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Securities and Corporate Finance - 2022 Year in Review and Future Trends

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2022 was marked by ongoing volatility in the global capital markets, which was fueled by soaring inflation rates, central banks raising interest rates at an unprecedented scale, the conflict in Ukraine and geopolitical uncertainty. The broader Canadian capital markets did not escape unscathed, as both market performance and underwriting activity were down year-over-year. However, the Canadian oil & gas sector was a bright spot in 2022, as oil & gas companies make up the biggest share of TSX's top performers in 2022 in large part due to a strong rebound in the price of oil and surging global demand for energy. Against this backdrop, we are pleased to present our 2022 Year in Review and Future Trends publication, where we will take a look back at key developments impacting the securities and corporate finance landscape in Canada, and provide our outlook on anticipated trends for 2023.

Contents

Amendments to National Instrument 33-109 Registration Information and Related Instruments: What registrants should know

On December 16, 2021, the Canadian Securities Administrators (CSA) introduced amendments to National Instrument 33-109 - *Registration Information and National Instrument 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations* as well as their respective companion policies (the Amendments).

The Amendments seek to modernize registration information requirements, clarify outside activity reporting, update filing deadlines, and address issues and concerns raised by CSA staff and registrants.

The purpose of the Amendments is to reduce the regulatory burden on registrants while allowing the regulators to receive complete and accurate information. The Amendments are not intended to change the nature of the registration process, the requirement to register, or the assessment of fitness for registration.

The Amendments came into force on June 6, 2022. Registrants are required to update their information in light of the Amendments on the earlier of (i) a change in the registrant's registration information previously provided, or (ii) June 6, 2023.

Well-known seasoned issuers came north

Effective January 4, 2022, pursuant to local blanket orders adopted by the CSA, qualifying well-known seasoned issuers (WKSIs) in Canada were made temporarily exempt from certain base shelf prospectus filing requirements, including the requirement to file a preliminary base shelf prospectus (the WKSI Framework).

The WKSI Framework is a welcome development as it provides quicker access to the public markets for larger, more seasoned Canadian reporting issuers. It was developed in response to feedback received by the CSA in relation to its Consultation Paper 51-404 - *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* indicating that certain prospectus requirements in the base shelf context create unnecessary regulatory burden for large, established reporting issuers that have a strong market following and up-to-date disclosure records. It allows WKSIs to take advantage of a strong capital market and offer further securities without amending or refiling a prospectus. The reduced regulatory burden – both in terms of not having to file a preliminary base shelf prospectus and not having to amend or refile a prospectus when, for example, there is an adjustment that needs to be made to the aggregate dollar amount of securities that may be raised – will enable greater efficiency of the Canadian capital markets, while still protecting the public through, among other things, the high hurdles that must be overcome to qualify as a WKSI. The accelerated timeline for obtaining a receipt for a base shelf prospectus, as well as the exemption from filing a preliminary base shelf prospectus, may also reduce the overhang risk typically associated with filing traditional, unallocated base shelf prospectuses.

The Canadian Securities Administrators released ESG-related guidance for investment funds

On January 19, 2022, the CSA released Staff Notice 81-334 - *ESG-Related Investment Fund Disclosure* (the Notice) which provided guidance on the disclosure practices of investment funds as they relate to environmental, social and governance (ESG) considerations.

An increase in ESG interest among investors as well as the potential for "greenwashing," whereby a fund's disclosure or marketing intentionally or inadvertently misleads investors about ESG-related aspects of the fund, are cited in the Notice as having led securities regulators and international organizations to directly address issues relating to ESG investing. Notably, the International Organization of Securities Commissions published a final report in November 2021 setting out recommendations for securities regulators and policymakers to improve sustainability related practices, policies, procedures and disclosure in the asset management industry. In the same month, the CFA Institute published their Global ESG Disclosure Standards for Investment Products with the aim of providing greater transparency and comparability to investors by facilitating clear communication of ESG-related features of investment products from asset managers.

In Canada, CSA staff have conducted continuous disclosure reviews of regulatory disclosure documents and sales communications of ESG-related funds. The findings of these reviews are summarized within the Notice. Although CSA staff consider current disclosure requirements to be broad enough in scope to address ESG-related disclosure, in their view, additional guidance was needed to clarify how the current disclosure requirements apply to improve the quality of ESG-related disclosure and sales communications.

Canadian government hardened stance on Russian investment in Canada in response to the Ukraine crisis

In response to President Putin's illegal invasion of Ukraine, Canada's Minister of Innovation, Science and Industry issued a statement requesting investors and Canadian businesses to review their investment plans involving Russian investors. This policy represented another economic measure taken by the Government of Canada to respond to the Russian action.

According to the Minister, Russia's continued attacks on Ukraine had created an environment of heightened national security and economic risk to Canada, which affected both "net benefit to Canada" reviews and national security reviews under the *Investment Canada Act* (ICA), Canada's foreign investment review law.

The Government of Canada recommended that non-Canadian investors and Canadian businesses identify potential connections to Russian investors and entities that may be participating as a controlling or a minority investor. In particular, it asked investors to proactively identify components of proposed transactions subject to review under the ICA that have ties to Russia, including indirect entities or individuals. The Government of Canada alerted non-Canadian investors and their Canadian targets that such reviews may require detailed and lengthy due diligence relating to corporate structure and sources of financing of direct and indirect investors, beneficial ownership and trusts. The Government of Canada cautioned such investors and Canadian businesses to consider the role of Russian entities and individuals with ties to Russia. This policy has applied during this period of "escalated risks of national security and economic injury" linked to Russia's attack on Ukraine.

Guidance from Canadian securities regulators concerning virtual shareholder meetings

On February 25, 2022, the CSA published guidance on virtual shareholder meetings for reporting issuers. Following the enactment of widespread public health restrictions during the COVID-19 pandemic, many corporations in Canada adopted a virtual format for their shareholder meetings.

While the guidance did not alter the formal requirements applicable to reporting issuers holding virtual meetings, it did highlight issues that securities regulators will look to in assessing the compliance of virtual meetings with requirements under securities law. The CSA made clear that the necessity and prevalence of virtual meetings does not relieve reporting issuers of their existing responsibilities for fulsome and accurate disclosure of information, as well as meaningful and accessible participation at shareholder meetings.

Dentons 2022 proxy season guide

In March 2022, the Dentons Securities and Corporate Finance group published the Dentons 2022 proxy season guide, with some reminders about continuing developments and future matters.

The Dentons 2022 proxy season guide covered the following topics:

I. New developments

- Adoption of new non-GAAP financial disclosure requirements
- Bill C-25 – proposed amendments to the Canada *Business Corporations Act*
- Advisory updates: ISS and Glass Lewis
- Adoption of Bill 213, *Better for People, Smarter for Business Act, 2020*

II. Continuing developments

- Diversity

III. Upcoming developments

- Amendments to National Instrument 51-102 – *Continuous Disclosure Obligations*
- Changes to climate disclosure
- Ontario's *Capital Markets Act*
- New self-regulatory organization to replace MFDA and IIROC

IV. Possible developments

- Recommendations from the Capital Markets Modernization Taskforce Final Report
- Conclusion of consultations on corporate governance amendments to the CBCA

Going Public in Canada: Key considerations for founding entrepreneurs and their start-ups

Taking a company public is a goal of many founding entrepreneurs. Doing so, however, is no easy task. There are many important considerations entrepreneurs must take into account as they prepare for an initial public offering (IPO).

Our fireside chat series, "Going Public in Canada," provided a forum for established entrepreneurs and lawyers to discuss some of these considerations.

Host Chris Wolfenberg, Partner at Dentons Canada, and guest Chris Buckman, Founding Managing Director at Endeavor Canada, discussed accelerating growth to position a company to go public. They described the process as a transition from start-up to revenue-generating, and outlined main three considerations for entrepreneurs:

- Focus on sales to accelerate growth;
- Build structurally to scale growth safely; and
- Consider capital structure and capitalization table early.

Canadian securities regulators proposed amendments to enhance derivatives data reporting

On June 9, 2022, members of the CSA published, for a 120-day comment period, a set of regulatory amendments (the Proposed Amendments) designed to streamline and internationally harmonize over-the-counter (OTC) derivatives data reporting.

In seeking to implement global standards to improve the quality of data and create standardized systems across other jurisdictions where derivatives are traded, the CSA proposed the implementation of new requirements to improve data quality and reporting, as well as ensure that the changes proposed are consistent with regulatory requirements internationally. Some of these amendments involve updated reporting counterparty obligations, including:

- A general obligation on reporting counterparties to ensure all reported data is accurate, contains no misrepresentations, and satisfies the repository's validation procedures;
- Reporting counterparties that are derivatives dealers must verify the accuracy of reported data every 30 days;
- A new hierarchy will determine which entity is responsible for generating Unique Transaction Identifiers;
- Reporting counterparties will be required to identify transactions using Unique Product Identifiers assigned by the Derivatives Service Bureau, who operates the unique product identifier reference data library;
- A reporting counterparty will be permitted to report netted aggregate position level data as an alternative to reporting lifecycle events separately for each derivative if the derivates meet certain criteria; and
- A reporting counterparty will be required to report collateral and margin data each business day, consistent with new data elements, until the transaction is terminated or expires.

Contained in the Proposed Amendments were also two key definitional updates, including that:

- The definition of "affiliated entity" will no longer capture two persons or companies if one of them is an investment fund as defined in NI 81-106 - *Investment Fund Continuous Disclosure*; and
- The definition of "derivatives dealer" will now include any person or company required to be registered as such under applicable securities legislation, but importantly, the "business trigger" test will also continue to operate.

The Canadian Securities Administrators commenced the SEDAR+ Pilot Program

In June 2022, the CSA commenced the SEDAR+ Pilot Program (the Pilot), which ran from June 2022 and, after an extension, will carry on until the end of January 2023. The initial group of participants consisted of regulatory staff in CSA jurisdictions that use the existing System for Electronic Document Analysis and Retrieval (SEDAR) extensively to build familiarity with the new system and provide feedback.

Once the rollout of SEDAR+ is complete, users can expect the following new features:

- Automatic historical file transfer: All historical filings and disclosures will be transferred to SEDAR+, and users will then be able to consolidate their filings. Investors should keep in mind that non-CSA filings will not be transferred into SEDAR+;
- Single point of access: Once fully integrated, users will be able to use SEDAR+ to access disclosure information from a single source rather than the independent predecessor systems;
- No software download: SEDAR+ is an entirely web-based platform that users can access from their browser, meaning that users will no longer be required to download SEDAR software to file their documents. This platform will also have enhanced cybersecurity and privacy features. Once SEDAR+ is live to the public, users will no longer be able to use the old systems for filings;
- Fees: System fees will be revised when the data has been transferred into SEDAR+. Notably, the CSA will switch to flat fees per filing type, and these fees will only be payable to the filer's principal regulator. In addition, SEDAR+ will eliminate some fees, including the prospectus distribution outside Québec, registration of an individual in an additional jurisdiction, related party transaction filings, and going private transaction filings; and
- System user and regulatory fees will be payable using Electronic Funds Transfer rather than the current Electronic Data Interchange system. For certain fees, credit card payments will be accepted.

TSX Venture Exchange announced changes to minimum pricing requirements

On June 23, 2022, the TSX Venture Exchange (TSXV) announced changes to its minimum pricing requirement for shares listed on the TSXV by amending several of its policies to incorporate the temporary relief measures (the Temporary Relief) previously granted in response to the COVID-19 pandemic which lowered the minimum price at which issuers could complete certain financings.

In April 2020, the TSXV published a bulletin that revised the minimum price at which listed shares may be issued from CA$0.05 to CA$0.01 in certain circumstances. Under the Temporary Relief, if the market price of an issuer's listed shares was not greater than CA$0.05, the minimum price at which that issuer could issue its listed shares was equal to that market price, subject to a minimum price of CA$0.01. However, if the market price of an issuer's listed shares was greater than CA$0.05, the minimum price at which that issuer could issue its listed shares remained equal to the market price less the maximum permitted discount, subject to a minimum price of CA$0.05.

The Temporary Relief applied to shares issued on or before June 30, 2022. Rather than extending the Temporary Relief, the Exchange permanently amended several of its existing policies (e.g., Policy 1.1 – Interpretation, Policy 4.2 – Prospectus Offerings, Policy 4.6 – Public Offering by Short Form Offering Document and NEX Policy) (the Amended Policies) to incorporate the minimum pricing requirements set out in the Temporary Relief. The minimum pricing requirements in the Amended Policies are, by and large, similar to the requirements set out in the Temporary Relief, except the TSXV made several slight modifications to the wording and scope of the requirements in certain instances. The Amended Policies came into effect on June 23, 2022, and a summary of the changes enacted by the amendments is included here.

Materiality and disclosure obligations: Dismissal of a class action upheld in *Wong v. Pretium Resources Inc.*

On July 22, 2022, the Ontario Court of Appeal upheld the dismissal of a class action under the secondary market liability *provisions of the Securities Act* (Ontario) in *Wong v. Pretium Resources Inc.*

In this case, objective reliability was properly considered in the assessment of materiality because the omission in question was the expression of an adverse opinion from a consultant regarding the validity of a key mining sample rather than an undisputed fact. Further, in all cases the disclosure standards require "an objective determination – considering what was occurring and known by the issuer within the context of the total mix of information – of what would have been important to a reasonable investor, and whether the failure to disclose the information would render misleading something already stated in the issuer's disclosure." The objective reliability of the opinion had to be evaluated to determine whether the substance of the opinion was material. The Court also confirmed that a public correction, in this case, a decline in market price, is a factor in the determination but is not itself determinative.

The decision provided a roadmap of the current case law and standards for issuers determining materiality, making it clear that the statutory and common law standard remains a fact-specific inquiry determined on a case-by-case basis.

Self-certified investor prospectus exemption expanded in Alberta and Saskatchewan

In response to feedback and to spur investment and provide enhanced flexibility for investors and businesses in Alberta and Saskatchewan, the self-certified investor prospectus exemption was expanded by the Alberta Securities Commission (ASC) and the Financial and Consumer Affairs Authority of Saskatchewan (FCAA).

The self-certified prospectus exemption allows investors to invest in businesses similarly to accredited investors. To qualify, a self-certified investor must certify that they have specific financial and investment knowledge and they must acknowledge that they understand certain investment considerations and risks. To reduce investment risk, businesses are limited to accepting investments from self-certified investors up to CA$10,000 in any one business and CA$30,000 across multiple businesses in a calendar year.

The ASC and the FCAA announced amendments to the self-certified prospectus exemption on July 28, 2022. These amendments permit the sale of securities by a business to self-certified investors and will allow for the resale of securities by a current security holder to a self-certified investor in the same manner as for accredited investors. In addition, the amendments allow businesses to sell their securities to certain qualifying special purpose vehicles, in which both accredited investors and self-certified investors participate without being subject to the investment limits that apply when selling securities to other self-certified investors.

The self-certified investor prospectus exemption was initially introduced as a three-year pilot project set to expire on March 31, 2024. The amendments have provided additional opportunities for investors and businesses to raise capital.

The CBCA amendments offer so many options... Which to vote for?

The *Canada Business Corporations Act* (CBCA) was amended effective August 31, 2022, to, among other things, require shareholders of a public company governed by such legislation to vote "for" or "against" directors at annual meetings of shareholders (the Amendments).

This is a departure from the "for" and "withhold" options previously offered to CBCA public company shareholders. Subject to certain exceptions, the Amendments also contemplate that each director in an uncontested election (i.e., where the number of director nominees is equal to the number of board positions to be filled) must receive more "for" votes than "against" votes to be elected.

We expect that over the coming period, unless exemptive relief is applied for and obtained (which doesn't seem practical based on the corresponding time and expense), or until the CSA issues a blanket order, there will be some uncertainty for CBCA public companies as to how best to comply with the different rules. We may see a variety of approaches taken, including three options: two options with the combined "against/withhold", or an option where others may take a more aggressive stance that "against" is the same as "withhold" provided that adequate disclosure is made. We also note that while these changes only apply to CBCA companies, and there are no proposed amendments to other provincial or territorial statutes that we are currently aware of, such as the *Business Corporations Act* (Ontario), time will tell if any of the provincial or territorial statutes may be changed in a similar manner. Finally, while the Toronto Stock Exchange (TSX) has its own majority voting requirement for TSX-listed companies, those rules generally defer to the corporate statutes, and thus, should not be affected by the Amendments.

The Canadian Securities Administrators announced the new Listed Issuer Financing Prospectus Exemption

On September 8, 2022, the CSA announced the introduction of a new prospectus exemption (the Listed Issuer Financing Exemption) to provide a more efficient method for issuers listed on a Canadian stock exchange to raise capital.

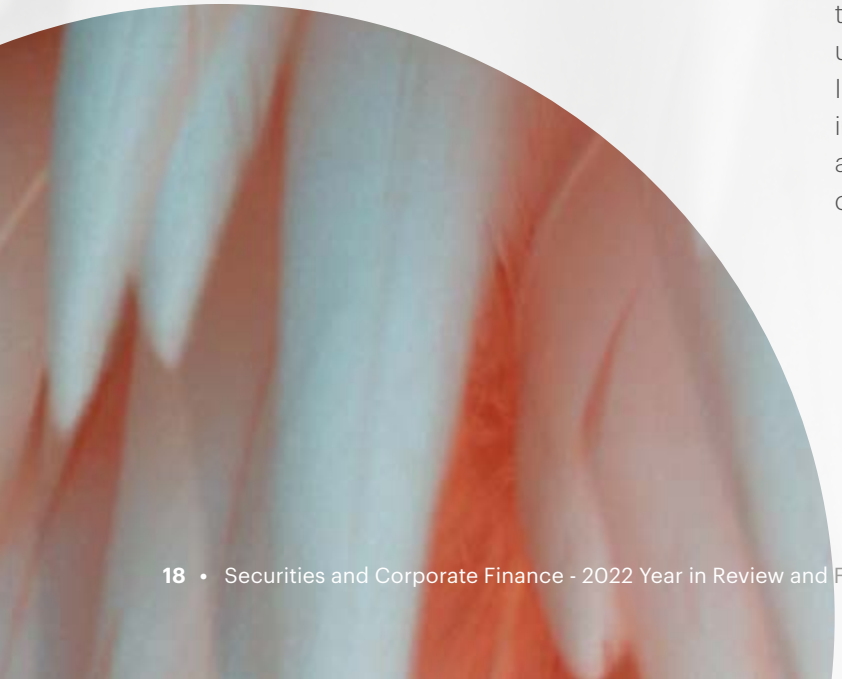
Reporting issuers trading on a Canadian exchange who have filed all required timely and periodic disclosure documents will be able to use this exemption to distribute freely tradable equity securities without preparing a prospectus by relying on their existing continuous disclosure record, supplemented with a short offering document. The new Listed Issuer Financing Exemption took effect on November 21, 2022.

The Listed Issuer Financing Exemption is expected to create greater accessibility in the capital markets for issuers, while also reducing transaction costs for raising capital. We expect this will be a particularly welcomed development for junior reporting issuers, as they will be able to distribute freely tradeable securities without the burden of preparing a prospectus, which can be cost prohibitive for those raising smaller amounts of capital. Furthermore, as the securities distributed under this exemption are not subject to any hold period, we anticipate the discount at which such securities are sold may be reduced relative to securities sold pursuant to other prospectus exemptions, which in turn, would minimize dilution to existing shareholders.

Ontario Securities Commission expands investment and capital raising opportunities through the self-certified investor exemption

On October 25, 2022, the Ontario Securities Commission (OSC) announced an 18-month pilot program that provides Ontario investors with qualifying education or work experience access to increased investment opportunities under a prospectus exemption (Self-Certified Investor Exemption or Exemption), similar to the commonly used accredited investor exemption (Accredited Investor Exemption).

The Self-Certified Investor Exemption came into effect on October 25, 2022. The Exemption will remain in effect until April 25, 2024 (unless extended by the OSC) or until the date the Exemption is subsumed by an expansion to the Accredited Investor Exemption.



To make use of the Self-Certified Investor Exemption, investors will be:

- Required to certify that they have met at least one of the qualifying criteria (which include industry-specific work experience, various financial and accounting designations and credentials, and business and finance university degrees);
- Required to review and complete a risk acknowledgment form confirming they understand the risks of investing in the issuer; and
- Subject to a CA$30,000 annual investment limit per calendar year and may choose to allocate that amount to one or more issuers.

Similar to the Accredited Investor Exemption, securities issued under the Self-Certified Investor Exemption will be subject to the same restrictions on transfer (i.e., four-month and a day hold period), and issuers must report the use of the Exemption by filing a report of exempt distribution on or before the 10th day after the distribution date. The OSC will use this data to monitor the use of the Self-Certified Investor Exemption and inform future policymaking, including whether to implement the Exemption on a permanent basis, potentially by expanding the definition of "Accredited Investor."

Canadian Securities Administrators caution issuers against using overly promotional "greenwashing" language in continuous disclosure

On November 3, 2022, the CSA published CSA Staff Notice 51-364 - *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021* as a biennial report on the CSA's review of continuous disclosure provided by reporting issuers (Report).

In the Report, the CSA identified overly promotional disclosure pertaining to ESG matters as a key area for improvement in issuers' continuous disclosure, stemming from the CSA's concerns about "greenwashing."

The following considerations concerning ESG or sustainability disclosure (ESG-related disclosure) may guide issuers in improving their continuous disclosure to align with CSA disclosure requirements in light of the examples of deficient disclosure identified by the CSA in the Report:

- Issuers were advised to ensure consistency between voluntary and required disclosure documents (e.g., AIF or MD&A) with respect to ESG-related disclosure. The CSA emphasized that both voluntary and required disclosure documents must contain factual and balanced disclosure and avoid misleading and promotional language. The CSA noted that many issuers have a practice of filing voluntary documents, such as sustainability reports, that contain different ESG-related disclosure than mandatory documents, such as their MD&A. The CSA reminded issuers that a mandatory document may be non-compliant with disclosure requirements if it omits or misstates material ESG-related information contained in a sustainability report or other voluntarily filed disclosure document.
- The CSA noted that it observed many issuers making potentially misleading, unsubstantiated or otherwise incomplete claims about ESG and sustainability-related aspects of their businesses that convey false impressions commonly referred to as "greenwashing." Issuers were advised to ensure that statements and assertions are corroborated by facts and corporate activities. Including background information in appropriate detail to explain the issuer's basis for making such disclosure may be appropriate. The Report noted that many sustainability-related assertions can constitute forward-looking information and that an issuer needs to have a reasonable basis for such statements. In the Report, the CSA warned that it considers vague or unsubstantiated claims related to ESG potentially misleading and promotional. The CSA suggested that where issuers disclose ESG scores, ratings or metrics, they should disclose the actual rating (as opposed to "high" or "low"), the criteria the rating is based on and what, if any, third party certified the rating.

2023 Trends Ahead

Potential recession and its impacts

Economists from the Royal Bank of Canada (RBC) expect the country to enter a recession in the first quarter of 2023. RBC also expects the weakening economy to push the unemployment rate up. With a possible recession looming, we may see more strategic and opportunistic acquisitions taking advantage of undervalued companies and cheaper assets.

ESG

ESG factors will continue to represent a variety of risks and opportunities for Canadian companies. These include:

- Environmental factors: such as pollution; energy and water use; resource extraction; waste management; and climate change;
- Social factors: such as inclusion, diversity and equity; employee treatment, satisfaction and compensation; working conditions and human rights; health and safety; data protection and privacy; community relations; and customer satisfaction; and
- Governance factors: such as shareholder and stakeholder engagement; internal codes of conduct and policies; executive compensation; board diversity; political contributions and lobbying; audit practices; and transparency.

Investment in ESG is considered a best practice for Canadian companies, as it is now widely recognized that pursuing environmentally and socially sustainable corporate governance leads to positive financial outcomes. With this comes a variety of new legal and market opportunities for Canadian companies.

The field of ESG is broad and rapidly developing. It is therefore essential that Canadian companies develop a nuanced understanding of their ESG obligations to succeed in the future.

Dentons forecasts that increased focus and attention will be paid not just on opportunities in ESG investment, but also on disclosures and standards related to ESG in 2023.

Climate-related disclosure

The CSA published a Notice and Request for Comment (Notice) on proposed National Instrument 51-107 - *Disclosure of Climate-related Matters* (NI 51-107) and its proposed Companion Policy 51-107CP (the Climate Disclosure Proposals). TSX-listed issuers with December 31 year-ends will have to apply the requirements set out in the Climate Disclosure Proposals effective in annual filings made in early 2024.

The Climate Disclosure Proposals will require disclosure based on recommendations of the Task Force on Climate Related Financial Disclosures (TCFD), which was established by the Financial Stability Board of the G20 group of countries to improve the effectiveness of climate disclosures. The Climate Disclosure Proposals would require issuers to make disclosure in the following areas:

- Governance: Describe the boards oversight of climate-related risks and opportunities, and management's role in assessing and managing climate-related risks and opportunities;
- Strategy: Describe any climate-related risks and opportunities identified over the short, medium and long term and describe the impact of these risks and opportunities on its business, strategy and financial planning;
- Risk management: Describe its processes for identifying, assessing and managing climate-related risks and how these processes are integrated into overall risk management; and
- Metrics and targets: Describe its metrics used to assess climate-related risks and opportunities and targets used to manage these risks and opportunities.

The TCFD contemplates that issuers should disclose greenhouse gas emissions. The Climate Disclosure Proposals will require issuers to make this disclosure or explain why they do not. The Climate Disclosure Proposals will not require issuers to disclose the resilience of their strategy with reference to various climate scenarios, a key element of the TCFD recommendations.

As with ESG, Dentons anticipates that continued and increased focus will be placed on climate disclosure and compliance with the evolving standards.

Going private transactions

In times of economic uncertainty or downtown, there are often strategic opportunities for certain companies. One trend we anticipate we may witness more of in 2023 is the rise of going private transactions.

Usually, a public company will consider reverting to private or limited shareholdings when management or other significant shareholders of the company want to buy out the public shareholders, which is referred to as a management buy-out, or a third party wants to purchase the target public company, with or without management support. Going private transactions are sometimes referred to as leveraged buy-outs, as a common method of acquisition involves using debt to finance the purchase of public company shares.

The following are common reasons why a going private transaction would be considered:

- To enable greater business and operational efficiencies or allow for greater flexibility when operating the business of the company;
- To extend the operational horizon and business planning metrics of the business and avoid short-term focus on quarterly reporting metrics;
- To eliminate or significantly reduce the costs associated with being a public company, including those expenses associated with financial reporting and other continuous disclosure requirements, regulatory compliance, investor relations, or other professional service fees;
- To provide an exit strategy for the existing shareholders;
- To permit the transfer of the business to controlling shareholders;
- To allow for significant business reorganization without the requirement to obtain diffuse shareholder approvals;
- To avoid being a target for purchase by opportunistic buyers;

- To access and obtain different or additional financial support or operational expertise and expert knowledge from sponsors of the going private transaction; and

- For a buyer or sponsor of the going private transaction, to permit the purchase of a desired company or business at opportune pricing because of depressed share trading values.

To assess whether a going private transaction would be desirable, a thorough assessment should be made regarding the likelihood that the transaction will be successful. This will depend, in part, on the type of transaction that is being pursued, the level of shareholder approval that will be necessary and the possibility of not reaching the necessary threshold of approval, and the ability of the acquiror to obtain the necessary financing to acquire the public company shares in a process that is transparent and could invite competing offers.

In 2023, we expect that market conditions will make consideration of going private attractive to certain issuers.

Continued rise of private markets

We expect private capital (private equity, venture capital, private wealth and crowdfunding, etc.) will play a more significant role in the Canadian capital markets in 2023. As more companies will seek to exit the public markets and the number of IPOs will decrease during times of economic uncertainty in the face of a possible recession, many of them will turn to private capital as a viable financing alternative.

Regulation of crypto assets and trading will be in the spotlight

The precipitous collapse and bankruptcy of FTX, a leading cryptocurrency exchange, in late 2022 may well be a watershed moment for the regulation of crypto assets and trading. The implosion of one of the industry's largest cryptocurrency exchanges and the resulting investment losses suffered by both institutional and retail investors alike highlight the potential risks that the rise of cryptocurrency can have on the broader financial markets. We expect that the collapse of FTX will hasten the speed at which lawmakers around the globe will introduce more comprehensive regulations governing the trading of cryptocurrency and assets in 2023. In this regard, Canadian securities regulators can be seen as leading the way on cryptocurrency regulation, having already published a basic framework for the regulation of crypto assets in Canada in Consultation Paper 21-402 - *Proposed Framework for Crypto-Asset Trading Platforms* and other staff notices. The Canadian federal government introduced the first reading of Bill C-249, *Encouraging the Growth of the Cryptoasset Sector Act* in the House of Commons of Canada, which if ultimately passed, requires the Minister of Finance to develop a national framework to encourage the growth of the crypto asset sector. We anticipate that Canadian securities regulators and lawmakers will only accelerate the pace at which crypto asset and trading regulation is implemented in 2023.

US Inflation Reduction Act

The US *Inflation Reduction Act*, which will result in change to the American economy related to the country's climate goals through various tax incentives, grants and loan guarantees related to clean energy and clean transportation, could trigger the flight of investment capital south.

Critical Minerals Exploration Tax Credit (CMETC)

We expect to see a renewed interest and a general increase in flow-through shares (FTSs) financings by Canadian issuers exploring for critical minerals. With the new CMETC doubling the tax credit rate of the existing 15% federal tax credit, the break-even point for investors is reduced significantly. The timing of the 30% CMETC also coincides with recent announcements by the CSA of new prospectus exemptions noted above. Given the expected increased interest in FTSs financings by many mineral exploration companies, we also expect to see an increase in the amount of capital raised by flow-through funds (typically in the form of limited partnerships) while the 30% CMETC is available.

AI and technology advances in 2023

Although we are still in the early days of applying AI to law, the question is not "will AI work?" but rather how to make it work. Whether it is email, e-signatures, or due diligence, the increased efficiencies of new technology inevitably become standard expectations.

Dentons anticipates that new and expanded technology offerings will continue to affect businesses and the securities and corporate finance industry.

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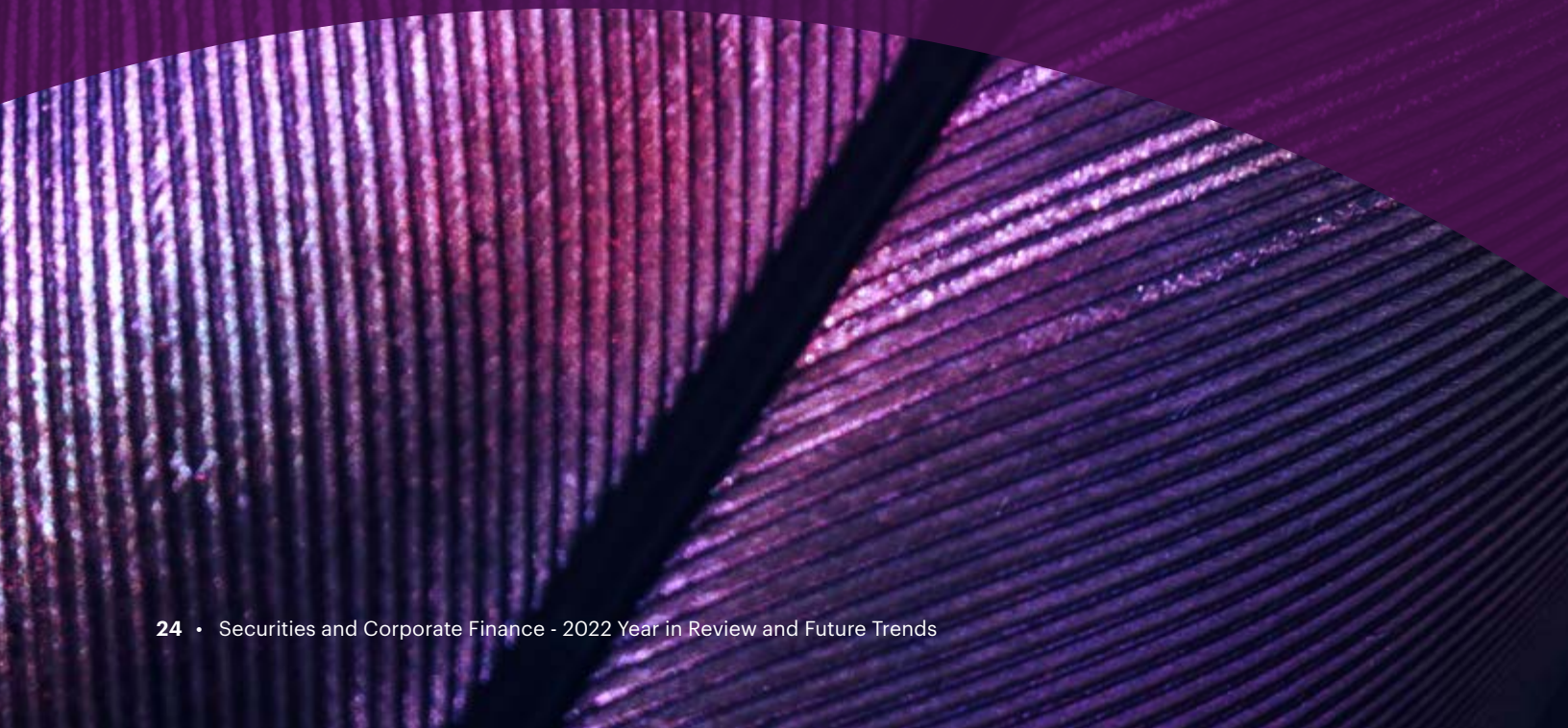

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