

OSC to focus on environmental disclosure by reporting issuers

RUTH ELNEKAVE (relnekave@stikeman.com) and CORA ZEEMAN (czeeman@stikeman.com)

In an earlier Securities Law Update we reported that against the backdrop of investors' concerns regarding climate change considerations and increasing regulation to combat greenhouse gas (GHG) emissions, the Ontario Securities Commission (OSC) released Staff Notice 51-716 – *Environmental Reporting* in February 2008, outlining the results of a targeted review to determine the degree to which reporting issuers were adequately disclosing “environmental matters”. Similarly, in our September 2009 Emissions Trading & Climate Change Update we reviewed the escalating significance of such considerations in light of numerous mandatory GHG reporting regimes that have recently been announced across North America.

The OSC embarked on a corporate sustainability reporting initiative earlier this year and on December 18, 2009, it publicized its escalating efforts on this front by issuing Staff Notice 51-717 – *Corporate Governance and Environmental Disclosure*. Specifically, Staff Notice 51-717 details the OSC's plans to enhance the environmental and corporate governance disclosure requirements of reporting issuers (other than investment funds). As part of this initiative, the OSC agreed that it would make recommendations to the Minister of Finance by January 1, 2010 regarding potential next steps to enhance disclosure of environmental matters.

Meanwhile, in the US, the Securities and Exchange Commission (SEC) recently noted that it is taking a serious look at these matters. The SEC's actions follow requests by leading US and Canadian institutional investors responsible for trillions of dollars worth of assets for interpretive guidance on climate risk disclosure,¹ including physical and regulatory as well as litigation-related risks. Generally, investors are expressing concern that significant gaps exist between GHG and climate change disclosure among reporting issuers and insist that “reporting on climate risks is no longer a mere virtue, but a legal obligation and a necessity for investors.” Investors have made it clear that valuable information reported in a clear and consistent manner is required in order to be able to make informed decisions about both climate risks and opportunities in their portfolios.

Similarly, in Ontario, the OSC is consulting with investors, climate change experts and other stakeholders as part of its corporate sustainability reporting initiative. Recently, James Turner, Vice-Chair of the OSC, stated that the OSC has heard support for more guidance to issuers on disclosure of climate change risk in order to improve the information disclosed to investors and the marketplace. Thus, the OSC intends to issue a notice by December 2010 that offers guidance on compliance with existing environmental disclosure requirements under National Instrument 51-102 *Continuous Disclosure*

This newsletter was prepared by members of the Emissions Trading and Climate Change Group at Stikeman Elliott.

Obligations. Publication is planned for no later than December 2010 so that reporting issuers will have sufficient time to consider the guidance when preparing their 2010 annual continuous disclosure documents.

Companies in Canada and across North America are poised to prosper in an emerging clean energy economy, and investors want to know which companies are preparing to capitalize on this opportunity and which are trailing behind. Accordingly, regardless of whether or not they are subject to GHG or other environmental reporting requirements, issuers must seriously consider the effect of environmental matters and climate change on their business and ensure that such matters are adequately disclosed to investors.

We will continue to follow the progress of the OSC in establishing more detailed guidance for climate change disclosure. Look for further analysis and observation in future bulletins.

For further information, please contact your Stikeman Elliott representative, the author listed above or any member of our Emissions Trading and Climate Change Group listed at www.stikeman.com

¹ Institutional Investors Group on Climate Change letter to the SEC: <http://www.sec.gov/comments/4-547/4547-10.pdf>; Investor Network on Climate Risk (a Ceres project) letter to the SEC: <http://www.ceres.org/Document.Doc?id=376>; Ceres: <http://www.ceres.org/Page.aspx?pid=1151>.