DENTONS

2025 Proxy Season Guide

January 2025

Dentons Canada's 2025 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 2025, with reminders about continuing developments and future matters.

Contents

New developments

1. Proxy advisory firm updates: ISS and Glass Lewis

Institutional Shareholder Services (ISS)

ISS announced the following key benchmark policy updates for 2025. These updates are effective for shareholder meetings held on or after February 1, 2025.

TSX guidelines

Non-Executive Director (NED) independence

ISS has updated their definition of independence for NEDs to extend the guidelines for non-independence for former/interim CEOs by removing the five-year cooling off period to gain independence. Unless an exemption is granted to make a five-year cooling off period sufficient, this change results in all former CEOs being deemed as non-independent NED by virtue of their former role.

Former CEO/CFO on audit/compensation committee

In conjunction with the updates regarding the independence of former CEOs, ISS has updated its policy regarding former CEO/CFOs on the audit/compensation committee. ISS will generally vote "withhold" for any director who has served as CFO of the company or its affiliates during the past three years or a company acquired in the past three years and is a member of the audit or compensation committee. As noted above, the policy will not apply to former CEOs ISS has deemed independent after the five-year cooling off period noted above and the policy for CFOs to be automatically deemed independent after three years continues.

Board gender diversity

For issuers in the S&P/TSX Composite Index, ISS' current board gender diversity is to generally withhold votes for the Chair of the committee responsible for nominating or the Board Chair if no such committee has been identified, where the board is comprised of less than 30% women. Previously there was an exemption for non-compliant issuers who had no women on the board provided they had disclosed a written commitment to add at least one woman to the board at or prior to the subsequent AGM and disclosed the circumstances for why there were no women on board. The policy change removes the requirement to interpret the disclosure before the exemption is applied. This change is intended to harmonize the Canadian approach with the US market and provide for greater transparency and predictability.

Board racial/ethnic diversity

ISS has removed the transitionary requirements from the guideline for racial and ethnic diversity for issuers in the S&P/TSX Composite Index which were implemented on February 1, 2024. ISS' current board racial/ethnic diversity is to generally withhold vote for the Chair of the committee responsible for nominating or the Board Chair if no such committee has been identified, where the board has no apparent racially or ethnically diverse members and the company has not provided a formal, publicly disclosed commitment to add at least one racially or ethnically diverse director at or prior to the next AGM. Issuers who fail to meet the policy over two years or more will be evaluated on a case-by-case basis.

As the transitory period has ended, ISS has added two conditional exemptions for issuers who have publicly committed in writing to add at least one racially or ethnically diverse director at or prior to the subsequent AGM. The first exemption is available for issuers who have joined the S&P/TSX Composite Index and were previously not subject to the requirement in the past and a second for S&P/TSX Composite Index issuers who have fallen below the minimum racial or ethnic representation after achieving such level of representation at the AGM.

Pay for performance evaluation

ISS has updated its guidelines regarding pay for performance evaluation to capture the exceptional circumstances of NEOs who regularly receive higher compensation than the CEO. This policy update allows ISS to elect to use a non-CEO NEO instead of the CEO in its pay for performance evaluation if doing so would be more appropriate in the circumstances.

TSX and venture guidelines

Shareholder meeting format

ISS has revised its guidelines regarding Articles/By-Law amendments to vote against any Articles or By-Laws which give the board discretion to hold shareholders' meeting in virtual only formats without compelling rationale. This change underscores ISS' preference for in-person or hybrid shareholder meetings to facilitate meaningful engagement. Notably, the guideline did not give examples of what would be deemed compelling rationale.

Glass Lewis & Co. (Glass Lewis)

Glass Lewis has announced the following key benchmark policy changes for shareholder meetings held in 2025.

Board oversight of artificial intelligence (AI)

Glass Lewis has outlined a new guideline regarding their expectation for board oversight of AI. In particular, Glass Lewis takes the position that boards should be cognizant of and take steps to mitigate exposure to any material risks that could arise from their use or development of AI. Companies who use or develop AI technologies should adopt internal frameworks which include ethical considerations and effective oversight of AI. Given that AI is likely to be of value to shareholders, there is an expectation for clear disclosure regarding how boards are overseeing AI and expanding their expertise and understanding of AI.

In instances where there is evidence that insufficient management of AI has resulted in material harm to shareholders, Glass Lewis may recommend that shareholders vote against the re-election of accountable directors or other matters subject to shareholder vote, as appropriate, should they find the board's oversight, response or disclosure concerning AI-related issues to be insufficient.

Shareholder meeting format

Glass Lewis is now tracking shareholder meeting format by in-person only meetings, virtual-only meetings and hybrid meetings where shareholders have equal access to participate virtually or in person and in-person meetings with virtual elements where shareholders can attend online but do not have the capacity to participate. While Glass Lewis has not yet adopted a benchmark policy voting recommendation, they do expect clear disclosure from issuers guaranteeing shareholders' ability to meaningfully participate in virtual-only meetings.

Glass Lewis has clarified its benchmark policy expectation that companies who do not allow for in-person attendance at the shareholder meetings should engage with their shareholders on this matter and provide rationale for their choice of meeting format. They may recommend voting against the chair of the governance committee or other relevant director, in cases where a board has failed to sufficiently respond to legitimate shareholder concerns regarding the shareholder meeting format.

Disclosure of professional skills and experiences

Glass Lewis has added language to their "Professional Skills and Experience" section of the guideline to note the importance of companies providing substantive disclosure regarding the experience and expertise of board nominees. Glass Lewis may recommend a vote against a chair of the nominating committee or equivalent, in cases where the disclosure of S&P/TSX 60 company does not allow a meaningful assessment of the key skills and experience of incumbent directors and nominees to a board.

Approach to executive pay program

Glass Lewis has adopted a holistic approach to its analysis of executive compensation programs and will review each on a case-by-case basis. They do not use a predetermined scorecard approach and instead, unfavourable factors in a pay program are reviewed in the context of rationale, overall structure, overall disclosure quality, the program's ability to align executive pay with performance, and the shareholder experience and the trajectory of the pay program resulting from changes introduced by the compensation committee.

Governance committee meetings

Glass Lewis has clarified its expectation that the governance committees of all TSX-listed issuers meet at least once during the year. In cases where the governance committee has failed to meet at least once, Glass Lewis will generally recommend voting against the chair of the committee and in the absence of a chair, the senior members of the committee.

2. SEDAR+ and CSA filing systems fee changes

On November 21, 2024, the Canadian Securities Administrators (CSA) released for public comment proposed amendments to Multilateral Instrument 13-102: *System Fees*, aimed at ensuring sustainable funding for the CSA's national systems, including SEDAR+ and the National Registration Database. The CSA stated that the proposed amendments are designed to better align system fee revenues with projected national system operating costs over the next five years.

The CSA's national systems play a critical role in facilitating securities regulation and market efficiency across Canada. However, according to the CSA, increasing operational costs, driven by rising IT labour expenses, technological advancements and enhanced cybersecurity measures, necessitate in their view adjustments to the fee structure to maintain the integrity and functionality of these systems. The CSA quote industry-wide trends that indicate IT labour costs have risen by 35% to 45%, alongside significant increases in technology and risk mitigation expenses.

Under the proposed plan, the CSA intend to implement a system fee increase phased over a five-year period beginning in late 2025. The proposed amendments ensure the funding model remains cost-recovery based, without introducing new system fees or altering the flat-fee structure. Instead, existing fees will be proportionally increased to support the CSA's operational needs.

A 60% system fee increase will take effect in November 2025. The CSA are proposing to increase system fees by 3% annually in each of the four years following the initial adjustment.

The CSA have requested stakeholder input in shaping these proposed changes. This 90-day comment periodwill conclude on February 19, 2025, and will provide an opportunity for market participants, organizations and other stakeholders to share feedback. The full proposal and accompanying details are available on CSA member websites.

3. Access equals delivery

The CSA "Access Equals Delivery" (AED) model is an optional alternative to the traditional physical delivery of certain documents to investors, with the aim to make it more cost-efficient, timely and environmentally friendly for issuers to communicate with investors.

The AED model applies to non-investment fund reporting issuers, including venture issuers. It does not apply to investment funds.

The AED model allows issuers to file prospectuses electronically on SEDAR+. For final prospectuses, issuers must also issue a news release on SEDAR+ announcing the prospectus's availability. The news release must include:

- A statement that the document is accessible through SEDAR+.
- A statement that access to the document is provided in accordance with securities legislation.
- A statement that an electronic or paper copy of the document may be obtained without charge from the issuer.

The AED model for prospectuses came into effect on April 16, 2024. The CSA are currently seeking feedback on proposed amendments and changes to implement an access model for certain disclosure documents of non-investment fund reporting issuers (the Proposed Access Model).

The Proposed Access Model will give issuers another alternative to send annual financial statements, interim financial reports and related management's discussion & analysis (collectively, CD documents), instead of following the current requirements found in securities legislation.

The CSA published initial proposals for implementing an access model for prospectuses, generally, and CD documents (the Initial Proposals) on April 7, 2022. On January 11, 2024, the CSA published amendments and changes implementing an access model for prospectuses only, which came into force on April 16, 2024.

After considering the comments received during the 2022 consultation, as well as consulting with the CSA Investor Advisory Panel throughout the policy development process, the CSA made substantive changes to the Initial Proposals for CD documents to enhance the Proposed Access Model from an investor perspective.

As the CSA consider these to be material changes, the CSA republished the Proposed Access Model for a further 90-day comment period that will end on February 17, 2025. Details about submitting comments can be found at the end of the CSA Notice of Republication and Request for Comment.

With this republication, the CSA anticipate resuming the work needed to implement the amendments that would introduce the annual and interim disclosure statements that were proposed in May 2021 (CD modernization proposals). Further, in deciding on the timing for implementing any of the CD modernization proposals, the CSA have stated they will ensure reporting issuers are provided with sufficient time to transition to any new forms and requirements.

4. AI in the capital markets

On December 5, 2024, the CSA announced the publication of a notice intended to provide clarity and guidance on how securities legislation applies to the use of artificial intelligence (AI) systems by market participants. Staff Notice and Consultation 11-348 *Applicability of Canadian Securities Laws and the Use of Artificial Intelligence Systems in Capital Markets* also seeks stakeholder feedback through consultation questions on the evolving role of AI systems and the opportunities to tailor or modify current approaches to oversight and regulation in light of these advancements.

The guidance in the notice addresses key considerations for registrants, reporting issuers, marketplaces and other market participants that may leverage AI systems. It highlights the importance of maintaining transparency, ensuring accountability and mitigating risks to foster a fair and efficient market environment. The guidance provided is based on existing securities laws and does not create new legal requirements.

The CSA have invited responses to the consultation questions available on CSA members' websites. The comment period closes on March 31, 2025. Responses will play a critical role in informing future initiatives to refine the regulatory framework applicable to the use of AI systems in capital markets.

5. Continuous disclosure for investment funds in continuous distribution

In November 2024, the CSA announced final rules modernizing the prospectus filing model for investment funds. Under the new rules, investment funds in continuous distribution will now be able to file prospectuses every two years instead of annually. Investors continue to have access to continuous disclosure documents, as well as the Fund Facts and the ETF Facts, which are updated annually and investors will still be able to request the prospectus or access it online.

For all investment funds, the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus is also being repealed.

The final rules, which are expected to take effect on March 3, 2025, are available on CSA member websites.

Continuing developments

6. Diversity on boards and in executive officer positions – CSA requirements and CBCA companies

The CSA published the 10th-year report titled "*Review of Disclosure Regarding Women on Boards and in Executive Officer Positions*" (CSA Report), which provides insights into the progress of gender diversity in corporate leadership among Canadian public companies. The CSA conducted the study to observe the impact of mandatory disclosure on gender diversity in corporate leadership. Specifically, the Report assesses compliance with National Instrument 58-101 – *Disclosure of Corporate Governance Practices*, which mandates certain disclosures on gender diversity for issuers on the Toronto Stock Exchange (TSX).

Key findings at a glance:

- Women held 29% of all board seats among surveyed issuers, marking a notable rise from 11% in the CSA Report's first year. However, only 8% of board chairs were women, revealing limited female representation in top board positions. 37% of board vacancies were filled by women, showing some progress in increasing female board presence when seats are vacated.
- Women comprised 16% of Chief Financial Officers and 5% of Chief Executive Officers. 72% of issuers had at least one female executive officer, but only 7% had explicit targets for female representation at the executive level.
- 64% of issuers have policies to support gender diversity on boards and 44% have set specific targets for female board representation. The presence of formal policies and targets correlates positively with higher female representation on boards, emphasizing the impact of deliberate diversity measures.
- About 25% of issuers adopted director term limits, while 40% implemented other mechanisms for board renewal. Notably, issuers with term limits or renewal mechanisms had higher female representation on their boards (35% on average).

The CSA Report shows that diversity practices and female representation vary significantly by industry. Issuers with explicit gender diversity policies and targets averaged 35% female representation on boards compared to 22% among issuers without such measures.

With the CSA Report marking the tenth and potentially final annual review, the CSA are exploring updates to disclosure requirements to create a more harmonized, national framework for gender diversity reporting. This CSA Report serves as both a benchmark and a call to action for continued development in gender diversity within Canadian corporate leadership.

In addition to the TSX requirements, all CBCA distributing corporations are required to disclose the representation of designated groups—women, Indigenous people, members of visible minorities and people with disabilities—on their boards of directors and in senior management positions. This reporting must be provided to both shareholders and separately to Corporations Canada through the filing of the CBCA distributing corporation's proxy circular on SEDAR+ as well as with Corporations Canada through its online filing centre. The compliance approach is 'comply or explain,' requiring corporations to either outline their diversity policies or explain the absence thereof. The diversity requirements in the CBCA are broader in scope than what is required to be disclosed under provincial securities legislation.

7. Virtual and hybrid shareholder meetings

The trend towards virtual or hybrid shareholder meetings continues. Issuers opting for virtual or hybrid meeting formats should ensure that shareholders have equitable opportunities to participate and that the rationale for the chosen format is clearly communicated. Transparent procedures for accessing materials and voting are essential. Shareholder proposals requesting annual meetings to be held in person with virtual meetings as complements continue to be in play. Institutional shareholders have voiced preference against virtual-only shareholder meetings as evidenced by strong voting support for proposals favouring in-person meetings this past season. Issuers should closely monitor the developments on this topic to properly plan and decide upon the meeting format for 2025.

The Canadian Coalition for Good Governance (CCGG) recognizes the benefits to shareholders attending meetings virtually and recommends hybrid meeting formats to facilitate both in-person and online attendance. To that end, in January 2024, CCGG released its policy regarding virtual meetings. The policy outlines CCGG's concerns that absent strong governance and a commitment to transparency there is a risk that shareholders are silenced and participation is diminished. To offset these concerns, the policy provides best practices for virtual participation in shareholder meetings that prioritize a simplified process, transparency of information and the free flow of communication, including:

- Using a hybrid meeting format as a default.
- Using accessible video-based technology platforms that facilitate virtual access, voting and real time participation.
- Ensuring synchronous shareholder participation to facilitate communication among shareholders and the company's board and management and providing shareholders with the ability to vote, raise points or order, speak to shareholder proposals and pose questions from the floor to management in real time, without prior gatekeeping or vetting by management.
- Ensuring that the disclosure in the management circular and proxy materials provides complete, thorough and transparent instructions for registering, shareholder authentication and voting. Ensuring the process for participation of beneficial shareholders is not overly cumbersome or requires unnecessary additional steps.
- Ensuring the chair of the meeting is well versed in meeting rules and procedures and exercises discretion with a view to the principles of transparency and accountability to shareholders.

The Canadian Securities Administrators (CSA) issued updated guidance on February 22, 2024, for conducting virtual shareholder meetings, building on initial advice from February 2022.

Key concerns from stakeholders include challenges in exercising shareholder rights and difficulties in accessing and participating in virtual-only meetings. The CSA's updated guidance aims to address these issues by emphasizing the importance of clear, comprehensive disclosure in management information circulars and associated proxy materials. This disclosure should detail the logistics of accessing, participating in and voting at virtual meetings, ensuring shareholders understand how to engage effectively.

To facilitate shareholder participation, the CSA advise reporting issuers to:

- Simplify registration and authentication procedures.
- Provide opportunities for shareholders to make motions or raise points of order.
- Ensure the ability for shareholders to ask questions and give direct feedback to management.
- Coordinate with proponents of shareholder proposals, allowing them to present and respond to questions.
- Use virtual platforms that support full shareholder participation.
- Ensure the meeting chair is well versed in the technology used.

The CSA also encourages the consideration of hybrid meetings, combining in-person and virtual participation to enhance shareholder engagement. Reporting issuers are urged to consult their governing corporate legislation and organizing documents, along with best practices for virtual meetings, to ensure compliance and facilitate meaningful shareholder participation. The CSA will continue monitoring virtual shareholder meetings practices and may issue further updates as needed.

8. ESG disclosure and greenwashing concerns

On November 7, 2024, the CSA published CSA Staff Notice 51-365 - *Continuous Disclosure Review Program Activities for the Fiscal Years Ended March 31, 2024 and March 31, 2023* (CSA Continuous Disclosure Review), in which the CSA highlights the increase in overly promotional disclosures, including recently, AI washing and greenwashing. "Greenwashing" refers to potentially misleading, unsubstantiated or otherwise incomplete claims about business operations or the sustainability of a product or service being offered, conveying a false impression. This reinforces the similar finding of the Ontario Securities Commission, in the OSC Staff Notice 51-735 – *Corporate Finance Branch 2023 Annual Report*, discussed in the 2024 Proxy Season update.

The CSA provided the following considerations to issuers for describing current and proposed ESG-related activities:

- In order to avoid misleading promotional language, issuers should ensure that all ESG disclosures, whether voluntary or required, are factual and balanced.
- ESG disclosure should be specific and supported by facts and corporate activities, as applicable.
- ESG-related disclosures may also constitute forward-looking information, for example, disclosure about future plans to improve operational performance in the context of ESG standards or to reduce greenhouse gas emissions or to obtain a carbon neutral position. Issuers must have a reasonable basis for forward-looking information. In addition, issuers must identify the material risk factors that could cause actual results to differ materially, state the material factors or assumptions used to develop the forward-looking information and describe its policies for updating the information.

The CSA further advised that issuers should exercise caution in using a rating to demonstrate its ESG impact and would expect the following to be disclosed:

- the actual rating;
- a description of the specific set of criteria on which the rating is based;
- a description of the methodology used and whether it is based on quantitative or qualitative data and the degree of subjectivity involved;
- the identity of the third party certifying the rating; and
- the date of the rating.

ESG shareholder proposals -– In a similar vein of requiring more information/data to substantiate the disclosures being made, Bill C-59 which received royal assent on June 20, 2024, amended the Competition Act to require that any environmental claim made by a company must be substantiated with 'adequate and proper tests' using internationally recognized methodologies. It further requires that any representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change must be based on 'adequate and proper substantiation' using internationally recognized methodologies. This means that any vague or unverified claims about environmental impact can no longer be made without the risk of facing potential penalties. Some issuers have chosen to curtail or withdraw their disclosure on environmental matters without current concrete guidance on what constitutes 'adequate and proper substantiation.'

9. Climate-related disclosure

As discussed in the 2024 Proxy Season update, Canadian securities regulators have been working towards the establishment of climate-related disclosure standards for Canadian issuers.

On December 18, 2024, the Canadian Sustainability Standards Board (CSSB) released its voluntary sustainability standards: CSDS 1 (general requirements for disclosure of sustainability-related financial information) and CSDS 2 (climate-related disclosures). These standards (the CSSB Standards) are now part of the CPA Canada Handbook – Sustainability and represent Canada's inaugural generally applicable sustainability disclosure standards.

The CSSB Standards are substantively identical to the International Sustainability Standards Board's (ISSB) standards (IFRS S1 and IFRS S2, respectively) (ISSB Standards) except for a few transitional matters:

- The effective date of the CSSB Standards is for reporting periods beginning on or after January 1, 2025.
- In each of the first three annual reporting periods in which an entity applies CSDS 2 (climate-related disclosures), it is not required to disclose Scope 3 emissions.
- In each of the first three annual reporting periods in which an entity applies CSDS 2 (climate-related disclosures), it is not required to use quantitative climate-related scenario analysis to assess its climate resilience. It is contemplated that "simpler" qualitative scenario analysis would still be provided over the transitional period.
- For Canadian public companies, sustainability reporting should be made at the same time as the entity's second quarter interim financial reporting in the first year of reporting and in the second and third years of reporting within six months of the end of the annual reporting periods. Note that thereafter, reporting is to be made with the regular annual financial reporting.

Following the release of the CSSB Standards, the CSA issued a press release indicating that:

- They continue to work towards a revised climate-related disclosure rule that will consider the CSSB Standards and may include modifications considered appropriate for the Canadian capital markets.
- As they develop a revised mandatory climate-related disclosure rule, they will consider the feedback received by the CSSB during their consultation on the CSSB Standards.
- They will continue to work towards a balanced approach that supports the assessment of material climate-related risks, responds to requests for consistent, comparable and decision-useful climate-related disclosures and contributes to efficient capital markets, including considering the needs and capabilities of issuers of different sizes.
- They will continue to monitor international developments related to climate-related disclosure. Given the interconnectedness of the Canada and US markets, the CSA will be carefully considering developments in the United States.

The CSA are expected to issue a new mandatory climate-related disclosure proposal in 2025. What it will say is unclear. However, consider a scenario (Scenario) based on the following three events and where that will place the CSA in assessing the appropriate regulatory approach to climate-related disclosure for Canadian public companies.

In the United States government changes mean the US Securities and Exchange Commission (SEC) revokes its mandatory climate-related disclosure rule so US public companies are not subject to a securities mandatory disclosure rule (for the purpose of this Scenario California's climate-related disclosure rules are not considered here).

In Canada, changes to the federal government mean that federal proposed amendments to the *Canada Business Corporations Act* to require larger private companies to make mandatory climate-related disclosure are not introduced.

The CSA focus on capital markets rather than environmental or social policy, as they've indicated, with an emphasis on alignment with US capital markets.

In this Scenario, the CSA would find themselves in a very similar position to where they stood in 2021. On October 18, 2021, the CSA were the first North American regulators to publish mandatory climate-related disclosure proposals when they published proposed National Instrument 51-107 *Disclosure of Climate-related Matters* (NI 51-107) and its proposed Companion Policy 51-107CP (the CSA 2021 Proposal). The CSA were the first movers at a time when the SEC was developing its own rule, but what that rule would say was uncertain. Under the Scenario, the CSA most likely would foresee no SEC climate-related disclosure rule being published for a number of years.

On this basis, it is possible that any new CSA proposed mandatory climate-related financial disclosure rule could look a lot like the CSA 2021 Proposal, updated for account for consensus changes to disclosure items.

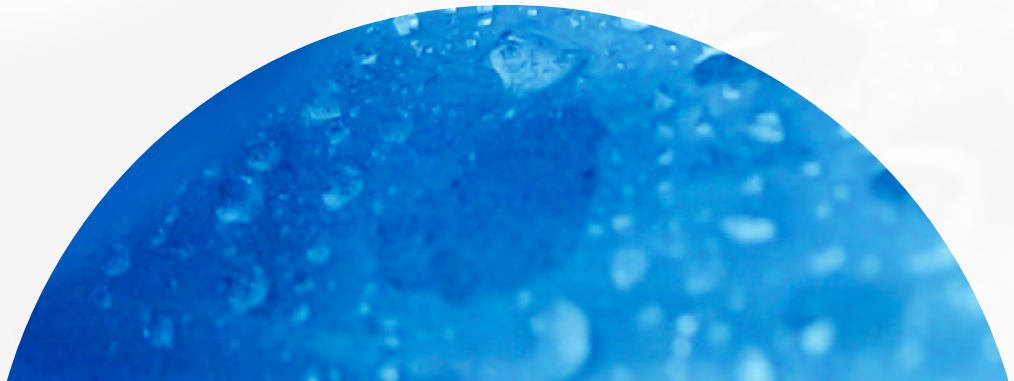
10. Permanent WKSI regime

On September 19, 2024, the Ontario Securities Commission (OSC) published proposed OSC Rule 44-503 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers* (the Rule). Subject to ministerial approval, the Rule would make permanent the Blanket Order (as defined below) that currently provides qualifying well-known seasoned issuers (WKSIs) with relief from certain base shelf prospectus requirements in Ontario.

As we discussed in our 2024 Proxy Season Guide, the OSC made Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers* (Interim Class Order) (the Blanket Order) in December 2021, providing WKSIs with a temporary exemption from certain base shelf prospectus requirements, including the requirement to file a preliminary base shelf prospectus. The Blanket Order was extended for 18 months by OSC Rule 44-502 *Extension to Ontario Instrument 44-501 Certain Prospectus Requirements for Well-known Seasoned Issuers* and expired on January 4, 2025.

In September 2023, the CSA published for comment proposed amendments to National Instrument 44-102 *Shelf Distributions* as well as consequential amendments to other rules and policies that would formalize and modify in certain respects the previously introduced WKSI regime in Canada (the Proposed Amendments). The CSA are reviewing the comments received and have indicated that a further publication regarding the Proposed Amendments may be expected in early 2025.

The Rule would bridge the gap between the expiry of the Blanket Order and the effective date of the Proposed Amendments. The Rule is expected to be revoked if and when the Proposed Amendments are adopted.



Upcoming developments

11. Climate-related disclosure standards

On October 9, 2024, the federal government announced:

- An intention to amend the *Canada Business Corporations Act* (CBCA) to require climate-related financial disclosures for large, federally incorporated private companies; and
- A plan to deliver Made-in-Canada sustainable investment guidelines (also referred to as the taxonomy).

This announcement builds on previous commitments made by the federal government in the 2023 Fall Economic Statement and Budget 2024, where it committed to developing a sustainable finance taxonomy to promote credible climate investment.

The federal government announced its intention to mandate climate-related financial disclosures for large, federally incorporated private companies and intends to bring amendments to the CBCA that will require these disclosures. The federal government indicated that it intends to work with provincial and territorial partners to ensure broad disclosure coverage across the Canadian economy and harmonize its regulations with similar regulations imposed on public companies by securities regulators.

To determine the substance of the disclosure requirements and the size of private federal corporations subject to them, the federal government intends to launch a regulatory process involving the Department of Finance, Environment and Climate Change Canada, and Innovation, Science and Economic Development Canada. Similar disclosure requirements are already in place for federal Crown corporations and federally regulated financial institutions. Small and medium-sized businesses will not be subject to the mandatory disclosures.

The Made-in-Canada sustainable investment guidelines will be a voluntary tool for investors, lenders and other stakeholders for identifying "green" and "transition" economic activities and will define each as follows:

- Green: low or zero-emitting activities that do not have material scope 1 and 2 emissions, low or zero downstream scope 3 emissions and sells into or benefits from markets that are expected to grow in the global net-zero transition; and
- Transition: decarbonizing activities that have material scope 1 and 2 emissions, including those with low or zero scope 3 emissions, that do not face immediate demand-side risk (i.e., market contraction) and do not create carbon lock-in and path dependency.

The federal government has outlined priority sectors where it will focus its development of eligibility criteria, including electricity, transportation, buildings, agriculture and forestry, manufacturing and extractives, including mineral extraction and processing. It also provided a list of potential taxonomy eligible activities in the backgrounder for the taxonomy.

The development of the Canadian taxonomy will be overseen by an external third-party organization to ensure its credibility and alignment with international standards, and taxonomy for two or three priority sectors is anticipated to be released within 12 months of the organization beginning its work.

It is generally understood that the federal government's plans are based on the Taxonomy Report provided to the government by the Sustainable Finance Action Council.

Given the current prorogation of Parliament, it is uncertain whether the proposed plans will come into effect.

12. Crypto currency regulation and decentralized finance

On January 18, 2024, the CSA published a notice and request for comment regarding proposed amendments (Proposed Amendments) and changes to regulations concerning investment funds that invest in crypto assets (Public Crypto Asset Funds). These proposals aim to provide clarity and regulatory guidance on various operational aspects of these investments.

The proposed amendments and changes intend to clarify regulations related to Public Crypto Asset Funds. They cover criteria for the types of crypto assets these funds can invest in, restrictions on investing in crypto assets and requirements for custody of these assets.

The project is divided into three phases:

- Phase 1: Provided guidance and information to stakeholders regarding expectations and developments related to Public Crypto Asset Funds.
- Phase 2: Involved the proposed amendments and changes to existing regulations, with a focus on codifying existing practices and granting exemptive relief for these products.
- Phase 3: Will involve broader public consultation for a more comprehensive regulatory framework for funds investing in crypto assets.

Proposed amendments to NI 81-102 include:

- Expanding the definition of "alternative mutual fund" to include those investing in crypto assets.
- Restricting the direct investment in crypto assets to alternative mutual funds and non-redeemable investment funds, with certain criteria for eligible assets.
- Prohibiting the use of crypto assets in securities lending, repurchase transactions or reverse transactions.
- Clarifying that money market funds cannot invest in crypto assets.
- Introducing provisions related to the custody of crypto assets, including requirements for offline storage and insurance.
- Allowing crypto assets as subscription proceeds for mutual funds, under specific conditions.

Proposed changes to 81-102 Companion Policy (81-102CP) (CP Changes) are intended to provide guidance and clarification on several aspects, such as:

- Defining "crypto assets" for investment funds regulation.
- Clarifying that funds can acquire crypto assets from sources other than recognized exchanges.
- Expanding on the standard of care required for crypto custodians.
- Providing details on the assurance reports required for custodians holding crypto assets.

The Proposed Amendments are expected to come into force approximately 90 days after final publication, depending on comments and regulatory requirements.

The CSA are seeking feedback on various aspects of the proposal, including the definition of crypto assets, restrictions on crypto asset types, custody requirements and any other considerations related to investment funds dealing with crypto assets.

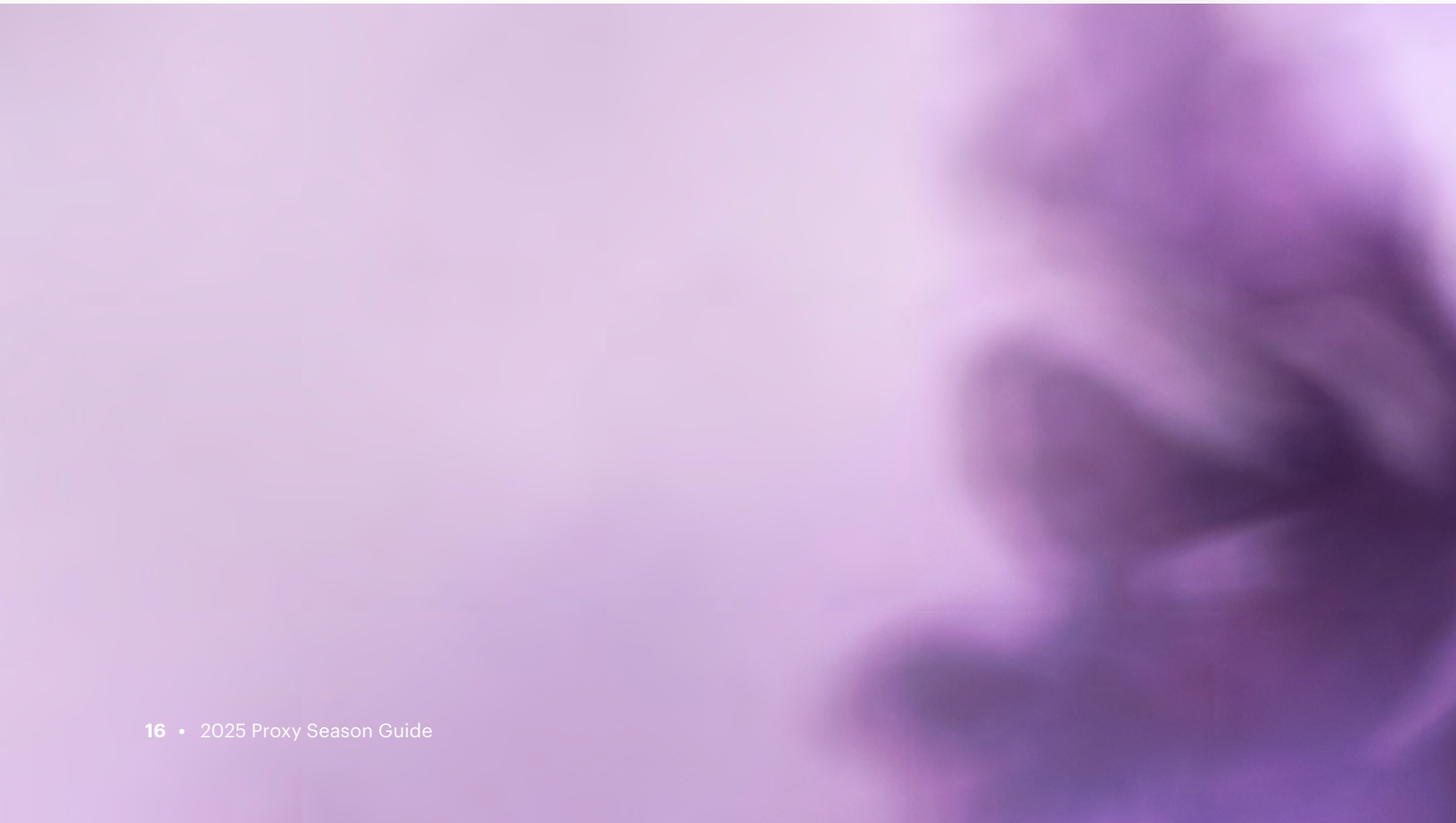
Possible developments

13. Material change reporting

The pending outcome of a decision from Supreme Court of Canada in the case *of Lundin Mining Corporation, et al.* v. *Dov Markowich* (Ontario) could affect issuers' disclosure obligations under applicable securities laws with respect to material change reporting and potentially encourage securities class actions. The appeal addresses the interpretation of "material change" and the threshold courts should apply in determining leave applications in securities class actions, raising the issue of whether a material change has occurred and been adequately disclosed. Hearings at the Supreme Court of Canada commenced January 23, 2025.

14. "AI washing" may become a hot topic, similar to concerns regarding "green washing."

AI washing is when an issuer makes false, misleading or exaggerated claims about its use of AI systems in its products or services, to capitalize on the growing use of and investor interest in AI systems. The CSA, in the CSA Continuous Disclosure Review, identified AI washing in certain issuers' continuous disclosure documents and in prospectus filings. When describing current and proposed products, services or activities, the CSA have warned that issuers must not make false, misleading and exaggerated claims about their use of AI systems. It is important to ensure that all public disclosures, whether voluntary or required, are factual and balanced.



Key contacts

François Brabant
Partner, Montréal
D +1 514 878 8826
francois.brabant@dentons.com

Megan Cornell
Partner, Ottawa
D +1 613 783 9643
megan.cornell@dentons.com

Peter Inglis
Partner, Edmonton
D +1 780 423 7132
peter.inglis@dentons.com

Eric Lung
Partner, Vancouver
D +1 604 691 6425
eric.lung@dentons.com

Ora Wexler
Partner, Toronto
D +1 416 863 4516
ora.wexler@dentons.com

Bennett Wong
Partner, Calgary
D +1 403 268 7057
bennett.wong@dentons.com

ABOUT DENTONS

Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you.

www.dentons.com

© 2025 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see dentons.com for Legal Notices.

CSBrand-161742-Dentons Canada Proxy Season Guide 2025-01 — 30/01/2025