

Torys on Climate Change

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Recent Developments in Climate Change Disclosure

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CICA releases climate change disclosure guide

On November 26, 2008, the Canadian Institute of Chartered Accountants (CICA) released its publication *Building a Better MD&A: Climate Change Disclosures* (the Guide). Building on previous CICA guidance regarding reporting issuers' ongoing disclosure obligations, the Guide is designed to assist issuers in deciding how to assess the business and financial impact of climate change issues for the purpose of their annual management's discussion & analysis (MD&A).

The Guide identifies various types of information that investors and analysts are increasingly seeking, including information relating to whether the company has factored climate change issues into its business strategy; whether climate change poses physical, regulatory, reputational or litigation risks to the company; the company's direct and indirect greenhouse gas (GHG) emissions; whether climate change issues have or are expected to have an impact on a company's financial operations, cash flow, or financial condition; and what governance processes and resources a company has dedicated to these issues. As part of considering whether any particular information is material and thus to be disclosed, the Guide suggests that management should consider whether the impact of a climate change issue might reasonably be expected to grow over time, potentially making early disclosure of the issue important to long-term investors.

The Guide indicates that companies, in addition to reviewing their securities law requirements and financial statements, might also consider a list of other sources when deciding what information to assess for their MD&A disclosure. Although securities laws do not prescribe a format for presenting this disclosure, the Guide suggests three options when disclosure relates to material climate change issues: (i) as a separate section; (ii) as a subheading within the risk factors section; or (iii) linked to relevant discussions in other parts of the MD&A, such as corporate strategy, capital resources or outlook. According to the Guide, annual MD&A disclosures about climate change are likely to be sufficient. Only material changes to information reported in annual MD&As need be included in interim MD&As.

For further information, please see www.cica.ca/download.cfm?ci_id=47636&la_id=1&re_id=0.

Carbon Disclosure Project releases 2008 Canadian report

The Carbon Disclosure Project (CDP) recently issued its 2008 report on the voluntary climate change disclosure of 200 of Canada's largest companies. Representing 385 investors with assets of over \$57 trillion under management, the CDP annually solicits information from the world's largest companies on how climate change risks and opportunities are affecting their businesses. The most recent Canadian report received responses from 55% of the 200 Canadian companies surveyed, up from 45%

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last year. Among the report's key findings, 54% of high-GHG-emitting companies voluntarily disclosed their fossil fuel and electricity costs, something that investors are increasingly requesting from companies whose energy costs are material to their production costs. Meanwhile, 73% of the respondents that reported their GHG emissions noted that they used internationally recognized protocols to measure these emissions. The report also indicated that respondents are increasingly establishing formal climate change management programs, not only to set internal emissions-reductions targets and to factor the future cost of carbon into their capital expenditure planning, but also to take advantage of business opportunities associated with climate change.

For further information, please see www.cdproject.net/reports.asp.

Energy company agrees to climate change disclosure

Energy company Dynegy Inc. recently entered into an agreement with the New York State Attorney General's Office, in which it committed to assess and, where material, disclose in its annual filings with the Securities and Exchange Commission certain material risks associated with climate change: in particular, (i) financial risks associated with current and proposed GHG-reduction regulations in the states and counties where it operates; (ii) climate change litigation, including matters in which the company is not directly involved; and (iii) the physical impact of climate change on the company's operations.

Dynegy also agreed to disclose its carbon emissions; projected increases in carbon emissions from planned coal-fired plants; its strategies for reducing, offsetting, limiting or otherwise managing its GHG emissions; the expected emissions reductions from these actions; and its corporate governance actions related to climate change, including whether environmental performance is incorporated into officer compensation. The settlement agreement is consistent with the Attorney General's earlier settlement agreement with Xcel Energy Inc. in August 2008. The Attorney General had prompted these agreements in September 2007 when it subpoenaed Dynegy and Xcel – as well as energy companies AES Corporation, Dominion Resources Inc. and Peabody Energy Corp. – for information on whether they had adequately informed their investors about the risks associated with GHG emissions from their power plant projects.

Meanwhile, investor groups and legislators continue to call for national guidance.

For further information, please see www.oag.state.ny.us/media_center/2008/oct/oct23a_08.htm. 