

# Environmental Regulatory Landscape - Changes Relevant for Audits and Management Systems

Michael Simms

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# Presentation Overview

- Environmental Claims Risk
- ESG Reporting – Emerging Standards
  - National Instrument 51-107
  - Canadian Securities Regulator Staff Notice
  - Canadian Sustainability Standards Board & International Sustainability Standards Board
  - Federal Budget Announcement – Financial Institutions
- Canadian Environmental Protection Act Update

# Definitions - ESG

- **Environmental** - emissions, energy efficiency, carbon footprint, GHG emissions, water use, biodiversity, climate change, pollution, waste management
- **Social** – labour standards, wages and benefits, diversity, equity and inclusion, pay equity, human rights, community relations, privacy, data protection, health & safety
- **Governance** – largely governance related to the other two, but also including board composition and structure, strategic sustainability, oversight and compliance, executive compensation, lobbying, political participation and bribery & corruption

# Definitions – Emissions Scope

- **Scope 1:** direct emissions from owned or controlled sources, such as a company's facilities and the company's vehicles
- **Scope 2:** indirect emissions from generation of purchased energy, such as electricity, steam, heating and cooling
- **Scope 3:** All indirect emissions that occur in the value chain, both upstream and downstream. These can be hard to quantify, but often represent biggest GHG emissions of a company
  - Upstream examples: purchased goods & services, capital goods, transportation, waste from operations, business travel, employee commuting and leased assets
  - Downstream examples: transportation and distribution, processing of sold products, use of sold products, end-of-life treatment of sold products and leased assets

# Environmental Claims Risk

- False & misleading advertising
- Competition Act s. 74.01
- Criminal & “reviewable conduct” tracks
- In promoting a product or service:
  - Representations to the public that are materially false or misleading
  - Statements of performance, efficacy or length of life that are not based on proper testing
- General impression as well as literal meaning

# Environmental Claims Risk

- Orders can include:
  - Cease & desist
  - Publish notice of the improper conduct
  - Pay an administrative monetary penalty of up to \$10 million and \$15 million for subsequent order
- Bureau very focused on environmental claims
- Guidance document: “Environmental Claims and Greenwashing”

# Keurig Case

- application by EcoJustice in May 2019
- Keurig claimed pods could be recycled if lid removed and coffee grounds removed
- Found to be true only in limited locations
- Consent order
  - Change labeling
  - \$3 million administrative penalty
  - \$800,000 to environmental charity
  - Publish corrective notice
  - Enhance compliance program

# Competition Bureau Guidance

- Make sure that claims:
  - Are truthful and not misleading
  - Are specific and precise about environmental attributes
  - Are substantiated and verifiable, claims must be tested and tests must be proper
  - Do not result in misinterpretations
  - Do not exaggerate the environmental benefits
  - Do not imply that product is endorsed by a third-party organization if it isn't



# Further Suggestions

- Treat environmental and sustainability claims with the same kind of rigor that you apply to financial statements
- Review all environmental and sustainability statements – those made on websites, in printed material, on packaging, online and in other media
- Question the basis on which environmental and sustainability claims are made
- Consider adopting relevant and reputable third party standards or frameworks that can be applied to support environmental and sustainability claims

# ESG Reporting – Emerging Standards

- To date, climate-related disclosure in the form of ESG or sustainability reports has been voluntary in Canada
- Generally no Canadian regulations that mandate a company to publicly disclose ESG information
- Currently very little standardization or oversight with respect to ESG reporting

**THIS IS ALL ABOUT TO CHANGE**

# National Instrument 51-107

- In October 2021, Canadian Securities Administrators published for comment, draft NI 51-107 “Disclosure of Climate-related Matters”
- Key elements include
  - requiring an issuer to disclose certain climate-related information mainly on governance, strategy, risk management and metrics and targets
  - introducing disclosure requirements for climate-related matters in certain regulatory filings of reporting issuers (other than investment funds)
  - non-venture issuers - comply beginning January 1 of the first year after the effective date (one-year transition phase)
  - venture issuers - comply beginning January 1 of the third year after the effective date (three-year transition phase)
- Comment period closed Feb. 16, 2022. 131 comment letters. Regulatory burden and administrative cost of climate-related disclosures were common themes

# National Instrument 51-107

- Proposed requirements contemplate disclosure by issuers related to the four core elements of the TCFD recommendations:
  - Governance – an issuer’s board’s oversight of and management’s role in assessing and managing climate-related risks and opportunities
  - Strategy – the short medium and long-term climate-related risks and opportunities identified and the impact on the business, strategy and financial planning
  - Risk management – how an issuer identifies, assesses and manages climate-related risks and how these processes are integrated into its overall risk management.
  - Metrics and targets – Metrics and targets used to assess and manage climate-related risks and opportunities

# National Instrument 51-107

- Issuers to disclose Scope 1, Scope 2 and Scope 3 GHG emissions and related risks, or reasons for not doing so
- CSA also consulting on alternative approach to allow issuers to disclose only Scope 1 GHG emissions Scope 2 and Scope 3 disclosures not mandatory under alternative approach, but have to comply or explain
- CSA suggests using GHG Protocol Corporate Standard, an international recognized framework for measuring GHG emissions
- If issuer chooses different standard, will need to explain how it is comparable to the GHG Protocol

# CSA Staff Notice 81-334

- Issued January, 2022
- Guidance on ESG-Related Investment Fund Disclosure
  - How existing securities requirements apply to investment funds as they relate to ESG considerations, particularly ESG-Related Funds
  - Covers topics such as investment objectives and fund names, investment strategies disclosure, proxy voting and shareholder engagement policies and procedures, continuous disclosure, ESG-related changes to existing funds, and ESG-related terminology
  - Concern over “greenwashing”

# Federal Financial Institutions

- 2022 Federal budget announced pending legislation in respect of ESG reporting aimed at banks and insurance companies
- Expected to focus on climate-related financial risk consistent with Task Force on Climate-related Financial Disclosures framework
- Consultations in 2022 to develop climate disclosure guidelines
- Starting in 2024, financial institutions will be required to report on:
  - GHG emissions
  - climate-related risk
  - strategy and management plans
  - climate transition plans and net-zero commitments,
- Full implementation by 2027

# Federal Financial Institutions

- Federally regulated pension funds to disclose ESG considerations used in portfolio construction, including climate-related risks
- May 2022 – OSFI issued Draft Guideline B-15 “Climate Risk Management”
- Public comment period closes this month.
- Draft guideline includes expectations around climate-related financial disclosures closely aligned with TCFD recommendations and the ISSB Exposure Draft on Climate-Related Disclosures



# Canadian Sustainability Standards Board

- Canadian Sustainability Standards Board announced June 2022
  - Aims to be operational by April 2023
  - Implementation Committee to establish groundwork including recruitment process for a Chair and Board and defining governance and process-related matters
  - Will work closely with the ISSB
  - Part of international push to standardize reporting metrics on broad range of items, from climate risks to work force diversity to boardroom gender equity
  - Arose out of Canadian Independent Review Committee on Standard Setting recommendations

# International Sustainability Standards Board

- International Sustainability Standards Board announced in November, 2021
- Formed by IFRS Foundation
- tasked with creating unified standards for ESG disclosure to shareholders
- published exposure drafts of its first two standards:
  - IFRS S1 – “General Requirements for Disclosure of Sustainability-related Financial Information”
  - IFRS S2 – “Climate-related Disclosures”
- Drafts were open for comment to July 29, 2022

# International Sustainability Standards Board

- IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information
  - would require companies to disclose information about all significant sustainability-related risks and opportunities
  - disclose information to enable investors to assess effect of sustainability-related risks and opportunities on the company
  - disclosures focused on governance, strategy and risk management, and metrics and targets used to measure, monitor and manage sustainability risks and opportunities
  - includes industry-based disclosure requirements based on SASB Standards. A company would identify the requirements applicable to its business model and associated activities

# International Sustainability Standards Board

- IFRS S2 Climate-related Disclosures
  - focuses on climate-related risks and opportunities
  - Uses the same approach as IFRS S1 - requires a company to focus disclosure on governance, strategy and risk management, and metrics and targets used to measure, monitor and manage climate risks and opportunities
  - Requires companies to disclose information about climate-related physical and transition risks and opportunities
- ISSB will consult later this year on future standard-setting priorities

# Canadian Environmental Protection Act

- Bill S-5 – passed third reading in Senate, awaiting first reading in House of Commons
- Enshrines right to a healthy environment
  - “Every individual in Canada has a right to a healthy environment”
- Requires Federal Government to protect health of vulnerable populations in the administration of CEPA
- Empowers Minister to consider if exposure in combination with other substances has potential for cumulative effects
- Strengthens Chemicals Management for existing substances and new substances