Notice relating to modern slavery disclosure requirements

September 4, 2018

1. Introduction

The purpose of this notice is to provide guidance to issuers[1] on existing disclosure requirements relating to modern slavery and share the expectations of staff of the *Autorité des marchés financiers* (the "**Authority**" or the "**AMF**") in this regard.

Modern slavery, which is a violation of human rights, is a concern in Canada and internationally. The International Labour Organization (**ILO**) defines modern slavery in its broadest sense as any work or service performed by a person involuntarily and under the threat of any penalty.[2] It can take various forms, including:

- forced labour;
- debt bondage;
- human trafficking; and
- child labour.

Although the scale of modern slavery is difficult to determine accurately, in 2016, the ILO estimated that there were 25 million victims of forced labour in the world.[3] Moreover, in 2014, the ILO estimated that the profits derived from forced labour amounted to US$150 billion worldwide.[4]

This notice is intended for all issuers, but may be of particular interest to certain issuers, depending on their situation. The ILO has identified the following industries as most likely to be exposed to this issue: construction, manufacturing, entertainment and agriculture.

Issues involving modern slavery can affect issuers directly or indirectly. For example, a mining company active in several parts of the world may be exposed to the issue directly, while an issuer active in the retail industry may be exposed via its supply chain.

This notice does not modify any existing legal requirements or create new ones. AMF staff is publishing this notice in order to help issuers:

- determine what information they must disclose; and
- improve or complete this disclosure, where necessary.

[1] In this notice, "issuer" refers to a reporting issuer, excluding investment funds.
[2] Article 2 (1) of the ILO Forced Labour Convention, 1930 (No. 29).
[3] On this topic, see the following report: Global Estimates of Modern Slavery: Forced Labour and Forced Marriage International Labour Office (ILO), Geneva, 2017 http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf
[4] On this topic, see the following report: *Profits and Poverty: The Economics of Forced Labour*/International Labour Office. – Geneva: ILO, 2014 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf

2. Background

Two factors led to the publication of this notice: international regulatory developments and growing investor interest in the social responsibility of issuers, including modern slavery.

2.1 Regulatory developments

A number of recent regulatory or governmental initiatives have addressed the issue of modern slavery and respect for human rights, and may be relevant to issuers:

- In the United States, the *California Transparency in Supply Chains Act of 2010* requires retailers and manufacturers to disclose their efforts to eradicate slavery and human trafficking from their supply chains. This legislation, which has been in force since 2010, is intended to provide consumers with the information needed to make informed purchasing decisions. The disclosure must be made on the websites of companies subject to the legislation and must indicate the actions undertaken by companies regarding the following: audits of their supply chains, certifications required from suppliers, internal procedures to combat modern slavery, and the training offered to employees on the subject.

- In 2014, the European Union adopted *Directive 2014/95/EU of the European Parliament and of the Council*, which requires certain large companies and groups to disclose non-financial information. In their management report, companies must, among other things, describe their policies regarding respect for human rights, the outcomes of those policies, and the steps they have taken. They must also provide disclosure regarding their supply and subcontracting chains in order to identify, prevent and mitigate existing and potential adverse impacts.

- In the United Kingdom, the *Modern Slavery Act* adopted in March 2015 provides tools to combat modern slavery and offers measures to protect victims. Among other things, the statute requires commercial organizations of a certain size to make an annual statement on their website setting out the steps taken to ensure that modern slavery is not taking place in their supply chain or in any part of their own business.

- In France, the *Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* adopted in 2017 requires large companies to establish and implement a vigilance plan. The vigilance plan must include reasonable vigilance measures to identify and prevent the risk of violations of human rights and fundamental freedoms resulting from the activities of the company or its subcontractors. Companies must publicize their vigilance plan.

- In Canada, on January 17, 2018, the federal government announced the creation of the position of independent Canadian Ombudsperson for Responsible Enterprise (CORE). The CORE will be mandated to investigate allegations of human rights abuses linked to Canadian corporate activity abroad. The CORE will have to assist in collaboratively resolving disputes or conflicts between impacted communities and Canadian companies.

2.2 Investor interest

Investors are increasingly interested in the risks associated with the social responsibility of issuers, including modern slavery. Many Canadian institutional investors have adopted responsible investment policies. These policies aim, in particular, to encourage investments in companies with a positive social record and to initiate a dialogue on these issues with management of these issuers. The policies also aim to set out the principles underlying proxy voting and the positioning of these investors on various issues, including respect for human rights.

3. Continuous disclosure requirements

Existing securities regulation may require the disclosure of certain information regarding modern slavery in the continuous disclosure documents of issuers.

More specifically, we wish to draw the attention of issuers to certain requirements which may be related to the issue of modern slavery:

3.1 Risks

Item 5.2 of *Form 51-102F2, Annual Information Form*, requires issuers to disclose, in their AIF, the risk factors relating to the company and its business most likely to influence an investor's decision to purchase securities of the company. Pursuant to this item, the risks associated with modern slavery that are considered material to the issuer must be disclosed. Moreover, paragraph (g) of item 1.4 of *Form 51-102F1, Management's Discussion and Analysis*, requires issuers to discuss their analysis of their operations for the most recently completed financial year, including risks that they reasonably believe will materially affect their future performance.

As prescribed by paragraph (e) of Part 1 of *Form 51-102F1*, *Management's Discussion and Analysis*, and paragraph (d) of Part 1 of *Form 51-102F2*, *Annual Information Form*, of *Regulation 51-102 respecting Continuous Disclosure Obligations* (**Regulation 51-102**), the deciding factor for the information to be disclosed is its materiality. Materiality must be assessed in light of the reasonable investor. Information regarding modern slavery is material if a reasonable investor's decision to buy, sell or hold securities of the issuer would likely be influenced or changed if the information in question was omitted or misstated.

Issuers should judge whether the nature of their business requires them to discuss the risks related to modern slavery in their continuous disclosure documents. For example, an issuer could face the following risks: litigation risks, regulatory risks, reputational risks and operational risks. Issuers should also assess the materiality of the risks affecting their supply chain, where applicable.

3.2 Social policies

Paragraph 4 of item 5.1 of *Form 51-102F2, Annual Information Form,* requires issuers to describe the social policies the company has implemented that are fundamental to its operations as well as the steps taken to implement them. The definition of "social policy" is broad and may include policies dealing with issues related to modern slavery.

This disclosure obligation helps investors understand how issuers manage their material social risks. Every issuer that presents its social policies should assess and describe their impact on its operations.

3.3 Code of conduct and ethics

Form 58-101F1, Corporate Governance Disclosure, of *Regulation 58-101 respecting Disclosure of Corporate Governance Practices* (**Regulation 58-101**) requires issuers to disclose whether or not the board of directors has adopted a code of conduct and ethics for directors, officers and employees. Section 3.8 of *Policy Statement 58-201 to Corporate Governance Guidelines* (**Policy Statement 58-201**) states that the code should constitute written standards that are reasonably designed to promote integrity and to deter wrongdoing, in particular, as regards fair dealing with the issuer's employees.

Paragraph (c) of item 5 of *Form 58-101F1, Corporate Governance Disclosure,* provides that issuers must also describe the steps taken by the board of directors to encourage and promote a culture of ethical business conduct. To that effect, section 3.9 of Policy Statement 58-201 recommends that the board of directors be responsible for monitoring compliance with the code.

We remind issuers that section 2.3 of Regulation 58-101 requires them to file their code and all amendments thereto on the System for Electronic Document Analysis and Retrieval (SEDAR).

4. Oversight of disclosure

When carrying out their oversight duties, boards of directors, audit committees and certifying officers should examine, among other things, management's assessment of the materiality of issues related to modern slavery and satisfy themselves that the disclosure provided in the documents filed under securities regulation is consistent with that assessment.

5. Issue-oriented review conducted by AMF staff

AMF staff conducted an issue-oriented review of the current practices of certain large issuers as regards disclosure of information on modern slavery. AMF staff selected twenty (20) issuers listed on the Toronto Stock Exchange and having a market capitalization of at least $1 billion.

These issuers are active in a number of industries, including: manufacturing and processing, retail sales, mining, banking, product distribution and marketing, communications and media, consulting services, real estate, transportation, energy production and distribution, and technology and IT services.

AMF staff selected issuers with international operations or with greater potential exposure to issues related to modern slavery. For each issuer, AMF staff examined the following documents:

AIF, information circular, MD&A, code of conduct and ethics, and voluntary social responsibility report.

Via this staff notice, AMF staff wishes to share certain findings of its issue-oriented review, as well as its expectations with respect to those findings:

5.1 Risks

In their MD&A, 15% of the issuers sampled identified social responsibility issues as a material reputational risk to the company.

In particular, they mentioned that their company could be exposed to criticism, complaints or boycotts for actions of the company that do not reflect its social and economic responsibilities, or that the company could attract negative media coverage in the event of admitted, alleged or perceived violations of local labour laws or international labour standards, or for unethical labour or other business practices.

For example, an issuer identified the concentration of its procurement strategy in a specific country as a heightened risk that illegal practices by one of its suppliers, in particular with regard to employment, could have a negative impact on its reputation and operations.

Expectations

Issuers should ask themselves the following questions in order to define the material risks to which they may be exposed as regards modern slavery:

- Is the issuer a party to litigation involving issues of modern slavery? What is the probability that the plaintiffs will win?

- What are the real and expected consequences of regulations relating to modern slavery on the issuer's business and strategy?

- How does the issuer handle issues related to modern slavery? The manner in which these are handled can have a positive or negative impact on fundamental intangible assets such as brand value, consumer confidence, employee loyalty and the ability to raise funds.

- What impact will the issuer's relationship with local communities and other parties affected by its activities as regards its workforce have on its performance and operations? The relationship between an issuer and local communities can impact its ability to operate and its operating costs.

As with all other types of disclosure, issuers should be specific about the material risks and avoid vague or boilerplate language. Issuers should mention both the risk and the facts giving rise to the risk.

5.2 Social policies

The issue-oriented review conducted by AMF staff showed that 15% of sampled issuers mentioned in their AIF the existence within their company of social policies dealing with respect for human rights or the issue of modern slavery.

5.3 Code of conduct and ethics

The issue-oriented review conducted by AMF staff showed that 40% of sampled issuers have adopted a code of conduct and ethics that deals in one way or another with respect for human rights. However, only 10% of sampled issuers discussed the issue of modern slavery more specifically.

However, it is worthwhile noting that 35% of the sampled issuers have adopted a code of conduct for their suppliers which specifically prohibits forced labour or child labour.

5.4 Voluntary disclosures

The issue-oriented review conducted by AMF staff revealed that some issuers voluntarily disclosed information regarding modern slavery or, more generally, their human rights record in their social responsibility reports. Some issuers also joined various international initiatives such as the Fair Labor Association or the UN Global Compact.

Expectations

Issuers that provide voluntary disclose about their initiatives with respect to modern slavery must assess the materiality of this information and incorporate it in their continuous disclosure documents if the information is material.

Issuers should ensure that information they disclose voluntarily is consistent with the information in their continuous disclosure documents.

6. Conclusion

Issuers should take the guidance in this notice into consideration when preparing their continuous disclosure documents so that the information disclosed complies with securities regulations and provides investors with useful information for making informed investment and voting decisions.

Questions

Please refer your questions regarding this notice to any of the following persons:

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