



June 10, 2024

By CSSB Online Form

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Dear Ms. Fashesin

RE: Adoption of CSDS 1 and CSDS 2 based on IFRS S1 and IFRS S2

Thank you for the opportunity to comment on the Canadian Sustainability Standards Board's (the "CSSB") draft Canadian Sustainability Disclosure Standards ("CSDS"). We have reviewed both CSDS 1, General Requirements for Disclosure of Sustainability-related Financial Information, and CSDS 2, Climate-related Disclosures.

The First Nations Financial Management Board (the "FMB") is a First Nations-led organization established under the *First Nations Fiscal Management Act*.¹ Our clients are First Nations who opt in to our services, primarily with respect to developing, implementing and maintaining fiscal capacity and controls within their governing and administrative bodies. Accordingly, we have reviewed CSDS 1 and CSDS 2 as it may relate to our clients.

From our assessment, our clients may be impacted by the CSDS 1 and CSDS 2 in two general ways:

1. **Our Clients' Government Business Enterprises ("GBE") may provide direct or scope 3 disclosures under the CSDS:**
 - a. Our clients' GBEs may choose to voluntarily publish disclosures pursuant to the CSDS, or they may, as part of an entity's value chain, be required to disclose their greenhouse gas emissions as part of a reporting entity's Scope 3 emissions.
2. **Our Clients' Communities may be Impacted by the operations of Entities' who make CSDS disclosures:**
 - a. Enterprises' impacts on Indigenous communities may constitute "sustainability-related risks and opportunities". This includes direct impacts;² cumulative effects;³ and indirect impacts on Indigenous communities.⁴ These impacts will be as material to an investor as any other sustainability-related risk and opportunity.

¹ S.C. 2005, c. 9. The FMB works with its First Nations clients to develop fiscal capacity and responsible fiscal governance, and further serves First Nations by advocating for the necessary inclusion of First Nations interests in financial policy matters throughout Canada.

² e.g. linear infrastructure construction on First Nation lands

³ As clarified in the decision in *Yahey v British Columbia*, 2021 BCSC 1287

⁴ e.g. increases in jobs; decreased food security amidst impacts on ability to harvest; decreased ability to practice cultural traditions because of increased dust during construction; economic development in Indigenous communities as Indigenous contractors are awarded contracts.

- b. Our clients are essential investors⁵ in the massive annual investment that is needed for Canada to meet its greenhouse gas emissions targets by 2030.⁶ Disclosures must reflect the expectations of Indigenous rights holders and the responsibility that state governments and corporations have under UNDRIP. This is to say, our clients may be users of sustainability disclosures when deciding where to invest.

Support for Consultation, but more planning needed

We support the CSSB's intention to have an Indigenous-specific consultation in Q4 of 2024. We recommend that the CSSB connect with Aboriginal rights-holders without delay to ensure that the timing of planned consultations aligns with community projects and plans. We further recommend that the CSSB ensure that materials are available in languages and in a format accessible to communities. To that end, the CSSB may consider reaching out to the national Indigenous organizations⁷ to begin connecting with local and regional organizations to plan a consultation that will be effective.

Regarding the timing of and transition relief for the standards, we recommend that CSSB specifically consult with Indigenous businesses. If those entities need additional time, it may be in the greater public interest to allot that additional time. Indigenous Peoples have been excluded from participation in corporate Canada. It would not be an acceptable outcome for reconciliation if Indigenous businesses are unintentionally harmed by the coming into effect of the CSDS when additional transition time may allow those businesses to properly prepare disclosures. This is in keeping with the International Sustainability Standard Board's view of transitional relief when jurisdictions are adopting the ISSB's standards.⁸

Rebuttable Presumption that Entities should consult with Indigenous groups

We recommend that the CSSB include a clause setting out that there is a rebuttable presumption that entities should have consulted with Indigenous groups and that entities should make disclosures accordingly.

We make this recommendation because of the high percentage of Indigenous-intensive industries⁹ in Canada that will be making sustainability disclosures. Including such a clause would be in keeping with the United Nations Declaration on the Rights of Indigenous Peoples, and the Truth and Reconciliation Calls to

⁵ There are billions of dollars in settlements that have been or will be paid to Indigenous nations, with significant amounts of those settlements being invested.

⁶ Estimated at around \$50B annually. See: [Investing in Canada's future capital projects and infrastructure | McKinsey](#).

⁷ Assembly of First Nations; Métis National Council; Inuit Tapiriit Kanatami.

⁸ See: [ISSB Vice Chair Sue Lloyd talks aligning sustainability standards across jurisdictions | S&P Global ESG Insider podcast | S&P Global \(spglobal.com\)](#): "What we don't want is for jurisdictions to look at our standards and say, "Oh my goodness, this looks hard so we're just going to cross requirements out." What we really want jurisdictions to do is rather to think about whether a more measured introduction of requirements might assist an ultimate compliance that's closer to our global baseline. **One of the things that we acknowledged in our conversations with jurisdictions is at a jurisdictional level they may wish to extend a relief like that a bit longer so that they've got more time to get ready, particularly for smaller companies.**" [Emphasis added.]

⁹ Indigenous intensive industries are industries that disproportionately affect Indigenous Peoples, by operating on their lands or otherwise. These industries include mining, energy, oil and gas, utilities and pipelines, telecommunications, clean technology and renewable energy, and financial services.

Action. Should an entity not need to consult Indigenous Peoples, it would merely state that it does not have to do so in narrative disclosures. This should not result in any additional costs to an entity. This ensures that all investors receive the same information regarding Indigenous consultation, which will increase clarity and comparability between sustainability disclosures.

This recommendation is in keeping with similar recommendations that we have made to the Auditing and Assurance Standards Board in relation to its CSSA 5000, General Requirements for Sustainability Assurance Engagements.

Standards should be demonstrated using Indigenous sustainability examples

We are also of the view that the standards require additional explanations and examples to indicate how they are applicable to sustainability-related risks and opportunities posed by Indigenous rights and title.

Throughout the CSDS 1, for instance, the CSSB explains or elaborates on the clauses in the standard with examples, including:

- **General sustainability-related risks and opportunities – Paragraph B3:** water is used as an example of a natural resource; workforce talent is used as an example of a necessary precondition to succeed in a competitive market.
- **Resources and relationships – Paragraph B4:** resources and relationships are exemplified by examples such as the entity's workforce, its know-how or its organizational processes (internal examples); and materials and services the entity needs to access, or the relationships it has with suppliers, distributors and customers (external examples).
- **Sources of information – Paragraph B9:** sources of information used by an entity in preparing its disclosures include: the entity's risk management processes; industry and peer group experience; and external ratings, reports and statistics.
- **Significant Change in Circumstances - Paragraph B11:** examples include increased greenhouse gas emissions in value chain; a merger or acquisition; or introduction of a new, unanticipated regulator in the value chain.

By also using Indigenous examples when explaining clauses, an entity will be better informed that Indigenous sustainability-related risks and opportunities are broad. This will avoid entities thinking that the only Indigenous sustainability-related risks and opportunities which they must disclose are the most well-known examples (e.g., consultation; free, prior and informed consent).

We thus urge the CSSB to elucidate topics throughout the standards by also using Indigenous examples. Entities rely on the standards to acclimatize themselves to what ought to be disclosed. By including Indigenous examples, the CSSB will be informing reporting entities of the breadth of Indigenous sustainability-related risks and opportunities.

Here are examples:

- **Relationships:** Consultation should be early, often and throughout. Accordingly, it is not enough for entities to consider consultation with nations only prior to beginning work. Entities should be



considering and reporting on consultation and relationships with Indigenous rights holders within their sustainability reports on a regular basis.

- **Indirect effects:** Entities should disclose the work undertaken to understand indirect sustainability impacts (e.g., economic; social; environmental) on Indigenous communities, up and down supply chains. This should also include impacts on or investments into infrastructure in and/or for Indigenous communities. See Footnotes 2-4 regarding examples of direct and indirect Indigenous impacts.
- **Sources of reasonable and supportable information:** Entities should consider Indigenous traditional knowledge as a source of reasonable and supportable information. This could include information regarding, for example, sustainability efforts (including for climate change-related risks) that an entity undertakes (e.g. biodiversity restoration; controlled burning) or which is otherwise material information.
- **Significant change in circumstances:** developments in Aboriginal law may constitute significant changes in an entity's circumstances (e.g. in 2021, the cumulative effects decision in *Yahey v. British Columbia*, 2021 BCSC 1287 would have been a significant change for economic developers in BC; in 2023 the decision in *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680, would have been a significant change for mineral developers in BC).

Thank you for the opportunity to share our comments. We would be pleased to discuss any of these with you in more detail.

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

Per:  _____

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Deputy Chief Executive Officer