

Climate Change Lawyers Network

October 14, 2009

James Turner, Vice Chair
Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, ON M5H 3S8

Re: Submission to Ontario Securities Commission's Corporate Sustainability Reporting Initiative

This submission requests that Ontario Securities Commission (OSC) pursue several actions aimed at increasing mandatory disclosure of climate change-related risks in securities filings, as part of the OSC's current review of environmental, social and governance ("ESG") reporting standards. We represent an asset manager with CDN\$79.6 billion in assets under management; a North American coalition of investors and environmental groups working with companies to address sustainability challenges such as climate change; a network of 65 member organizations in Canada committed to preventing dangerous climate change; and a network of Canadian lawyers practicing climate change law.

We appreciate the OSC's efforts to examine environmental disclosure among reporting issuers in Ontario, first through OSC Staff Notice 51-716 - *Environmental Reporting* ("51-716") that highlighted deficient disclosure as well as the current review of the quality of environmental disclosure. We believe Ontario has a unique opportunity to show leadership in the area of environmental disclosure, and specifically carbon disclosure, by working to improve the quality of climate-related disclosure in OSC filings.

The increased attention on carbon disclosure by investors and securities regulators highlights how climate change is seen as a material issue because of the sizable risks it poses to the environment, society, economies and investments; and because of its ability to significantly accelerate other material environmental and social risks. Investors in the U.S. filed a record 68 shareholder resolutions with U.S. and Canadian companies on the financial risks and opportunities from climate change in the 2009 proxy season, and 31 were withdrawn after the companies agreed to positive climate-related commitments.¹ A number of Canadian investors are signatories to the Carbon Disclosure Project ("CDP"), which sends a climate disclosure questionnaire annually to several thousand of the world's largest corporations. In the U.S., Securities and Exchange Commission Chairman Mary Schapiro responded to a June letter from 41 institutional investors—members of the Investor Network on Climate Risk—by agreeing to ask SEC staff and members of its Investor Advisory Committee to reexamine the issue of the quality of climate-related disclosure in SEC filings.

In Canada, a number of investors are taking steps to improve climate-related disclosure and responses by corporations. For example, Ethical Funds has encouraged companies to disclose climate risk for years, and over the last two years sent over 75 letters urging companies in its portfolio to respond to CDP. Ethical Funds has also filed seven shareholder resolutions asking companies to improve their disclosure on climate change risks and opportunities, six of which were withdrawn as the companies agreed to the request. Recently British Columbia Investment Management Corporation (bcIMC) contacted 26 companies that have particular importance in their Canadian equity portfolio with a request that they enhance climate risk disclosure by participating in the CDP questionnaire, and 18 of the companies complied.

¹ Please see: <http://www.ceres.org/Page.aspx?pid=1121>

Outside of North America, securities regulators and stock exchanges have already caught on to the importance of carbon disclosure and related corporate social responsibility reporting obligations. For example, the French Government currently requires corporations to report non-financial information and the Swedish Government requires state-owned companies to report annually according to the Global Reporting Initiative Guidelines, the international standard for ESG reporting. A number of international stock exchanges, including the London Stock Exchange and Malaysian Stock Exchange mandate disclosure of relevant environmental, social and community information from listed companies. Even the Chinese government through China's Assets Supervision and Administration Commission encourages state-owned businesses to report on corporate responsibility. The European Commission is also currently reviewing corporate disclosure of ESG information, which could also result in increased reporting obligations for climate-change and other environmental risks.

In light of these international initiatives and the increased investor attention to climate change issues, Canadian companies and their securities regulators appear to be lagging behind. This was largely the case in 2007 when the OSC undertook its review of the filings of 35 reporting issuers to assess their environmental reporting and often found only boilerplate disclosure that was considered "insufficient." As part of this submission we conducted our own review of the same number of issuers to see if there have been significant improvements in this area following the guidance provided by the OSC in 51-716. We found that it has not; the vast majority of issuers we reviewed still had climate change disclosure best characterized as "poor" and others were even worse. The first part of this submission summarizes our review and the results from each of the industrial sectors that was considered. The second part of this submission details our recommendations for how the OSC should respond to this predicament.

Disclosure Review: Methodology

In support of this submission we reviewed the 2008 annual reports (including Management Discussion and Analysis and the Annual Information Form) as filed on SEDAR for 35 reporting issuers across nine sectors of the economy. The sectors reviewed are similar to those reviewed in the June 2009 Ceres/Environmental Defense Fund (EDF) report, *Climate Risk Disclosure in SEC Filings* ("the SEC Report"), and we added companies in the chemicals, mining, forestry and pipelines sectors as these are particularly important to the Canadian economy. All of the sectors in our review face relatively higher exposure to the physical, regulatory and market risks associated with climate change.

In choosing the individual companies for our review we began with companies that had a market capitalization of at least CDN \$1 billion and are reporting issuers in the province of Ontario. Approximately five companies in each sector were then randomly chosen, though subsidiaries of companies were excluded from the selection process so only one related issuer in each section was chosen.

Once the companies were selected, the quality of climate-related disclosure in their 2008 annual reports was assessed using the scoring methodology created by the Corporate Library, Ceres and EDF for the SEC Report, and based on the Global Framework for Climate Risk Disclosure. Issuers were analyzed on three separate areas of disclosure: 1) emissions and climate change position disclosure, 2) risk assessment disclosure, and 3) disclosure of actions to address climate risk. Within these broad categories, specific issues were identified, and companies were evaluated on the extent to which their disclosure addressed these issues. Companies in all industries were evaluated on the same basis, with the exception of insurance, which was evaluated based on the Global Framework and the National Association of Insurance Commissioners' new mandatory requirement that insurance companies disclose to regulators

the financial risks they face from climate change. Scores were divided into the categories of “none”, “poor”, “limited”, “fair”, and, in just one instance, “adequate”.²

Findings by Industrial Sector

Industrial Products: Chemicals and Fertilizers³

We reviewed four issuers in this sector and found that factual disclosure of greenhouse gas (GHG) emissions was non-existent in each of the issuers, though three of the four discussed climate change regulatory frameworks that could have some impact on the company (though this impact was never quantified.) No further risk assessments were provided, and only half of the companies reviewed had plans to reduce their emissions. Nova Chemical Corporation scored the highest among the companies reviewed in the sector, though its overall carbon disclosure performance was still considered “limited.”

Insurance⁴

While insurance companies themselves have low emissions from their own operations, all property insurers face risks from greater weather-related claims arising from climate change. It is due to this risk that in March 2009, the National Association of Insurance Commissioners (NAIC) approved a groundbreaking mandatory requirement that American insurance companies disclose to regulators the financial risks they face from climate change, as well as actions the companies are taking to respond to those risks. However, none of the five Canadian insurers we reviewed provided any climate risk assessments, and four of the five companies made no mention of climate change at all. This was a bit surprising considering one of the issuers mentioned increased losses from more extreme weather events, yet this was not associated with climate change. In light of the coming NAIC requirements, the OSC should give serious consideration to requiring greater carbon disclosure from Canadian (property) insurance companies.

Oil and Gas⁵

As possibly the sector with the highest climate change risks, we placed greater emphasis on oil and gas companies (both producers and those in the integrated oils sector) and reviewed nine companies in total. Royal Dutch Shell plc's 2008 Annual Report stood out as the only company in this sector that treated climate change as an issue worthy of immediate strategic attention. Shell received the only “adequate” score in our review of all issuers as they reported historical emissions data (showing a decrease by 30% below 1990 levels), acknowledged specific risks associated with climate change, highlighted investments in low carbon alternatives to minimize risks and even claim to advocate for emissions regulations based on hard caps, suggesting they are strategically positioned to succeed in a carbon constrained economy. In contrast to Shell, the other companies reviewed had markedly less discussion and analysis of climate change. None of the other companies had emissions data or any quantification of the cost of climate change, although one company suggested it is in the process of incorporating carbon pricing into its financial models). All but one company discussed climate change regulations that exist in Alberta and are under development by the federal governments of Canada and the U.S. However most concluded that it was premature to attempt to quantify the effects of proposed regulations, noting only that such regulations

² For more information on the scoring methodology used for this submission, please see the Appendix.

³ The chemical and fertilizer companies reviewed were: Potash Corporation of Saskatchewan Inc., Agrium Inc., NOVA Chemicals Corporation and Methanex Corporation

⁴ The insurance companies reviewed were: Great-West Lifeco Inc., Industrial Alliance Insurance and Financial Services Inc., Fairfax Financial Holdings Limited, and the Co-operators General Insurance Company

⁵ The oil and gas companies reviewed were Imperial Oil, Suncor, Petro-Canada, PetroKazakhstan, EnCana, Nexen, Talisman Energy, Penn West Energy Trust, and Royal Dutch Shell plc.

will likely lead to higher costs. None of the companies, including Shell, discussed the risks that the physical effects of climate change could have on their assets or operations.

*Paper and Forest Products*⁶

We examined climate change disclosure for five paper and forest product companies due to both the regulatory risks this sector faces but also the potential for low cost climate change mitigation through avoided deforestation and sustainable practices. Our analysis of selected companies in this sector revealed highly divergent trends with some issuers having virtually no carbon disclosure while others, notably Catalyst Paper Corporation, scored either fair or adequate in all areas. Catalyst's incorporated historical and present GHG emissions into their financial reporting and quantified projected costs of compliance with British Columbia's carbon tax, while also discussing the regulatory framework at the federal level, regional schemes (i.e. the Western Climate Initiative) and cap and trade developments in the United States. Catalyst has also undertaken a voluntary target to reduce CO₂ emissions at its British Columbia based facilities to 70% below its 1990 emissions by the year 2010 and currently report their 2008 absolute greenhouse gas emissions at 73% below 1990 levels. With all the actions taken by Catalyst and the depth of their risk assessment, the lack of mention of climate change or, at best, limited treatment of the issue by the other four companies reviewed in this sector should be cause for concern by securities regulators.

*Pipelines*⁷

We examined five companies in the pipeline sector as it is particularly susceptible to climate change risks, including physical pipeline risks in northern climates like Canada where global warming could thaw permafrost, making oil pipeline installation and maintenance more costly. Warmer temperatures may also disrupt operations by shortening the season for low impact operations on ice roads and pads. Despite these apparent risks, two of the companies reviewed made no mention of climate change or related risks whatsoever, and two other companies had limited or poor disclosure of the issue. The only exception to this trend was Fort Chicago Energy Partners L.P., who fairly presented climate change risks and quantified the historical costs of regulatory compliance, both in Alberta's carbon market and with British Columbia's carbon tax.

*Transportation*⁸

With changes to federal fuel standards in automobiles and the carbon tax on fossil fuels in British Columbia, the transportation sector has become a target of climate change regulations. We reviewed five companies in this sector (including aviation, trucking, and shipping and logistics companies) and found all companies scored poorly. None of the companies reviewed disclosed their GHG emissions despite all of them having presumably high levels of fuel consumption. While some companies identified the possible regulatory risks associated with environmental regulatory developments, these were given cursory treatment of the type of boilerplate disclosure that the OSC advised against in 51-716. One issuer discussed vague aspirations to realize emissions reductions, but overall there was still a general lack of discussion about climate risks and opportunities.

*Utilities*⁹

⁶ The paper and forestry companies reviewed were: Weyerhaeuser Company Limited, Catalyst Paper Corporation, Domtar Corporation, Tembec Inc., and Canfor Corporation

⁷ The pipelines companies reviewed were: TransCanada Corporation, Pembina Pipeline Income Fund, Inter Pipeline Fund, Enbridge Pipelines Inc., Fort Chicago Energy Partners L.P.

⁸ The transportation companies reviewed were: Air Canada Inc., Canadian Pacific Railway Limited, British Columbia Ferry Services Inc., Greater Toronto Airports Authority and Mullen Group Income Fund

The utilities sector has received a great deal of attention for its carbon disclosure, particularly in the United States where New York Attorney General Albert Cuomo subpoenaed five utilities in demanding they increase their disclosure (Dynergy and Xcel Energy have since complied). We reviewed five Ontario utilities to see if their disclosure matched efforts by some of their American counterparts, yet we found scores ranging from only poor to limited. Less than half of the companies reviewed disclosed their GHG emissions and only one has set an emissions reduction goal (Ontario Power Generation, as has been mandated by the Ontario Government.) While most companies acknowledged at least some regulatory risk, there was no discussion of other risks, including physical risks to plants, market risks, and litigation risks. This poor carbon disclosure by these Ontario utilities put them far behind the sectoral leaders Dynergy and Xcel Energy in the United States.

Recommendations

Our review of issuers' 2008 annual filings demonstrates that carbon disclosure by reporting issuers in Canada, including companies in emissions intensive industries subject to direct regulations, too often contains poor or limited descriptions of their climate risks, if the issue is discussed at all. Among those companies that are currently disclosing information about climate risks there is very little consistency in the format or level of detail of information presented. This lack of consistency makes it difficult, if not impossible, for investors to compare corporations' respective exposures to and preparedness for climate change in order to make informed investment decisions.

It is clear therefore that issuers in Canada require much more guidance on how to disclose climate change within the context of present reporting obligations. As Canada once again considers the possibility of a national securities regulator and seeks to address systemic risks in our capital markets, it is imperative that the OSC work with the Canadian Securities Administrators ("CSA") in addressing this issue on a national level.

As a first principle in addressing this situation, we believe that the OSC and CSA should be informed by the Global Framework for Climate Risk Disclosure (the "Global Framework") when providing guidance to issuers on climate change disclosure. The Global Framework was created to standardize climate change disclosure and was informed directly by the information requirements of investors needing to make informed investment decisions. The Global Framework sets out four areas of disclosure that need to be reflected in future regulatory filings by issuers in impacted sectors:

1. present, historical, and future emissions data;
2. strategic analysis of climate risk and emissions management;
3. assessment of the physical risks of climate change; and
4. analysis of regulatory risks including estimated financial impacts.¹⁰

By adopting the Global Framework and providing specific guidance on how issuers can report these four areas of disclosure within present environmental disclosure obligations, the OSC and CSA can provide a level playing field for all issuers and greater consistency in carbon disclosure. It will also remove any disincentives issuers currently face for providing enhanced climate change disclosure, who may fear that providing more information than their competitors could expose them to market risks.

⁹ The utilities companies reviewed were: Fortis Inc., Enbridge Gas Distribution Inc., Canadian Hydro Developments Inc., Ontario Power Generation Inc. and Great Lakes Hydro Income Fund

¹⁰ The entire text of the Global Framework for Climate Risk Disclosure can be found at www.ceres.org.

On a practical level, guidance on how to disclose climate change risks could be incorporated into any number of existing national instruments, including National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 51-201 *Disclosure Standards* and National Instrument 43-101 *Standards of Disclosure for Mineral Projects*. While it is outside of the scope of this submission to suggest the exact language of such guidance, we do offer our services in providing more detailed input on the form and content this could take in the future.

As a final recommendation, we strongly encourage the OSC to consider corporate governance disclosure requirements as pertains to climate risk management in securities filings. Issuers are required to disclose corporate governance obligations under National Instrument 58-101 *Corporate Governance Disclosure* (“58-101”) yet there is no requirement within 58-101 for issuers to have a climate change committee, nor even disclose a single board member responsible for climate change and environmental issues. While it would be cumbersome to require all issuers to form climate change committees and appoint a chair from their boards, it would be worthwhile for the OSC to provide guidance on 58-101 and encourage issuers to incorporate climate change and environmental matters into their corporate governance disclosure. Past experience in this area has shown that companies do a much better job of disclosing their climate change risks and managing these risks where there is clear board responsibility for such efforts.

Conclusion

As can be seen in the results of our review, a material gap exists between the carbon disclosure sought by investors and that provided by reporting issuers in Canada. As the impacts of climate change become more severe and the policy response greater, this gap in disclosure will continue to undermine both the efficiency of capital markets and the confidence of those who participate in them. The last time there was such a crisis in Canadian capital markets following the Bre-X scandal, the OSC and CSA responded forcefully with National Instrument 43-101 that sought to improve reporting of mineral deposits and, of equal importance, improve investor confidence in Canadian capital markets. While the global climate crisis is different in many ways from the Bre-X fraud, this crisis and the growing international response of both policymakers and securities regulators deserves no less attention by the OSC and CSA.

We therefore offer our continued support in your efforts to address this situation, beginning with your response to the Ontario Government on ways forward. We would be delighted to meet with you in person during the week of October 18th to discuss in greater detail the findings of our review and the recommendations that arise from it.

Sincerely,

British Columbia Investment Management Corporation (bcIMC)

Ceres

Climate Action Network Canada

Climate Change Lawyers Network

cc: Hon. Jim Prentice, Minister of the Environment
Laura Broten, Member of Provincial Parliament for Etobicoke-Lakeshore
W. David Wilson, Chair, OSC
Lawrence E. Ritchie, Vice-Chair, OSC
Jo-Anne Matear, Assistant Manager, Corporate Finance, OSC
Neeti Varma, Senior Accountant, Corporate Finance, OSC

Appendix: Climate Risk Disclosure Assessment Methodology

The disclosure of the 35 companies in this submission was analyzed by extracting information related to climate change and climate risks and opportunities from OSC filings and using keyword searches and manual reviews of each document. Companies in all industries except insurance were evaluated using the criteria summarized in Table 1.

Table 1: Overview of Assessment Methodology for Coal, Electric Utilities, Oil and Gas, and Transportation Companies

- I. Emissions & Climate Change Position Disclosure
 - Company discloses GHG emissions data in filings
 - Filings mention climate change or state the company's position
- II. Risk Assessment Disclosure
 - Physical plant risks disclosed in filings
 - Regulatory risks disclosed in filings
 - Business model/strategic risks disclosed in filings
 - Litigation risks disclosed in filings
- III. Disclosure of Actions to Address Climate Risk
 - Climate change-related opportunities disclosed in filings
 - GHG emissions reduction pledges disclosed in filings
 - Risk management and mitigation measures disclosed in filings

The assessment methodology for insurance companies, summarized in Table 2, was altered because of the unique nature of this industry's exposure to climate risk.

Table 2: Overview of Assessment Methodology for Insurance Companies

- I. Emissions and Climate Change Position Disclosure
 - Company discloses GHG emissions data in filings
 - Filings mention climate change or state the company's position
- II. Risk Assessment Disclosure
 - Underwriting climate risks disclosed in filings
 - Investment climate risks disclosed in filings
 - Enterprise risks related to climate change disclosed in filings
 - Litigation risks related to climate change disclosed in filings
- III. Disclosure of Actions to Address Climate Risk
 - Climate change-related opportunities disclosed in filings
 - Enterprise risk management strategies related to climate change disclosed in filings
 - Loss control measures related to climate change disclosed in filings