

# Preparing for the 2020 proxy season: Key governance matters in Canada

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A broad range of corporate governance considerations will influence this year's reporting season. Read about what Canadian companies should have on their watchlist for 2020.

## Climate change-related risk disclosure

Last August, the Canadian Securities Administrators (CSA) [published guidance \(SN 51-358\)](#) to assist public companies in identifying and disclosing material climate change-related risks, an area of increasing investor focus in Canada and globally. The CSA recognizes that climate change-related risks are a mainstream business issue impacting many issuers, not just those in carbon-intensive industries—however, Canadian public company disclosure practices of climate change-related risks have been varied and often lacking.

The regulators acknowledge that assessing climate risks can be difficult due to the evolving understanding of the risks, the difficulty in quantifying them, and the potentially longer time horizon for these risks to materially impact an issuer's business. This assessment can be particularly challenging for smaller issuers with limited resources. To assist issuers, the guidance sets out a number of questions for the board and management to consider when assessing the appropriate level of climate change-related risk disclosure.

Borrowing from the recommendations of the Financial Sustainability Board's Task Force on Climate-related Financial Disclosures, the CSA guides issuers to consider both "physical" and "transition" climate change-related risks. Physical risks, such as direct damage to an issuer's assets, can be acute and result from event driven climate events (like hurricanes) or chronic and result from longer-term shifts in climate patterns. Transition risks include reputational, market, regulatory, policy, legal and technology-related risks.

In addition to considering the existence of material climate change-related risks, the CSA encourages issuers to, where practicable, quantify and disclose the potential financial and other impact(s) of such risks, including their magnitude and timing. Companies that disclose projections, such as targets to reduce GHG emissions or scenario analyses of climate change-related business impacts, are reminded to comply with the rules governing forward-looking information.

Moving forward, boards of directors and management are encouraged to conduct self-assessments relating to their climate change-related risk assessment expertise, and the quality of the company's climate risk management practices, including disclosure controls and procedures for climate change-related risks and considering how investors are factoring such risks into their investment and voting decisions.

## New diversity disclosure requirements for public CBCA companies

As of January 1, 2020, new diversity disclosure requirements are now effective for annual meetings of public CBCA companies. The CBCA goes further than securities laws by requiring disclosure not just about gender diversity, but also about the representation of visible minorities, Indigenous peoples and people with disabilities on the board and among senior management. Unlike securities laws, the CBCA grants no exemption for venture issuers.

Many companies' existing diversity policies address race, religion, ethnicity, sexual orientation and other diversity categories. The CBCA does not mandate that public companies adopt a policy or amend an existing policy, but their disclosure will have to separately cover the four designated groups.

## Directors' duties and Bill C-97

On April 8, 2019, the federal government introduced Bill C-97. Bill C-97 codifies elements of the Supreme Court of Canada's (SCC) decision in [BCE Inc. v 1976 Debentureholders](#) (BCE) and adds new contours to directors' legal obligations by amending the CBCA to state that, when acting with a view to the best interests of the corporation, directors and officers may consider, but are not limited to considering, the following: the interests of shareholders, employees, retirees and pensioners, creditors, consumers and governments, the environment, and the long-term interests of the corporation. Bill C-97 also contains provisions on say-on-pay, compensation clawbacks and the well-being of employees, retirees and pensioners. These provisions are not effective yet as they require regulations to be implemented.

## SHARE Report

The Shareholder Association for Research and Education (SHARE) reported in 2019 that many of the proposals submitted to Canadian companies during the 2019 meeting season were related to environmental matters, compensation equity, or a combination of the above (e.g., proposals requesting a company to integrate environmental and social criteria into executive compensation decisions). In 2020, SHARE reports that it intends to engage in outcome-oriented dialogues with more than 85 Canadian and international issuers on matters including climate change, reconciliation with Indigenous peoples, water scarcity, human rights and governance in the pharmaceutical industry,

Companies can expect the above types of proposals, and perhaps also proposals relating to diversity and inclusion, privacy and cybersecurity topics, to be made in the 2020 proxy season.

## Soliciting dealer arrangements

IIROC [published guidance in 2019](#) indicating that in contested director elections, dealers should avoid fee arrangements that involve: a) payment only for votes in favour of one side; or b) payment only if a particular side is successful.

## Conclusion

Issues that can be expected to be prominent in the 2020 reporting season are a reflection of the governance matters that have surfaced in recent years: climate change and ESG risks, diversity, and the broadening of the perspective on what it means to act in the best interests of the corporation. In an environment of increasingly active shareholders and other stakeholders and heightened scrutiny of disclosure from regulators, issuers will need to remain agile to navigate these emerging developments.

# Canadian proxy advisory firm policy updates

## ISS Recommendations

In November of last year, proxy adviser Institutional Shareholder Services Inc. (ISS) released the 2020 Policy Voting Guidelines Updates for the Canadian market. Key updates include the following:

**Non-audit fees.** In determining its voting recommendations for audit committee members and for ratifying the external auditor, ISS does not penalize companies for having paid non-audit fees relating to certain significant one-time capital restructure events. Beginning in 2020, ISS will no longer limit these events to initial public offerings, emergence from bankruptcy and spinoffs. Non-audit fees paid in connection with M&A transactions, including dispositions, and other one-time events may also be excluded by ISS when considering the magnitude of non-audit fees. This ISS policy is conditional on the company providing full disclosure of the nature and amount of the non-audit fees.

**Former CEO/CFO on audit/compensation committee.** ISS generally recommends a withhold vote for any director who served as CEO or CFO of the company in the past five years and is a member of the audit or compensation committee. ISS has expanded this policy so it now covers CEOs and CFOs of affiliated or acquired companies in the past five years.

**Over-boarding when directors are transitioning among boards.** Service on another board will generally not be penalized under ISS' over-boarding policy if a company publicly discloses in its circular that the director will be stepping down from the other board at the next annual meeting of the other company. Conversely, in applying its over-boarding policy, ISS will count any new board that a director plans to join, even if the other company's shareholders' meeting has not yet occurred.

**CSE-listed companies' evergreen equity plans.** The TSX and TSX-V require regular shareholder reconfirmation of rolling limit equity plans. By contrast, the CSE does not impose this requirement. ISS will be recommending voting against these plans at CSE companies (and voting withhold for compensation committee members, beginning in 2021) if they are not subject to shareholder approval every three years.

## Glass Lewis voting recommendations

Proxy adviser Glass Lewis released their 2020 Policy Guidelines for the Canadian market last November. The Guidelines were heavily influenced by the recent CBCA amendments. Key updates include the following:

**Director attendance/committee meeting disclosure.** Glass Lewis has increased the expectations for disclosure of board and committee meetings. Starting in 2020, Glass Lewis will generally recommend that shareholders vote against the chair of the issuer's governance committee if records for board and committee meetings attendance are not disclosed.

**Executive compensation, contractual payments and arrangements.** Glass Lewis has clarified their approach to excessive compensation practices contained in executive employment agreements and expects that if a company materially amends an executive's employment agreement, the company should use that opportunity to eliminate any contractual excessive compensation practices.

**Professional skills and experience.** Glass Lewis recommends that adequate information be provided to allow for the meaningful valuation of a board's skills and experience and that all TSX 60 issuers disclose a board skills matrix. If a board has failed to address material concerns regarding the mix of skills and experience of the non-executive element of the board, Glass Lewis may recommend that shareholders vote against the chair of the nomination committee or equivalent.