

**Comments regarding the CFA Institute ESG Disclosure Standards
for Investment Products: Exposure Draft (Released May 2021)**

Submitted by the First Nations Financial Management Board (FMB)
and the Reconciliation and Responsible Investment Initiative (RRII)

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Understanding and incorporating Indigenous perspectives in investment decision-making helps investors align their approach with international standards related to Indigenous rights, and in particular the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).¹ We applaud the CFA Institute’s efforts to build disclosure standards for investment products to facilitate transparent evaluation, comparison, and discussions of ESG products. However, we are writing to communicate our concern that the current exposure draft fails to incorporate Indigenous perspectives and rights as important ESG information related to investment products. To remedy this, we submit the following recommendations for your consideration. We believe that these amendments would help investors whom recognize the materiality of Indigenous rights and respectful relations with Indigenous peoples identify ESG products that match their own values and investment beliefs.

1. Incorporating Indigenous Perspectives in Defining ESG:

Term “ESG”: A movement has emerged in Canada, as well as in parts of Australia and New Zealand, to apply Indigenous approaches to ESG. This has led to a growing number of investment professionals and other actors to refer to ESG as ESGI, with the “I” being “Indigenous.” In nation-states where Indigenous rights are being recognized in domestic law and in practice by companies, such as in Canada, Australia, New Zealand, and some countries in South America, Indigenous rights are material to the success of any investments that may affect Indigenous lands, waters, territories, people, and/or rights. An issuer’s development of infrastructure or use of public lands, resources, and/or waterways is at risk when Indigenous rights due diligence is not fully undertaken. Aligning investment products’ ESG with Indigenous perspectives and rights is thus critical.² We propose changing “ESG” to ESGI,” with Indigenous referring to the following:

Relating to mutually beneficial relationships with Indigenous peoples, including a commitment to upholding Indigenous rights (namely those outlined in UNDRIP, including free, prior, and informed consent); representation of Indigenous peoples in diversity policies and corporate leadership; employment, contracting, and procurement opportunities for Indigenous people and businesses; and Indigenous community investment, support, and participation.

Alternatively, we propose that the definitions of the constituent parts of “ESG” be broadened to include Indigenous peoples and rights, as outlined below:

¹ SHARE. Energy and Mining Investment: Assessing Accountability for Indigenous Rights in Complex Investment Chains. SHARE, 2020. https://share.ca/wp-content/uploads/2020/08/SHARE_Mining-Report_FINAL_Web-High-Res.pdf;

Fredericks, C. F., Meaney, M., Pelosi, N., & Finn, K. R., Social Cost and Material Lost: The Dakota Access Pipeline. U of Colorado Law Legal Studies Research Paper No. 19-1. First Peoples Worldwide, 2018. https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

² For instance, see First Nations Major Projects Coalition (FNMPC). 2021. *Indigenous Sustainable Investment: Discussing Opportunities in ESG*. Available at https://static1.squarespace.com/static/5fb6c54cff80bc6dfe29ad2c/t/6009dc280d5f7c464a330584/1611258929977/FNMPC_ESG_Primer_2021_Final.pdf

Term “Environmental”: the definition of Environmental centres a western view of environment as separate and apart from people. The definition negates the human dimensions of environmental systems and change, and does not speak to the relationship of Indigenous peoples with the land. Instead of:

Relating to the quality and functioning of the natural environment and natural systems.

We propose:

Relating to effects on the environment and nature, including, but not limited to, climate change, resource depletion, waste and pollution, deforestation, greenhouse gas emissions, and alteration of the relationship between people and nature, including that between Indigenous peoples and their traditional territories.

Term “Social”: the definition of social does not speak to the rights and title of Indigenous peoples, nor to social licence to operate. Instead of:

Relating to the rights, well-being, and interests of people, communities, and society.

We propose:

Relating to the sustainability of social fabric, including workers’ rights, Indigenous rights and reconciliation, human rights, and respectful community relations including social licence to operate, both within companies and other investee entities, and their supply chains.

Term “Governance”: the definition of Governance does not speak to the transparency and equitable organizational structure of the corporation and other investee entities, including the participation of underrepresented groups at all levels of the relevant organization. Instead of:

Relating to the policies and procedures used to direct, control, and monitor companies and other investee entities.

We propose:

Relating to the good and ethical stewardship of a company or other investee entities, including factors such as executive pay, bribery and corruption, political lobbying, board diversity and structure, tax strategy, and compliance.

Examples used: There are many kinds of ESG examples given on pages 35 and 36 of the draft disclosure standards. However, there is no mention of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), nor of Free Prior and Informed Consent (FPIC), a key tenet of the UN Declaration in the standards. Also absent are other human rights standards related to Indigenous rights such as ILO Convention 169, as well as the need for the inclusion of Indigenous peoples in corporate leadership and business partnerships. We suggest that you consider including examples of relevance to Indigenous rights and economic development within this list. For instance, the list would benefit from featuring points related to UNDRIP due diligence and compliance, as well as Indigenous inclusion in company operations and governance, Indigenous partnerships, among other forms of ESG strategies.

2. Process Underlying the Disclosure Standards' Development:

The process of developing the standards did not appear to include or consult Indigenous peoples or Indigenous-led organizations. As a result, the proposed disclosure standards may overlook Indigenous peoples, including their inherent and internationally-recognized rights. In our view, the marked absence of considerations related to Indigenous peoples is a significant shortcoming in the draft standards. We suggest that the CFA Institute engage directly with Indigenous peoples prior to finalizing these draft disclosure standards, and in future processes undertaken in relation to ESG standards, which may be facilitated through national CFA branches.

About the First Nations Financial Management Board (FMB):

Canada has almost 1.7 million Indigenous people, the majority of which are ‘First Nations’ peoples (‘North American Indians’) who are members of First Nations bands/governments. There are more than 600 unique First Nations bands/governments in Canada. The First Nations Financial Management Board is an Indigenous led organization that was created by the *First Nations Fiscal Management Act*, which was passed with all party support in Canada’s parliament in 2005.

Our role is to support First Nations governments in the development of strong governance and financial management systems. More broadly, FMB enables the economic and social development of First Nations by assisting them. in the development, implementation, and improvement of financial relationships with financial institutions, business partners and other governments. It is optional to work with us and our services are free of charge, to date 315 First Nations governments from across Canada have scheduled to our Act.

About the Reconciliation and Responsible Investment Initiative (RRII):

The Reconciliation and Responsible Investment Initiative (RRII) is a partnership between the Shareholder Association for Research and Education (SHARE) and the National Aboriginal Trust Officers Association (NATOA). SHARE is a non-profit organization dedicated to mobilizing investor leadership for a sustainable, inclusive, and productive economy. NATOA is a charitable organization committed to providing Indigenous peoples with the resources and information that will help them efficiently create, manage, and operate trusts as a means to ensure the seven generations yet unborn can benefit from the goals and dreams of the present generation. Together through RRII, we work with Indigenous and non-Indigenous investors to foster a financial system that empowers Indigenous perspectives, recognizes the role of community values in investment decision making, creates positive economic outcomes for Indigenous peoples, and contributes to protecting Indigenous rights and title. For more information, please visit reconciliationandinvestment.ca