

October 4, 2022

Office of the Superintendent of Financial Institutions
255 Albert Street
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Via Email - ClimateRisks-RisquesClimatiques@osfi-bsif.gc.ca

Re: Comments on the Office of the Superintendent of Financial Institutions (“OSFI”) Draft Guideline B-15 Climate Risk Management’

The First Nations Financial Management Board (“the FMB”) is pleased to provide you with comments on the proposed **Draft Guideline B-15 Climate Risk Management (“the guideline”)**.

General Comments

The guideline is an important step in setting clear guidance for the management of climate-related risks for Federally Regulated Financial Institutions (“FRFIs”). The FMB commends the work that has been done by OSFI in this emerging reporting area. The FMB supports the development of guidelines around the disclosure of climate-related risks as well as greenhouse gas (“GHG”) emissions. However, the proposed guidance has failed to consider the United Nations Declaration on the Rights of Indigenous People (“UNDRIP”) and the Final Report of the Truth and Reconciliation Commission (“TRC”) of Canada.

Indigenous people should be consulted on the development of the climate risk guidance, and Indigenous rights should be reflected within the guideline. Canada has a legal obligation to pursue reconciliation with Indigenous peoples which is found in the *Constitution Act, 1982*, and appears in federal legislation, provincial legislation, the common law and the Truth and Reconciliation Commission’s Report. In addition, UNDRIP has been adopted into law in Canada and requires that Indigenous people be consulted, and free prior informed consent (“FPIC”) be provided before adopting and implementing legislative or administrative measures that may affect them. Furthermore, Indigenous rights in Canada are inextricably linked with climate and environment and should be considered simultaneously. Finally, the failure to obtain FPIC, and other negative impacts on Indigenous people are risks that should be assessed, mitigated, and reported on by FRFIs.

Legal Requirement for Consultation and Cooperation with Indigenous people

Article 19 of UNDRIP requires that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”¹ While the guidelines being proposed are for FRFIs, the decisions made by FRFIs will impact Indigenous people, and Indigenous businesses. Indigenous people and businesses have made significant investments in resource extraction and other development opportunities as well as in supporting and related industries.

It has been demonstrated through the effects of legal challenges and stakeholder activism that ignoring the rights of Indigenous people can have significant adverse impacts on the feasibility of companies and commercial projects. The result of these challenges could be a material impact on an entity’s enterprise value; therefore, this information should be disclosed to investors. In addition, activist investors have boycotted the financiers of companies and projects that violate the rights of Indigenous people as a way of negatively impacting the enterprise value of entities that indirectly facilitate these projects. Financial institutions should be acutely aware of the risk associated with projects which do not have FPIC from Indigenous rightsholders. For this reason, FRFIs should mitigate and report on identified Indigenous rights related-risks, in addition to climate-related risks.

The Responsibility for Implementing TRC Calls to Action

The TRC released its Calls to Action in 2015 to further reconciliation between Canada and Indigenous peoples. Call to Action #57 called on all levels of governments to provide education to public servants on the history of Indigenous peoples, including the history and legacy of residential schools, and UNDRIP, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. In our view, OFSI has failed to consider Call to Action #57 in the development of this guidance. In addition, Call to Action #92 requires Canada’s corporate sector to actively engage in reconciliation. Noting that FRFIs should be working to comply with this Call to Action, it is recommended that reconciliation with Indigenous people be a basis for additional OFSI guidance for reporting. It was noted in our review of OFSI guidance that there was nothing that discussed Indigenous people, UNDRIP, TRC, or reconciliation.

FRFIs have a statutory obligation to familiarize themselves with and work to implement the TRC Calls to Action in all dealings that impact Indigenous peoples. We are concerned that OSFI is not meeting its obligations to consult and cooperate with Indigenous peoples. The failure to report on the impacts on Indigenous people by FRFIs, has had a profound effect on Indigenous participation in the core financial decisions and flow of money in Canada. FRFIs should seek to support Indigenous governments, individuals, and businesses to work towards economic reconciliation. All FRFIs should be required to create a Reconciliation Action Plan with measurable outcomes and report on an annual basis.

¹ The United Nations Conference on Environment and Development 1992

Indigenous Rights are Interconnected with Climate and the Environment

While some may argue that climate risks are separate and distinct from risks associated with failure to respect Indigenous rights, there is a high level of interrelatedness between these areas. Many Indigenous groups signed treaties with Canada in part to protect their right to hunt, fish, harvest resources, and otherwise use the land to maintain their traditional lifestyle. Negative impacts to the environment as well as plants and animals have occurred as a result of development, as well as climate change. These impacts have impaired Indigenous peoples' ability to practice their traditional lifestyle as well as reduced food security and degraded overall health outcomes. The principles identified in the guideline should reflect the reality that Indigenous rights should be considered in conjunction with climate-related risks. The governance and risk management principles outlined within the guidance can be expanded to incorporate Indigenous rights. The risks to FRFIs from failure to respect Indigenous rights are same as those risks outlined in the guidance related to climate. Similarly, the outcomes identified for FRFIs to achieve could be similarly modeled for mitigating risks related to the violation of Indigenous rights.

A just transition to a low-greenhouse gas ("GHG") economy must be present in the climate risk management guidance produced by OSFI. There is a balance to be struck between immediately reducing greenhouse gas emissions along the value chain and ensuring that people and entire economies are not left behind. Indigenous people are disproportionately located in higher-carbon economies including remote and northern communities. To ensure a just transition to a lower-carbon economy, standard setters should work in consultation and cooperation with Indigenous peoples by ensuring that Indigenous reporting is implemented simultaneously with climate and GHG emission reporting. Considerations such as transitional provisions for Indigenous businesses would help to ensure a just transition. There needs to be an understanding that Indigenous people have been disproportionately affected by the physical impacts of climate change. Without careful planning on the part of regulators and standard setters, Indigenous people will also be disproportionately affected by the shift to a lower carbon economy. It is also important to recognize the barriers that Indigenous people and businesses in geographically remote or northern locations and/or Indigenous territories or reserves face in reducing their carbon footprint.

As signatories of *COP26 SUPPORTING THE CONDITIONS FOR A JUST TRANSITION INTERNATIONALLY* communique, Canada (along with 30 other countries) must balance GHG reporting with Indigenous ESG factors. A just transition must consider that Indigenous people and businesses along the value chain currently have less access to renewable and cleaner forms of energy. As access to capital is improved, and the infrastructure gap closes, Indigenous people have an important role to play as stewards of the land and resources that will make the transition to net zero achievable. Lands held by Indigenous people, and land comprising their traditional territory represent significant opportunities for the future clean energy development as well as energy metal extraction. These projects may only come to fruition through equitable, responsible, projects which respect the land and the rights of Indigenous people.

Requiring FRFIs to disclose how they are furthering a just transition and Indigenous reconciliation together with their climate risks will provide a more complete reporting of sustainability considerations. This reporting will incentivise entities to collaborate with Indigenous people, and businesses.

Indigenous people build economies based on the resources and opportunities available

The economic opportunities available to Indigenous communities are largely dependent on the proximity of their reserve land to urban centres, and the natural resources found in their traditional territories. In many instances the resources or features that attracted Indigenous people to their traditional territories have been exhausted or significantly depleted such as abundant bison herds, rich salmon runs, or trading routes which are no longer in use. In addition, many Indigenous people were forcefully relocated from prime land by Canada in the name of settlement and development and are now isolated in remote or flood prone areas.

Due to insufficient funding, Indigenous people have been forced to find ways to generate own-source revenue to deliver essential services to their citizens and create employment opportunities. When resource extraction projects are proposed in their traditional territories, the nature of the projects are frequently not of their choosing. The economic feasibility of a project will be determined by price of the output, and the cost of producing it. Carbon intensive natural resource extraction carries significant risk to people and environment and isn't likely the first choice for any group of Indigenous people. It may, however, be the only choice for some Indigenous people to sustain their economy while transitioning to more environmentally sustainable opportunities. FRFI's should be encouraged to support Indigenous participation in economic development projects, as well as with infrastructure lending and operational financing.

Energy Metals are Located in the Traditional Territories of Indigenous people

In order to move towards a low carbon economy, energy metals, those which are necessary for the storage and use of electricity will be needed in enormous quantities. The Ring of Fire region in Ontario is a particularly rich source of these essential minerals. The Canadian Climate Institute has reported that in order to become a global leader in critical minerals, Canada must do two things, prioritize Indigenous partnerships and remove barriers to private finance. Establishing climate related reporting guidance for the banking sector will help to standardize reporting. Incorporating metrics for Indigenous rights and reconciliation will strengthen the resulting standards.²

In order to adequately mitigate and disclose material climate-related risks, it is essential that a registrant's relationships with, and impacts on, Indigenous people and their traditional territory is included. It has been demonstrated through the effects of legal challenges and stakeholder activism that ignoring the rights of Indigenous people can have significant adverse impacts on the feasibility of commercial projects. The result of these challenges will have a material impact on an FRFI's ability to remain operationally resilient;

² Forman, J. Critical minerals, war and the race to net zero: What is Canada's role?
<https://climateinstitute.ca/critical-minerals-war-and-the-race-to-net-zero/>

therefore, this information should be disclosed to stakeholders. Conversely, obtaining FPIC, and partnering with Indigenous people improves project viability and reduces uncertainty. This approach is consistent with the implementation of the universal framework of minimum standards set out in UNDRIP.

Biodiversity is Strongest in Indigenous territories

Recent research demonstrates that while the world's 370 million indigenous peoples make up less than five percent of the total human population, they manage or hold tenure over 25 percent of the world's land surface and support about 80 percent of the global biodiversity³. From an Indigenous perspective, lands and resources are for people to use, to protect and to benefit from. This custodial world view instills the obligation of looking after the environment in a way that ensures the next seven generations of people will be able to enjoy its use and benefits in the same way.

Economic reconciliation will only be possible with the support of Canada's FRFIs

Reconciliation is much more than a land acknowledgement during a prepared speech. Indigenous peoples have been and will continue to be impacted by the decisions made daily by Canada's FRFIs. Becoming equity partners in responsibly planned, long-term major projects is one of the most effective ways that Indigenous people can build strong, stable economies. In order for this equity participation to occur, FRFI's need to support collaboration for projects for which Indigenous rights holder have given FPIC. Conversely, FRFIs should not support projects which do not have FPIC, and those which violate Indigenous rights.

Canada's five largest banks have adopted The Equator Principles, but many FRFIs have not. These principles are "...intended to serve as a common baseline and framework for financial institutions to identify, assess, and manage environmental and social risks when financing Projects."⁴ These principles are very broad in nature and do not consider the unique histories or distinct legal requirements of each jurisdiction. In order to ensure that Canada's vitally important financial institutions are respecting the rights of Indigenous people and furthering reconciliation, OSFI must establish Canada-specific guidance in these areas.

While it is important that the rights of Indigenous people be reflected within this guidance, we also recommend that separate reconciliation guidance be developed in consultation and collaboration with Indigenous people. It will be critical to determine what information and metrics should be disclosed by FRFIs to meet the needs of various stakeholders. Firstly, Indigenous people should have the opportunity to identify their information requirements to be able to determine whether Canada's FRFIs are meeting their obligation for reconciliation. All FRFIs should be required to create a Reconciliation Action Plan with measurable outcomes and report on an annual basis. OSFI should develop the guidance to ensure that reconciliation reporting is consistent, and comprehensive. In future guidance, the FMB encourages OSFI to also explore the possibility of discrete reporting on Indigenous lending. Developing metrics for FRFIs to report on how they are supporting Indigenous governments and businesses through financing as well as other avenues will inform stakeholders and challenge

³ Garnett, S.T., Burgess, N.D., Fa, J.E. et al. A spatial overview of the global importance of Indigenous lands for conservation. *Nat Sustain* 1, 369–374 (2018)

⁴ Equator Principles EP4, July 2020, www.equator-principles.com

entities to develop innovative means of promoting Indigenous participation in the economy and creating opportunities for Indigenous people. Failure to require specific Indigenous climate reporting will serve to penalize FRFIs for supporting projects with Indigenous people who may be more reliant on higher carbon energy.

Specific Comments

The FMB encourages the expansion of the Disclosure Expectations for FRFIs (Annex 2-1) to require the inclusion of a registrant's impact on Indigenous people. In order to adequately disclose material climate and sustainability risk information, it is essential that a registrant's relationships with, and impacts on, Indigenous people and their lands and traditional territory is included.

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

Per: *"Harold Calla"*

Harold Calla, FCPA, FCGA, CAFM
Executive Chair

Annex 1

Barriers for Indigenous people to move to a lower carbon economy:

- Infrastructure gap or deficit
- Lack of access to capital
- Higher cost of financing
- Reliance on fossil fuel energy sources
- Legislative and regulatory considerations
- Higher construction costs
- Higher transportation costs

Actions for FRFI's to promote reconciliation with Indigenous people:

1. FRFI support for Indigenous equity participation in economic development projects
2. FRFI support for Indigenous entrepreneurs
3. FRFI support for Improvement and expansion of member loan programs
4. FRFIs not to support projects that lack FPIC from Indigenous rights holders