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Environmental,
Social &
Governance (ESG)
Considerations



ESG considerations are becoming increasingly important and are central to any business strategy in Canada. Specific requirements under Canadian securities law are limited to Governance-related disclosure. No such disclosure is expressly required of Environmental and Social (E&S) factors. Instead, public companies are subject to a general rule that they must meaningfully disclose any material risk to their business. This materiality requirement applies to environmental, social and governance information as it would to any other information.

Companies are expected to embrace a materiality framework that prioritizes investor concerns regarding ESG issues and to convey a strong ESG narrative across their capital market disclosures. This shift not only reflects the growing demands of institutional investors but also mirrors recent revisions to Canadian policy guidelines by prominent proxy advisory firms, emphasizing the critical role of ESG disclosures.

Moreover, the manner in which pension plans should incorporate ESG risks, given their fiduciary responsibilities related to pension fund investments, is a complex challenge facing pension plan administrators worldwide. In Canada, leading pension plan investment managers have called on companies and investors to provide consistent and complete ESG information to strengthen investment decision-making and better assess and manage their collective ESG risk exposures.¹

Environment

Environmental and Climate Change-Related Disclosures for Canadian Issuers

In recent years, Canada has seen a surge in attention towards environmental and climate change-related concerns. The Canadian Securities Administrators (CSA) has responded by issuing guidance to assist Canadian issuers in recognizing and disclosing material environmental information², with a specific emphasis on climate change-related risks.³

Given the complex nature of environmental materiality, the CSA has refrained from setting a fixed threshold, opting instead to offer guiding principles for companies to evaluate such risks. These principles, drawing on the Task Force on Climate-Related Financial Disclosures (TCFD) recommendations, include considering the context, the timing, the probability, and the anticipated magnitude of environmental or climate-related risks on business operations.

To ensure comprehensive reporting, the CSA advises issuers to lean towards transparency when assessing materiality. Furthermore, the guidance highlights the importance of outlining the board's and management's roles in the oversight, evaluation, and management of climate-related risks and opportunities. While not mandatory, it advocates for clear communication about how these risks and opportunities could affect the company's business model, strategy, and financial planning. Additionally, it emphasizes the necessity of disclosing the processes in place to manage these concerns, as well as the specific metrics and targets established to measure progress in addressing climate risks and opportunities.

¹ [CEOs of eight leading Canadian Pension Plan investment managers call on companies and investors to help drive sustainable and inclusive economic growth.](#)

² [CSA Staff Notice 51-333 - Environmental Reporting Guidance \(October 27, 2010\).](#)

³ [CSA Staff Notice 51-358 - Reporting of Climate Change-related Risks \(August 1, 2019\).](#)



Such disclosures might be required in an issuer's management's discussion and analysis (MD&A), where the issuer must disclose material information that may not be fully reflected in its financial statements, and trends and risks that are reasonably likely to affect the issuer's future performance. Examples of environmental information that may require disclosure in a MD&A include trends relating to consumer preference, supply chain management, availability and price of carbon allowances or offsets.

In an annual information form (AIF) an issuer must describe, among other things, risk factors relating to the company and its business most likely to influence an investor's decision to purchase securities of the company and what environmental policies have been implemented that are fundamental to its operations. Potential exposure to effects of extreme weather patterns, emissions-limiting regulations, and the transition to a low-carbon economy are examples of potential risks that may require disclosure if considered material. If information is disclosed as forward-looking information, it must be identified as such in addition to providing a disclaimer and a description of factors and assumptions grounding its projection. Examples of forward- looking information may include a target to reduce greenhouse gas (GHG) emissions or a scenario analysis of climate change-related business impacts.

As Canada progresses toward a more transparent and uniform approach to climate-related disclosures, several key regulatory developments have been set in motion, aligning with international standards and addressing evolving market needs. Initiating these changes, in 2023, the Office of the Superintendent of Financial Institutions (OSFI) issued Guideline B-15: Climate Risk Management, which sets out the financial regulator's requirement that federally regulated financial institutions, including large Canadian banks and insurers, publish climate disclosures aligned with the TCFD framework as of fiscal year-end 2024.⁴

The Canadian government also plans on extending mandatory climate disclosures to large, federally incorporated private companies, based on TCFD recommendations.⁵ Amendments to the *Canada Business Corporations Act* will detail these new disclosure requirements. Though small- and medium-sized enterprises are not subject to these new mandates, they are nonetheless encouraged to adopt voluntary climate-related disclosures.



⁴ Effective fiscal year-end 2024 for Domestic Systemically Important Banks (DSIBs) and Internationally Active Insurance Groups (IAIGs) headquartered in Canada. For all other in-scope Federally Regulated Financial Institutions (FRFIs), the Guideline will become effective at fiscal year-end 2025.

⁵ <https://www.canada.ca/en/department-finance/news/2024/10/government-advances-made-in-canada-sustainable-investment-guidelines-and-mandatory-climate-disclosures-to-accelerate-progress-to-net-zero-emissions.html>



In March 2024, the OSFI released updates to Guideline B-15: Climate Risk Management with a focus on ensuring that the expectations for federally regulated financial institutions align with the International Sustainability Standards Board's (ISSB)⁶ final International Financial Reporting Standards (IFRS) S2 Climate-related Disclosures standard. Similarly, the *Autorité des marchés financiers* (AMF) published its Climate Risk Management Guideline⁷ in July 2024, which conforms to ISSB standards. The guideline applies to licensed insurers, financial services cooperatives, licensed trust companies and other licensed deposit-taking institutions under the AMF's jurisdiction. It sets forth climate-related disclosure requirements with different timelines for large versus smaller institutions: larger entities are to comply 180 days post-financial year 2024, while smaller ones have until the end of financial year 2025, with some scope 3 emissions disclosure requirements coming into effect a year later. This move by the AMF not only underscores the alignment with international norms but also provides a template that could shape forthcoming regulations across the Canadian securities landscape.

Parallel to these developments, the Canadian Sustainability Standards Board (CSSB) released its proposal for the Canadian Sustainability Disclosure Standards (CSDS)⁸ in March 2024. Targeted for effectiveness starting January 1, 2025, these two standards draw from the ISSB's IFRS sustainability disclosure standards.⁹ For these to become mandatory under Canadian securities law, they must be adopted as a CSA rule. Post-consultation, the CSA intends to solicit comment on a revised climate-related disclosure rule that harmonizes with the finalized CSSB standards, taking into account the particularities of Canadian capital markets. The CSA is actively monitoring international regulations, such as the climate-related disclosures rule enacted by the United States Securities and Exchange Commission (SEC) in March 2024, to align with global best practices. The decisions regarding the compulsory nature of CSDS, the scope of its applicability, and the implementation timeline are expected to be key focal points for Canadian regulators as they look to update CSA's climate-related disclosure rules following the finalization of the CSDS, anticipated later in 2024.

Climate Investment Taxonomy


To complement the new climate-related disclosure mandates, the Canadian government is introducing a sustainable investment taxonomy aimed at classifying investments related to green and transition projects and investments conducive to environmental sustainability.

6 The TCFD framework was positioned under the jurisdiction of the newly established ISSB in 2023.

7 [AMF Climate Risk Management Guideline \(July 2024\)](#).

8 The CSDS is currently reviewing the responses received on proposed CSDS 1 and CSDS 2.

9 IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information (IFRS 1) and IFRS S2 Climate-related Disclosures (IFRS 2).



In March 2023, the Sustainable Finance Action Council (SFAC) within the Department of Finance Canada published the Taxonomy Roadmap Report.¹⁰ This report proposes a structured approach for standardized definitions of what constitutes a climate-compatible investment, drawing parallels to the established EU Taxonomy on Sustainable Activities. This initiative is coined the “Canadian Green and Transition Financial Taxonomy”. Garnering the support of Canada’s 25 leading financial institutions, the taxonomy is being crafted to guide investments towards projects that are aligned with Canada’s climate goals and those that present significant economic opportunities.

Climate-related Proxy Advisory Policy Guidelines

Beginning in 2023, Glass Lewis included a new discussion on director accountability for climate-related issues in its Policy Guidelines.¹¹ In particular, Glass Lewis has recommended that companies whose GHG emissions represent a financially material risk provide thorough climate-related disclosures in line with the recommendations of the TCFD. Glass Lewis also recommends that the boards of these companies should have explicit and clearly defined oversight responsibilities for climate-related issues. As such, in instances where either of these disclosures is found to be absent or significantly lacking, it may recommend voting against responsible directors. While this policy was applied to the largest, most significant emitters in 2023, beginning in 2024, TSX 60 companies operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that companies’ GHG emissions represent a financially material risk will also be targeted.¹²

Financing

Creditors too are increasingly requiring climate change-related disclosures in their financing agreements. One example is the Government of Canada’s large employer loans program in response to COVID-19, which required recipients to publish annual climate disclosure consistent with the TCFD’s recommendations.

Social

Economic Globalization has dominated the world economy post World War II. The failure to bring into existence, in the late 1940s, the Charter of the International Trade Organization (ITO), alongside the International Monetary Fund and the World Bank, left international business largely unregulated for the next half century or more. The ITO, among other things, housed the labour standards intended to accompany economic globalization.

Before the turn of the century, supranational organizations such as the World Trade Organization (established in 1995) recognized that a “social deficit” was embedded in globalization and in need of correction.

Efforts were under way to find a better balance between economic development and social progress so as to put globalization on a sustainable footing. In 1998, the International Labour Organization (ILO) passed the Declaration on Fundamental Principles and Rights at Work (the “Fundamental Declaration”).¹³ In 2011, the UN Guiding Principles on Business and Human Rights (the “UNGP”) came into existence.

¹⁰ [Taxonomy Roadmap Report](#).

¹¹ Glass Lewis – 2023 Policy Guidelines (Canada), p. 7-8.

¹² [Glass Lewis – 2024 Benchmark Policy Guidelines \(Canada\)](#), p. 8.

¹³ Article 2 of the ILO’s Fundamental Declaration sets out the five core labour standards, namely, (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation; and (e) the right to a safe and healthy working environment. See: Article 2 of the ILO Declaration on Fundamental Principles and Rights at Work.



For more than a decade (2011-2024), numerous initiatives have been undertaken to “operationalize” the UNGP. Although attention has been paid to Pillar 1 and Pillar 3, close scrutiny has centered on Pillar 2 related to Business and Human Rights¹⁴ (BHR), which has become a significant part of the international discourse around the rectification of the social impact of globalization.

The leading initiatives in the BHR space, include:

- The UN Treaty process to impose binding regulation on international business. The negotiation of a UN Treaty (i.e., the Legally Binding Instrument to Regulate, in International Human Rights Law, The Activities of Transnational Corporations and Other Business Enterprises) completed its ninth international session in October 2023.¹⁵
- The passage by national governments of: (1) National Action Plans (NAPs), under Pillar 1 of the UNGP, setting out the ways in which the jurisdiction will advance human rights; and (2) follow-on domestic legislation.¹⁶

- Recent judicial developments that are shifting standards impacting business from “soft” law guidelines, such as the UNGP, to “hard” law requirements. For instance, recent Canadian case law confirms that customary international law is incorporated into the country’s common law.¹⁷
- Running parallel to the foregoing initiatives and developments in the BHR field is the emergence of Environmental, Social, and Governance (ESG) initiatives and ESG Investing. The Social in ESG is essentially BHR, with attention on how the corporation interacts with its various “people” constituencies, namely: investors and shareholders; employees, suppliers, contractors and workers in the Global Supply Chain (GSC); consumers; local communities; and civil society in general.

The efforts to recover from the socio-economic fallout from the pandemic increased the debate between shareholder capitalism and stakeholder capitalism.

Under stakeholder capitalism, corporations are expected to engage in an ongoing process of “due diligence” in terms of the human rights footprint connected with the operations and activities of the corporations at home and abroad.¹⁸

¹⁴ The three pillars of the UNGP are as follows: Pillar 1 – States’ duty to protect human rights; Pillar 2 – Business’ duty to respect human rights; and Pillar 3 – Access to effective remedy. See: the UNGP.

¹⁵ A [draft version of this treaty](#) dated July 2023 was discussed at the 9th session. The 10th session will be held between December 16 – 20, 2024.

¹⁶ To date, 34 States have adopted NAPs. Canada has elected not to enact a NAP. Rather, it has implemented other regulatory and legislative measures. For example, on November 24, 2021, an Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff (Bill S-211) was introduced in the Canadian Senate to respond to the use of forced labour within Canadian businesses’ supply chains. The Act received royal assent on May 11, 2023 and came into force in January 2024. The Act introduced a supply chain transparency regime for certain Canadian entities and government institutions. In addition, Canada has implemented regulatory strategies to address business and human rights. For example, the [Canadian Ombudsman for Responsible Enterprise \(CORE\)](#) was established to investigate complaints about potential human rights abuses by Canadian companies operating abroad in the garment, mining, and oil and gas industries. Further, in accordance with obligations under the Canada-United States-Mexico Free Trade Agreement, Canada’s Customs Tariff also bans the importation of goods made in whole or in part with forced labour. The Canada Border Services Agency works with the federal Labour Program of Employment and Social Development Canada to identify and detain goods that are suspected of being produced by forced labour. The Canadian government is engaged in public consultations to strengthen its current forced labour import prohibition regime, including by introducing new measures to strengthen requirements to prove transparency and traceability of goods and by introducing more robust enforcement mechanisms. In other jurisdictions, the [German Act on Corporate Due Diligence in Supply Chains](#) took effect in January 2023, July 25, 2024, the EU’s [Directive on corporate sustainability due diligence](#) entered into force. The directive requires certain companies to identify and address adverse human rights and environmental impacts of their actions inside and outside Europe. Member states have to incorporate the Directive into national law by July 26, 2026 and the rules will start to apply to the first group of companies one year later.

¹⁷ See, for example, [Nevsun Resources Ltd. v. Araya, 2020 SCC 5](#). At paragraphs 59 and 114, Abella J. rejects the Act of State Doctrine and accepts the application of customary international law: “The [Act of State] doctrine is not part of Canadian common law, and neither is its underlying principles as developed in Canadian jurisprudence a bar to the Eritrean workers’ claims. [...] Ultimately, for the purposes of this appeal, it is enough to conclude that the breaches of customary international law, or jus cogens, relied on by the Eritrean workers may well apply to Nevsun. The only remaining question is whether there are any Canadian laws which conflict with their adoption as part of our common law. I could not, with respect, find any.”

¹⁸ The ingredients of corporate “due diligence” include a commitment to making respect for human rights a “core” part of the business and an ongoing process of “due diligence” as it pertains to the human rights footprint of the corporation. The due diligence process will include steps to assess risk to human rights; take action to mitigate such risk; track the progress of the measures aimed at mitigating the human rights risks; communicate, internally, and beyond the measures taken and the results achieved; and provide a remedy for those harmed by the corporation’s human rights footprint. See the [UNGP Guiding Principles 18-21](#).



Governance

Governance-related considerations emphasize robust governance structures, responsiveness and engagement with shareholders, and transparency. The following subjects are considered central, if not mandatory, to company practice and disclosure in Canada.

E&S-related Governance Considerations

As described above, the disclosure of material, environmental and social risks is mandatory under Canadian securities laws. It is the responsibility of an issuer's board and senior management to complete a risk analysis of company operations, including those with environmental and social implications, and to institute and disclose these risks and related policies and practices.

Glass Lewis has published a Proxy Paper on ESG initiatives¹⁹, in which it identifies the level and quality of oversight of environmental and social issues as critical in deciding whether to vote against a board, to support a shareholder resolution (or in some cases, to recommend voting against a company's accounts and reports, and/or ratification of management and board acts), particularly where the board fails to properly disclose, maintain oversight, or uphold related policies and practices.

Similarly, Institutional Shareholder Services (ISS) has published sustainability proxy voting guidelines relating to sustainability policy voting recommendations on certain matters such as climate risk mitigation, net zero and diversity matters.²⁰

In addition ISS has also published proxy voting guidelines with respect to TSX-listed companies in relation to E and S shareholder proposals and say-on climate proposals (management and shareholder).²¹

Board Diversity

Publicly-traded corporations, including companies listed on the TSX venture exchange, governed by the *Canada Business Corporations Act* (CBCA) are required to disclose, on a comply or explain basis, information on company policies and practices related to diversity of the board of directors and in senior management.²² This includes the number and percentage of members of the board and of senior management who are women, Indigenous Peoples, members of visible minorities and persons with disabilities. The company is also required to disclose whether or not they have adopted a target of representation in such positions, and if such a target has not been adopted, the reasons why they have not done so.

Board Compensation

All Canadian issuers are required to disclose a Statement of Executive Compensation with any information circular that is sent in connection with an annual general meeting, or a meeting in which directors will be elected or matters related to executive compensation will be voted upon.²³

¹⁹ 2023 Policy Guidelines, Glass Lewis.

²⁰ International Sustainability Proxy Voting Guidelines (ISS) January 2024.

²¹ Proxy Voting Guide for TSX-Listed Companies- 2024 Benchmark Policy Recommendations, January 2024

²² Section 172.1 Canadian Business Corporations Act and section 72.2 Canada Business Corporations Regulations, 2001.

²³ Item 8, Form 51-102F5 Information Circular; Form 51-102F6 Statement of Executive Compensation.