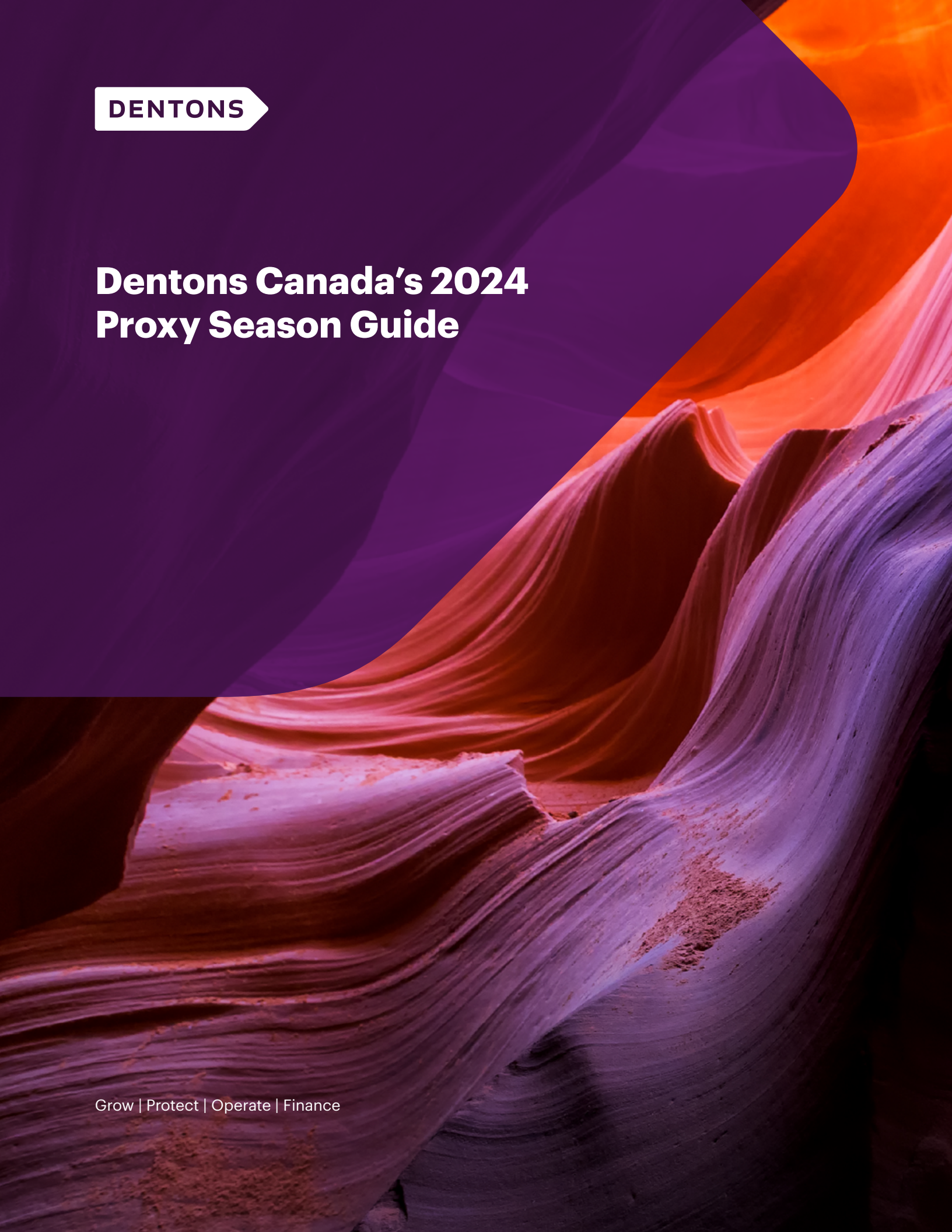
DENTONS

Dentons Canada's 2024 Proxy Season Guide



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Dentons Canada's 2024 Proxy Season Guide sets out legislative, regulatory and advisory developments pertaining to corporate governance and annual disclosure matters which will impact Canadian public companies with respect to their proxy-related materials and other annual disclosure. In particular, the guide focuses on changes that occurred in the 12 months leading up to February 2024, with reminders about continuing developments and future matters.

Contents

New developments

1. Proxy advisory firm updates: ISS and Glass Lewis

Glass Lewis advisory updates

Board accountability for climate-related issues

Glass, Lewis & Co. (**Glass Lewis**) has expanded its guidelines for director accountability for climate-related issues for shareholder meetings on or after January 1, 2024. As discussed in the 2023 Proxy Season Guide, Glass Lewis applied its policy to the largest, most significant emitters in 2023. Beginning in 2024, it will apply the policy more broadly to include TSX 60 companies that operate in industries where the Sustainability Accounting Standards Board (**SASB**) has determined that companies' GHG emissions represent a financially material risk. Glass Lewis will assess whether a company's climate-related disclosures are aligned with the recommendations of the Task Force on Climate-Related Disclosures (**TCFD**), and if they set out explicit and clearly defined board-level oversight responsibilities for climate-related issues. See *"Upcoming Developments"* below for more information on climate-related disclosure standards.

If a company's climate-related disclosures or governance disclosures are absent or significantly lacking, Glass Lewis may recommend voting against the chair of the committee charged with oversight of climate-related issues, or, if no committee has been charged with such oversight, the chair of the governance committee. Glass Lewis reserves that its recommendation may be extended to additional members of the responsible committee in certain instances, including if the chair of such committee is not standing for election or if the company has a large industry and overall governance profile.

Human capital management

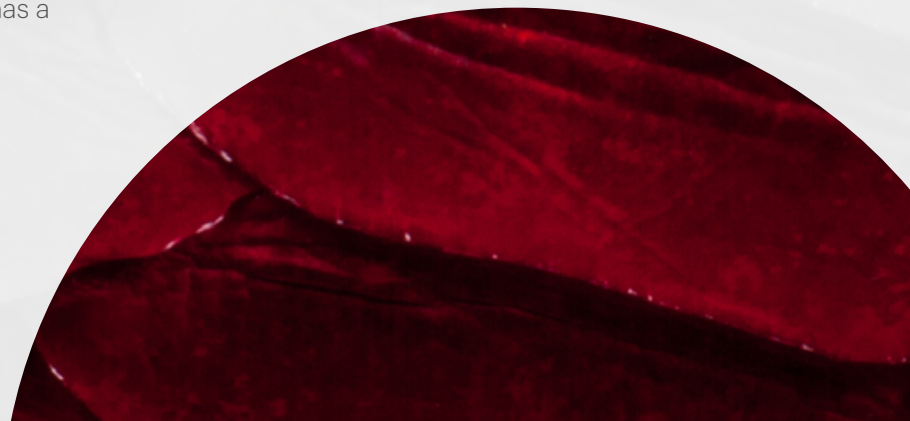
Glass Lewis has updated its guidelines for boards to be broadly accountable for direct oversight of workplace issues at large beyond diversity and inclusivity measures, to include labour practices, employee health and safety, and employee engagement. In egregious cases where management has failed to respond to legitimate concerns regarding its human capital management practices, Glass Lewis may recommend voting against the chair of the committee overseeing the company's environmental and social issues, the chair of the governance committee, or the chair of the board as applicable.

Cyber risk oversight

Glass Lewis has expanded its policy on cyber risk oversight as previously discussed in the 2023 Proxy Update. In instances of a material cyber-attack against a company, it may recommend voting against the appropriate directors should the board's oversight, response or disclosures concerning cybersecurity-related issues be found to be insufficient or not clearly outlined to the shareholders.

Interlocking directorships

Glass Lewis has expanded its policy on interlocking directorships to consider both public and large privately held companies and note that it evaluates other types of interlocking relationships on a case-by-case basis. The aim of such evaluations among non-insiders is to identify patterns of poor oversight.



Audit financial expert designation

Glass Lewis has revised its criteria to designate a director as an "audit financial expert" to include one or more of the following (i) a chartered accountant; (ii) a certified public accountant; (iii) a former or current CFO of a public company or corporate controller of similar experience; (iv) a current or former partner of an audit firm; or (v) having similar demonstrably meaningful audit experience. Glass Lewis considers this designation separate and distinct from the financial skill in its skill matrix, and, at a minimum, expects an audit committee to have at least one audit financial expert.

Clawback provisions

Glass Lewis has updated its policy with regard to clawback provisions with a view that companies should be able to recoup executive incentive compensation where there is evidence of problematic decisions or actions, and not necessarily on the basis of financial restatements. Further, such power should be available regardless of the termination of an executive with or without cause.

Executive ownership guidelines

Glass Lewis has added a formal outline to their approach to executive share ownership. Glass Lewis believes that counting unearned, performance-based awards or unvested/unexercised stock options towards minimum share ownership targets may be inappropriate and encourages companies to clearly disclose their executive ownership requirements in their compensation discussion and analysis.

Proposals for equity awards for shareholders

Glass Lewis has expanded its guidelines with regard to front-loaded awards such that companies should have provisions to facilitate recipients of such grants who are also shareholders to not vote or to abstain from voting on such awards. Glass Lewis notes that such provisions address conflicts of interest, especially where the vote of such shareholder could materially influence the passage of the proposal.

Clarifying amendments

Glass Lewis notes that committees charged with nominating and governance mandates may be combined or separate, and to capture where they are not combined has segregated its previous "Nominating and Corporate Governance Committee" section into individual sections for "Nominating Committee Performance" and "Corporate Governance Committee Performance."

Glass Lewis has expanded its guidance for how it examines governance following an IPO, spin-off or direct listing to allow, where the board adopts overly restrictive governance policies, for recommendations against the election of members of the governance committee (or the board chair, in the absence of a committee). In addition, Glass Lewis will generally recommend against the election of the chair of the governance committee or most senior representative of the major shareholder where the board adopts a multi-class share structure in connection with an IPO, spin-off or direct listing.

Glass Lewis has expanded its discussion regarding the use of non-GAAP measures in incentive programs to emphasize the need for transparent and thorough disclosure in the proxy statement to assist shareholders in reconciling the differences between non-GAAP results used for incentive payout determinations and reported GAAP results. In situations where significant adjustments were applied, Glass Lewis will note the lack of such disclosure in its assessment of the quality of executive pay and may factor this into its recommendations on say-on-pay.

ISS advisory updates

Gender diversity (TSX-listed issuers)

Effective February 1, 2024, Institutional Shareholder Services (**ISS**) will remove the transitionary language in its diversity policy for Canadian S&P/TSX Composite Index constituents. Under the policy, as previously discussed in our 2023 Proxy Season Guide, ISS will recommend against the election of the chair of the nominating committee, or its equivalent, of a company listed on the S&P/TSX Composite Index with less than 30% representation of women on its board of directors.

Compensation and Equity-Based Compensation Plans (TSX-listed issuers)

Effective February 1, 2024, the percentage limit of option grants to non-executive directors (**NEDs**) of 0.25% to 1% of the company's outstanding shares is being replaced with an annual maximum limit which "should not exceed CA$150,000 across all equity compensation plans in aggregate, of which no more than CA$100,000 of value may comprise stock options." ISS will also remove the percentage limit factor in its analysis of equity compensation plan proposals. In both instances, ISS states that the previous percentage limits are no longer reflective of market practices. ISS will vote against any individual equity grants to NEDs that exceed the annual maximum limit or any proposed equity compensation plans that do not specify the ISS recommended individual NED maximum grant limit.

Equity-Based Compensation Plans (Venture Companies)

Effective February 1, 2024, ISS has added the circumstance when companies have adopted an equity plan without seeking shareholder, as companies listed on the Canadian Securities Exchange (**CSE**) are required to obtain shareholder approval within three years after the creation of a rolling (evergreen) equity plan and within every three years thereafter. In such cases, where a CSE listed company has not sought shareholder approval in the past three years and does not seek shareholder approval of the plan at the meeting, ISS will generally recommend to withhold voting for the election of the continuing compensation members (or, where no compensation committee has been identified, the board chair or full board).

2. SEDAR+ and CSA filing systems upgrades

The CSA launched SEDAR+ on July 25, 2023, to replace the System for Electronic Document Analysis and Retrieval (**SEDAR**), the CSA's legacy platform for filing, disclosing and searching for information in the Canadian capital markets. SEDAR+ has also replaced the National Cease Trade Order Database, the Disciplined List, certain filings in the British Columbia Securities Commission's eServices system, the Ontario Securities Commission's Electronic Filing Portal, and reporting issuers lists from all provincial and territorial regulators. The launch of SEDAR+ is part of a multi-year process to modernize the CSA's national systems, and future phases of SEDAR+ will replace the System for Electronic Disclosure by Insiders, the National Registration Database, and the remaining filings in local systems.

Please see our Insight dated July 28, 2023, for more information on the launch of SEDAR+

3. CIRO replaces and consolidates MFDA and IIROC

Effective January 1, 2023, the Mutual Fund Dealers Association of Canada (**MFDA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**) were consolidated into a new national self-regulatory organization in Canada, which changed its name to the Canadian Investment Regulatory Organization

(**CIRO**) on June 1, 2023. CIRO combines the regulatory functions of the MFDA and IIROC, setting and enforcing rules for the business and financial conduct of Canadian investment dealers and mutual fund dealers. Effective January 1, 2023, the Canadian Investor Protection Fund (**CIPF**) was created from the amalgamation of the former Canadian Investor Protection Fund and the MFDA Investor Protection Corporation as an investor protection fund independent of CIRO.

4. Modern slavery reporting guidelines

On May 3, 2023, Canada passed its first reporting legislation for modern slavery and child labour, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the **Act**). The Act, which includes reporting requirements, forms part of an increasing response from the Government on business and human rights considerations, and in particular human rights in supply chains. The Act came into force on January 1, 2024, with the first set of reports due on May 31, 2024.

It is crucial for reporting entities to note the following key aspects of the Act:

- The reports are public. The reports must be prominently posted on a company's website. Further, they will be available in a government registry.
- For *Canada Business Corporations Act* entities or entities created under any other act of parliament, reports must be sent out to shareholders with other financial reporting documents.
- The reports must be approved by an entities' board and signed off by one or more directors or officers.
- There are penalties for non-compliance, including fines up to CA$250,000. This includes false or misleading statements.
- Directors/officers are specifically liable under the Act, in addition to any other general director/officer liability.
- Notably, while a company may already report in jurisdictions other than Canada on modern slavery, the Act also includes reporting on child labour. – Canada is one of the first jurisdictions in the world to include reporting on child labour in supply chains. To the extent a reporting entity's existing internal policies do not include diligence and prohibitions relating to child labour, they should consider expanding the diligence efforts and policies to include it.

Please see our Insight dated May 26, 2023, for more information on the Act, including the entities that are required to report, the contents of the reporting, the governance oversight of the reporting, and the offences and punishments for compliance failures.

On December 20, 2023, Public Safety Canada released guidance (the **Guidance**) on certain reporting requirements included in the Act, and set out guidance that goes beyond the requirements in the Act. In particular the Guidance (i) addresses the key threshold issues for determining if an entity must report, (ii) clarifies the meanings of producing, selling, distributing and importing goods under the Act, (iii) provides suggested wording for the required attestation, (iv) provides guidance on the substantive elements of the report, including entity structure, activities and supply chains, policies and due diligence processes, forced labour and child labour risks, remediation measures/remediation of loss of income, and assessing effectiveness.

Please see our Regulatory Review dated January 12, 2024, for more information on the Guidelines.

Continuing developments

1. Diversity on boards and in executive officer positions

On October 5, 2023, the CSA published Multilateral Staff Notice 58-316 – *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions* (*Year 9 Report*), the ninth annual review by the CSA of public disclosure regarding women on corporate boards and in executive officer positions. The CSA reported a steady uptick in the overall percentage of women on boards and in executive officer positions compared to its eighth annual review in 2022. As of 2023: 27% of board seats were occupied by women (increasing from 24% in 2022); 89% of issuers had at least one woman on their board (increasing from 87% in 2022); 71% of issuers had at least one woman in an executive officer position (increasing from 70% in 2022); 8% of issuers had a woman as chair of the board (increasing from 7% in 2022); and 5% of issuers had a woman as Chief Executive Officer (consistent with 5% in 2022). The CSA noted that the number of women on boards and in executive officer provisions varied by industry, with manufacturing, retail and utilities having the highest percentage of issuers with one or more women on their boards and retail, real estate, utilities and manufacturing having the highest percentage of issuers with one or more women in executive officer positions. The mining, biotechnology and financial services industries had the lowest percentage of issuers with one or more women on their boards, and the mining, technology, oil and gas, and biotechnology industries had the lowest percentage of issuers with women in one or more executive officer positions.

The CSA noted a correlation between issuers that adopted diversity measures, such as a written policy or targets relating to the representation of women on their boards, and the proportion of board seats held by women. Issuers that adopted board targets had, on average, 32% of board seats held by women, compared to 22% for issuers without board targets. Issuers that adopted a written policy had, on average, 30% of board seats held by women, compared to 19% for issuers without a policy.

As discussed below under "Upcoming Developments," in April 2023, the CSA proposed amendments to corporate governance disclosure rules and policy relating to the director nomination process, board renewal and diversity (**Proposed Diversity Amendments**). Please see below and our Insight published on April 27, 2023, for more information on the Proposed Diversity Amendments.

In light of the continued investor focus on environmental, social and governance factors, and an increase in shareholder activism in this area, there appears to be an opportunity for more significant disclosure for issuers that actively plan to address diversity metrics, as well as potential consequences for issuers that fail to adequately address a lack of diversity on their boards and management teams.

2. ESG disclosure and greenwashing concerns

On December 7, 2023, the Ontario Securities Commission (**OSC**) published OSC Staff Notice 51-735 – Corporate Finance Branch 2023 Annual Report (**OSC Annual Report**) to provide guidance regarding regulatory requirements in certain areas, including an annual review of issuers' continuous disclosure. In the OSC Annual Report, the OSC identified the presentation of disclosure pertaining to an issuer's ESG impact as a key area for improvement. The OSC noted that it observed an increase in issuers making misleading, unsubstantiated or otherwise incomplete claims about ESG and sustainability-related aspects of their businesses that convey false impressions commonly referred to as "greenwashing." The OSC Annual Report advises that issuers should ensure

their ESG disclosures are factual, balanced, specific and corroborated by supporting data, reports and factual disclosure, as applicable.

We previously discussed the CSA's greenwashing concerns in an insight regarding the CSA's biennial report on continuous disclosure provided by reporting issuers. For more information, please see our Insight published on November 4, 2022.

As discussed below under "Upcoming Developments," the CSA has proposed climate-related disclosure rules for reporting issuers to provide consistent, comparable and decision-useful disclosure to market participants. In 2023, the CSA announced its intention to conduct further consultations to align its proposed disclosure standards with the sustainability standards introduced by the International Sustainability Standards Board in June 2023, modified as necessary for the Canadian context. For more information, please see below and our Insight published on July 5, 2023.

3. Virtual shareholder meetings

Throughout the COVID-19 pandemic, many reporting issuers adopted a virtual or hybrid format for their shareholder meetings, and the flexibility to hold a virtual or hybrid shareholder meeting was reinforced in 2023. Recent legislative amendments to the Ontario Business Corporations Act (**OBCA**), which came into effect on October 1, 2023, have institutionalized the use of virtual meetings by providing that meetings of shareholders may be held entirely by one or more telephonic or electronic means. Such virtual meetings must enable all attendees to reasonably participate. The amended OBCA also provides that a notice of a shareholders' meeting is not required to specify a place of meeting if it is to be held virtually, but must include instructions for attending and participating in the meeting by the telephonic or electronic means, including instructions for voting by such means at the meeting.

The virtual meeting landscape continues to evolve and face challenges with respect to facilitating shareholder participation. As discussed in our 2023 Proxy Season Guide, the CSA has issued guidance for virtual shareholder meetings, recommending that virtual meeting practices be transparent and consistent with established practices for in-person meetings, with the goal of promoting meaningful interaction between shareholders and management. The CSA suggests that issuers provide clear and comprehensive procedural disclosure in management information circulars and proxy materials for virtual shareholder meetings, including full explanations of the means by which shareholders can access, participate and vote at virtual meetings. The CSA has urged issuers to consider whether a virtual format is appropriate for contested shareholder meetings, and whether a meeting protocol agreement is needed. For more information, please see our Insight published on March 15, 2022.

Upcoming developments

1. Diversity disclosure and corporate governance practices

On April 13, 2023, the CSA published a notice and request for comment on the proposed amendments to Form 58–101F1 – *Corporate Governance Disclosure* (**Form 58-101 F1**) and National Policy 58–201 – Corporate Governance Guidelines (**NP 58-101**), pertaining to diversity, board renewal and board nominations. The primary objectives of the proposed amendments are to:

- increase transparency about diversity – including diversity beyond women, both on boards and in executive officer positions;
- provide investors with useful information that enables them to better understand how diversity ties into an issuer's strategic decisions; and
- provide guidance to issuers on corporate governance practices related to board nominations, board renewal and diversity.

Two versions of Form 58-101F1 were proposed for comments - Form A and Form B. Both forms share the goal of requiring disclosure on aspects of diversity beyond the representation of women, however, each the forms adopt different approaches to diversity-related disclosure.

Form A would require the issuer to disclose its approach to diversity in respect of the board and executive officers, but would not mandate disclosure in respect of any specific groups, other than women. An issuer would be required to describe its chosen diversity objectives and how it would measure progress and explain what mechanisms it has established to achieve its diversity objectives.

Form B contemplates mandatory disclosure on the representation of five designated groups: women, Indigenous peoples, racialized persons, persons with disabilities and LGBTQ2SI+ persons, on boards and in executive officer positions. An issuer may also choose to voluntarily provide disclosure in respect of other groups beyond the designated groups.

While the CSA is considering adapting the proposed amendments for venture issuers, as of the date of this publication, the forms would only be applicable to non-venture issuers.

The proposed changes to NP 58–201 would provide enhanced guidelines for all issuers related to board nominations, board renewal and board diversity to complement the disclosure requirements contained in the proposed Form 58-101 F1.

The proposed guidelines would address the following:

- the responsibilities of the nominating committee;
- the adoption of a written policy respecting the director nomination process;
- the use of a composition matrix;
- effective succession planning and the mechanisms of board renewal, including term limits;
- the adoption of a written diversity policy; and
- setting targets for achieving diversity on the board and in executive officer positions.

Similar to the approach of two forms, the CSA has proposed two versions of NP 58–201 for comment, "Policy A" and "Policy B." The guidelines pertaining to board nominations and board renewal are harmonized in both Policy A and Policy B, but differ with respect to diversity-related guidelines in order to match the corresponding versions of Form 58–101F1 for the diversity-related disclosure requirements. The consultation period has ended and more updates are expected from the CSA.

Please see our Insight dated April 27, 2023, for further information on the diversity disclosure proposals.

2. Climate-related disclosure standards

Over the last few years, Canadian securities regulators have been working towards the establishment of climate-related disclosure standards for Canadian issuers. In 2021, the CSA published a proposal of such standards, modelled on the TCFD recommendations, in the form of National Instrument 51-107 *Disclosure of Climate-related Matters* and the related Companion Policy 51-107CP (collectively, the **Climate Disclosure Proposals**). As discussed in our Insight from December 2021, the 2021 Climate Disclosure Proposals would require issuers to make climate-related disclosures encompassing four key areas: governance, strategy, risk management and metrics and targets.

In June 2023, the International Sustainability Standards Board established an international framework for sustainability and climate-related disclosure by publishing its inaugural standards: the IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and the IFRS S2 Climate-related Disclosures (collectively, the **ISSB Standards**). This framework was developed in response to growing calls from market participants for more consistent and uniform climate-related disclosure standards on a global scale.

Currently, consultations among the CSA, the Canadian Sustainability Standards Board (**CSSB**) and provincial securities regulators are ongoing with respect to adopting climate-related disclosure requirements in Canada based upon the ISSB Standards. Key themes from the consultations to date include, but are not limited to:

- The importance of alignment with international standards to mitigate the potential challenges for multi-jurisdictional issuers having to navigate multiple climate-related disclosure frameworks.
- Emphasizing proportionality and scalability to ensure issuers of all sizes can comply with the standards without overly burdensome costs.
- Potential challenges with disclosure of certain information, which may be difficult to quantify and measure. For example, some stakeholders have commented that emissions disclosures should be voluntary instead of mandatory due to the challenges associated with identifying and measuring certain types of emissions.
- Liability-related concerns and the consideration of safe harbours, given that certain disclosures may require future or forward-looking disclosures.

Given that the foundation for a climate-related disclosure framework in Canada has already been established, we anticipate that the CSA (in conjunction with the CSSB and provincial securities regulators) will work to incorporate the ISSB Standards into the Climate Disclosure Proposals.

We will continue to monitor ongoing developments related to climate-related disclosure standards and anticipate to publish further commentary as discussions among the CSA, CSSB and provincial securities regulators continue and the parties move towards establishing climate-related disclosure standards for the Canadian market.

3. Finalized access model for prospectus delivery and updates to access equals delivery model for continuous disclosure

On October 3, 2023, the CSA provided an update delaying the implementation of proposed amendments to continuous disclosure requirements for non-investment fund reporting issuers (**Proposed CD Amendments**). First introduced in 2021, the Proposed CD Amendments aim to change the existing continuous disclosure regime by streamlining and clarifying certain disclosure requirements in financial statements, management discussion and analysis and annual financial statements and introducing new measures to address gaps identified in the current disclosure framework. This update regarding the delay came after the CSA published a notice and request for comment on proposed amendments to several national instruments and policies to adopt an "access equals delivery" model (**AED Model**). As a result of comments received on the AED Model, the CSA will publish a revised access model for continuous disclosure in due course and the Proposed CD Amendments will not be implemented until an access model is chosen.

On January 11, 2024, the CSA published in final form amendments and changes to implement an electronic access model for prospectuses (**Access Model**), to take effect on April 16, 2024. The Access Model, which is not mandatory for issuers, provides alternative procedures whereby providing public electronic access to a preliminary prospectus or a final prospectus, as applicable, and alerting investors that the document is accessible through SEDAR+ will constitute delivery for the prospectus, generally, under securities legislation (or, in British Columbia, Québec and New Brunswick, satisfy the conditions of an exemption from the requirements under securities legislation to send a prospectus). The Access Model is intended to modernize the way prospectuses are made accessible to investors and reduce costs to issuers associated with the printing and mailing of prospectuses.

Please see our Insight dated October 18, 2023, for more information on the Proposed CD Amendments and AED Model and our Insight dated January 19, 2024, for further information on the finalized Access Model.

4. Permanent WKSI regime

On September 21, 2023, the CSA proposed amendments to National Instrument 44-102 – Shelf Distributions, Companion Policy 44-102CP and National Policy 11-202 – Process for Prospectus Reviews in Multiple Jurisdictions (**Proposed Amendments**) which, if implemented, would provide an expedited shelf prospectus regime to well-known seasoned issuers (**WKSIs**). The Proposed Amendments enhance, and make permanent, the temporary local blanket orders adopted by the Canadian provinces and territories on January 4, 2022.

A WKSI is an issuer that, among other criteria, has either (1) outstanding listed equity securities that have qualifying public equity of CA$500 million or (2) at least CA$1 billion aggregate amount of non-convertible securities, other than equity securities, distributed under a prospectus in primary offerings for cash, not exchange, in the last three years. Under the regime, WKSIs that satisfy the qualification criteria and conditions are exempt from certain base shelf prospectus filing requirements, including the requirement to file a preliminary base shelf prospectus and having such prospectus undergo a regulatory review (**WKSI Framework**). WKSIs are also permitted to omit certain disclosure from the base shelf prospectus (e.g., aggregate dollar amount of securities that may be raised under the prospectus) and under the Proposed Amendments, will benefit from an automatic prospectus receipt effective for a period of 37 months after its deemed issuance, subject to an annual confirmation.

The Proposed Amendments enhance the WKSI Framework by providing transaction certainty for issuers – because prospectus receipts are deemed to be automatically issued. This change reduces the regulatory burden for WKSIs as well as certain transaction risks associated with the traditional base shelf prospectus, enabling WKSIs to respond quickly to changing market conditions. For high market-cap companies, this means taking advantage of favourable market conditions or narrow market openings.

Please see our Insight dated October 4, 2023, for further information on the proposed permanent WKSI regime.

Possible developments

1. Artificial intelligence in the capital markets

Artificial intelligence (**AI**) is becoming increasingly prevalent in the capital markets. As a result, Canadian securities regulators are directing greater attention and resources toward researching AI, which has transformative potential to affect market participants.

In October 2023, the OSC published a report examining the use and application of AI in Ontario's capital markets (**AI Report**). As discussed in our Insight from November 7, 2023, the AI Report summarizes current use cases of AI in the capital markets, including trading surveillance, asset price forecasting, marketing and sales, and data quality improvement. Generally, market participants in Ontario are using AI to manage risk, improve efficiency, and generate revenue.

Although AI has the potential to benefit market participants, the AI Report also highlights the potential challenges of the widespread adoption of AI, including governance issues, privacy-related concerns and overcoming knowledge gaps.

The AI Report also stresses that as the use of AI grows, so does the risk of the technology being exploited for malevolent purposes, which may come at the expense of investor safety and/or market stability. In turn, the AI Report emphasizes the need for ongoing collaboration between governments and regulators at the federal and provincial levels to establish consistent regulations in this area.

To date, the OSC is the only Canadian securities regulator to publish a report on AI in the capital markets. While the report signals that regulators are beginning to take notice of this emerging technology and its disruptive potential, we anticipate that the OSC and other provincial securities regulators will engage in more substantive research moving forward.

2. Consultation on changes to National Instrument 43-101

Last updated in 2011, National Instrument 43-101 – Standards of Disclosure for Mineral Projects (**NI 43-101**) governs the disclosure of scientific and technical information concerning mineral exploration, development and production activities by mining issuers for a mineral project on a property material to the issuer. The disclosure, whether oral or written, must be based on information provided by or under the supervision of a qualified person, and specified terminology is required when disclosing mineral resources and mineral reserves. NI 43-101 also requires a mining issuer to file a technical report at certain times using the prescribed format of Form 43-101F1 – Technical Report. Such a report must be prepared by one or more qualified persons who may need to be independent of the issuer and the mineral property.

Since 2011, the CSA have continually monitored the mineral disclosure requirements in NI 43-101 and gathered data identifying numerous deficiencies with the regulatory framework, ranging from consistent non-compliance with certain aspects to inadequate or low-quality disclosure.

In light of these deficiencies, the CSA published a consultation paper in 2022, looking to receive comments from industry stakeholders on ways to update and improve NI 43-101. The consultation paper posed questions to stakeholders relating to the clarity and sufficiency of the disclosure requirements imposed by NI 43-101, as well as ways to improve and modernize such requirements, including:

- the format and substance of Form 43-101F1 (and potential alternatives);

- data verification processes and disclosure requirements outlined in section 3.2 of NI 43-101 and Item 12 of Form 43-101F1;
- historical estimate disclosure requirements imposed by section 2.4 of NI 43-101;
- preliminary economic assessments, including those used in conjunction with pre-feasibility and feasibility studies;
- the definition of a "qualified person";
- the current personal inspection requirement in section 6.2 of NI 43-101;
- disclosure of exploration information outlined in section 3.3 of NI 43-101;
- mineral resource estimates and the rules pertaining to reasonable prospects for eventual economic extraction, data verification, and risk factors, to address the deficiencies identified in CSA Staff Notice 43-311;
- environmental and social disclosure requirements;
- rights of Indigenous peoples in Canada and potential future disclosure requirements specifically addressing the impacts that a mineral project may have on Indigenous peoples; and
- the economic analysis of mineral projects, including capital and operating costs assumptions and estimates.

We anticipate continued activities in the mining sector in the upcoming year, and will continue to monitor ongoing developments regarding potential changes to NI 43-101. More information on the consultation exercise and comments received can be found on the OSC website.

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