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The Environmental Issue



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A Greener Future

Environmental Disclosure in Securities Regulation

Maria Sagan

As someone who is interested in securities law, I often observe environmental topics converging with securities regulation.

This convergence is underscored by the environmental disclosure requirements increasingly being placed on security issuers.

The United States recently provided guidance on the future of environmental disclosure, moving in the direction of more rather than less. While this disclosure may be viewed as an extra burden on issuers, it is information that is becoming increasingly important to investors and especially to the investors of the future. Canada requires environmental disclosure in National Instrument 51-102 Continuous Disclosure Obligations and the Ontario Securities Commission has issued a staff notice based on these obligations. More guidance on environmental disclosure is anticipated in the near future.

Environmental disclosure not only helps investors understand a corporation's environmentally risky activities, but also tells them what the corporation is doing to minimize such environmental risk. It encourages companies to be environmentally responsible and promotes environmental transparency. Environmental disclosure helps corporations understand the financial risks of environmental liabilities. It allows corporations to assess their impact on the environment as well as to minimize it, thereby not contravening any laws or regulations.

Despite the benefits to corporations, environmental disclosure is primarily an investor-driven requirement. While environmental disclosure may not be a priority for present-day investors, it must be so for the investors of the future – those who are being educated in an environmentally conscious world. Investors should carefully consider a corporation's environmental disclosure information since risky environmental practices may, with today's ever more stringent environmental laws and regulations, lead to a risky investment – the BP oil spill being one recent example. Investors hold the power

to both improve and expand environmental reporting. At the same time, they have the capacity to extinguish it.

Environmental disclosure must meet the needs of many different entities – ones with often divergent interests. These include investors, issuers, the government, and the Canadian public. Environmental disclosure is not possible without the willing participation of those who depend on a corporation's success, as well as those who depend on environmental protection. While relatively few may fall under the former category, we are all captured by the latter.

Disclosure of environmental risks and liabilities should not be viewed as, nor should become, a burden on corporations. The government should work with corporations to create positive and manageable disclosure guidelines. It should reward transparent disclosure and commendable environmental practices. Environmental disclosure creates many "winners" – everyone benefits from a healthier environment, issuers benefit from less risky environmental activities, and investors benefit from knowing that their investment is unlikely to face an environment-related loss.

Environmental disclosure is an emerging and popular trend. We live in a world dominated by large corporations, and it is this domination that requires us to ask the very best of corporations. After all, while corporations exploit the world's resources, they are also protectors of the environment and gardeners of the earth's future. Corporations should inspire each other to be more environmentally conscious. As lawyers we should also encourage them to be so.



Maria Sagan is an articling student at McMillan LLP.