First Nations FINANCIAL MANAGEMENT BOARD | CONSEIL DE GESTION FINANCIÈRE des Premières Nations

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By E-mail

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Dear Mmes. Spensieri and Field:

RE: AASB Exposure Draft, "CSSA 5000, General Requirements for Sustainability Assurance Engagements"

Please accept this letter from the First Nations Financial Management Board as our comments on the AASB Exposure Draft, "CSSA 5000, General Requirements for Sustainability Assurance Engagements" ("**CSSA 5000**").

The Truth and Reconciliation Commission ("**TRC**") Call to Action 92 calls on corporate Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**") as a reconciliation framework, and to incorporate UNDRIP in policies and core operational activities. It further calls on corporate Canada to educate and train employees on the true history of Canada's Indigenous Peoples. The AASB plays an essential role in corporate Canada, and we are pleased to see that CSSA 5000 includes Indigenous matters.

I. Introductory Comments and Canada's Necessary Focus on Indigenous Issues

Sustainability auditing and assurance is essential to ensuring users can confidently rely on an entity's sustainability reporting. Sustainability disclosures are material to investors, as these disclosures highlight an entity's risks and opportunities associated with climate, biodiversity loss, human rights, human capital, and other sustainability issues. Some sustainability issues will be universally important (e.g. greenhouse gas emissions), while others will be specific to regions or countries (e.g. biodiversity loss).

Canada is unique in several ways. Canada's economy is heavily dependent on natural resources. Further, many organizations in Canada are situated on Indigenous lands and traditional territories. We are accordingly pleased to see the AASB has proposed a Canadian amendment to International Standard on Sustainability Assurance ("**ISSA**") 5000, the CSSA 5000.

Indigenous lands and territories are indelibly intertwined with business in Canada, with over 60% of TSX non-venture issuers operating in Indigenous-intensive industries, or 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.

Accordingly, Indigenous Peoples and their lands and territories are essential to Canada's economy. Sustainability disclosures in Canada will, or ought to, include disclosures about Indigenous-specific issues, including issues regarding consultation; free, prior and informed consent ("**FPIC**"); Indigenous diversity on boards, senior management, and along all business lines; UNDRIP; the TRC Final Report and Calls to Action; the Viens Commission Report and Calls for Action, and more. This means that practitioners have a responsibility to understand these concepts in order to be competent to provide sustainability assurance services.

II. Specific Questions posed by the AASB

We have not responded to all questions.

A. **Question Four: Do you agree with the proposed Canadian amendments to ISSA 5000 to adopt it as CSSA 5000? If not, what Canadian amendments do you believe may be required, and why? Note: Any proposed amendments would need to meet the criteria set out in the Appendix.**

The FMB agrees that a Canadian amendment is necessary. We support adopting ISSA 5000 as CSSA 5000. However, further amendments are needed for CSSA 5000 regarding Indigenous issues. We will discuss these required amendments in our response to Question Seven.

B. **Question Six: The proposed standard is named CSSA 5000, General Requirements for Sustainability Assurance Engagements. The AASB already has an existing standard with the same numbering, Canadian Standard on Association (CSOA) 5000, Use of the Practitioner's Communication or Name. Do you believe there will be confusion between the two standards in the marketplace? If your answer is "yes," do you agree that for the reasons outlined below, CSOA 5000 should be renumbered to a new series (e.g., CSOA 8000)?**

Yes, we think there may be some confusion in the marketplace if the two standards share the same numbering. We agree that it is beneficial to have alignment with the International standard, ISSA 5000. Accordingly, renumbering CSOA 5000 will be beneficial, provided that CSOA 5000 can be renumbered with limited amendments to other standards and/or regulations.

C. **Question Seven: Do you think Canadian amendments are required in CSSA 5000 related to Indigenous matters, in particular, the role meaningful consultation with Indigenous Peoples plays in this standard? (a) If your answer is "yes", do you agree with the potential Canadian amendments to paragraph 72 in ISSA 5000 and related application material? If not, what Canadian amendments do you believe may be required, and why? Any proposed amendments need to meet the criteria set out in the Appendix.**

Yes, Canadian amendments are required in CSA 5000 related to Indigenous matters. Consultation is one of those matters. In addition, however, we think that practitioners must be aware of and alive to a number of Indigenous matters.

It is in keeping with the Appendix to amend CSSA 5000 to include Indigenous matters, because Indigenous disclosures and assurance of same will serve the public interest and maintain the quality of auditing and reporting in Canada. Appendix, s. 3 reads:

The AASB may make amendments to an ISA with respect to requirements or guidance that do not fall within 1 or 2 above when it believes that there are circumstances particular to the Canadian environment where such amendments are required to serve the Canadian public interest and maintain the quality of auditing and reporting in Canada.

Our recommendations below aim to enhance practitioners' baseline understanding of Indigenous matters that should arise in sustainability disclosures by Canadian entities, especially those operating in Indigenous-intensive industries. By including these recommendations, the AASB is progressing towards TRC Call to Action 92. It is in the public interest for corporate sector standard setters to make progress in the Calls to Action.

Furthermore, users of sustainability reports need disclosures about Indigenous matters. In any Indigenous-intensive industry, these disclosures will be material. Practitioners must be guided by best practices regarding Indigenous sustainability disclosures and the true history of Canada's Indigenous Peoples in order to competently assure sustainability report. Including Indigenous matters in CSSA 5000 is thus essential to maintain the quality of auditing and reporting in Canada.

1. **Amendments to Paragraph 99: Risk Procedures**

While setting a requirement for a practitioner to "Evaluate whether the entity has engaged in meaningful consultation with Indigenous Peoples" is a useful amendment, we do not think that this Canadian amendment should be made at paragraph 72 or be included in the section of CSSA 5000 that pertains to **Preconditions for an Assurance Engagement**. Instead, this evaluation should be performed as part of the **Risk Procedures**. We recommend that this proposed amendment be moved to form part of paragraph 99 by adding:

99. The practitioner shall obtain an understanding of the entity and its environment, including:

...

(d) <u>Policies and procedures designed to ensure that the entity is meeting Call to Action 92 contained in the Truth and Reconciliation Commission of Canada's Final Report.</u>

2. **Amendments to Paragraph 100: Reference the *United Nations Declaration on the Rights of Indigenous Peoples***

We also recommend that the following amendments be made to paragraph 100:

100. The practitioner shall obtain an understanding of:

(a) The legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates, in the context of the entity's sustainability information; ~~and~~

(b) The requirements of the United Nations Declaration on the Rights of Indigenous Peoples applicable to the entity and the industry or sector in which the entity operates, in the context of the entity's sustainability information; and

...

3. Amendments to Definitions and Language

We recommend that AASB include definitions for the following terms in CSSA 5000:

- **"Indigenous-intensive industry"** means an industry that disproportionately affects 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.
- **"Truth and Reconciliation Commission" or "TRC"** means the Truth and Reconciliation Commission of Canada that was established pursuant to the Indian Residential Schools Settlement Agreement.
- **"TRC Final Report"** means "Canada's residential schools: the final report of the Truth and Reconciliation Commission of Canada",
- **"TRC Calls to Action"** means the TRC's 94 calls to action made "in order to redress the legacy of residential schools and advance the process of Canadian reconciliation."
- **"TRC Call to Action 92"** means the TRC Call to Action that is specifically directed at Canada's corporate sector, that calls on the sector to, among other things, adopt UNDRIP as a framework for reconciliation and to follow UNDRIP's principles in the sector's policies and core activities.
- **"UNDRIP"** means the United Nations Declaration on the Rights of Indigenous Peoples.
- **"UNDRIP-implementing legislation"** means legislation that has been passed in Canada, from time to time, that implements UNDRIP (e.g. *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c. 44; *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14);
- **"Viens Commission Report"** means the Public Inquiry Commission on Relations between Indigenous Peoples and Certain Public Services in Quebec;
- **"Viens Calls for Action"** means the recommendations that the Viens Commission released in the Viens Commission Report.

We further recommend all references to "Canadian law or regulation" should be revised to "Canadian law, regulations, and the TRC Call to Actions". The TRC Call to Action 92 specifically calls on Canada's corporate sector to adopt UNDRIP as a reconciliation framework, and, in effect, to do its part to advance reconciliation. Including the TRC Calls to Action will ensure that practitioners bear Indigenous matters in mind which will serve the "*Canadian public interest and maintain the quality of auditing and reporting in Canada*".

4. Recommendation to Include Explanatory Note

We recommend that AASB prepare an explanatory note on Indigenous matters for practitioners. The AASB should consult with Indigenous Peoples, including Indigenous CPAs, auditors, and other accounting practitioners; representative bodies; communities; and organizations to prepare this explanatory note.

This note should plainly advise practitioners that they have an obligation to have a minimum understanding of Canada's Indigenous Peoples. This note should include topics like:

- The true history of Canada's Indigenous Peoples;[1]
- An overview of the TRC Final Report and Calls to Action;
- Treaties and Aboriginal Rights;
- The duty to consult;
- Free, prior and informed consent;
- Economic reconciliation;
- Indigenous Law;
- Indigenous economic systems;
- Aboriginal-Crown relations; and, among others,
- Case studies on how an entity's lack of consultation or adequate response to Indigenous issues poses risks that are material to investors (e.g. Rio Tinto's destruction of Juukan Gorge in Australia).

The note should advise practitioners of forms of evidence that could assist in sustainability assurance engagements related to Indigenous matters. For example:

- An entity's reconciliation action plan;
- Indigenous representation on an entity's board, senior management, and across all business lines;
- Whether the entity has Indigenous contractors or measurable targets for procurement from Indigenous owned businesses;
- Whether the entity has equity partnerships with Indigenous government business enterprises; and, among others,
- Records of recent and publicly available consultations with Indigenous rights holders on material decisions or operations.

5. Consultation-Specific Recommendations

Consultation is an important aspect of a company's dealings with Indigenous Peoples. Consultation is rooted in legal principles (e.g. the *Constitution Act*, the Duty to Consult; fairness), documents (e.g. the TRC Calls to Action), and laws (e.g. the *Charter of Rights and Freedoms*; UNDRIP-implementing legislation)

[1] A great example of a professional cultural competency course is the Law Society of British Columbia's Indigenous Intercultural Course.

that practitioners may not previously be familiar with. Thus, paragraph CA185 will be most useful to practitioners if it sets out a few additional details.

1. Paragraph CA185A: We propose that this paragraph specify that there is a rebuttable presumption that an entity ought to have consulted with Indigenous Peoples. We propose this because of the preponderance of Indigenous-intensive industries in Canada, as we set out above. The following chart sets out that and a series of other changes that we recommend.

Current Draft	Proposed Changes
	[Insert as new first sentence] CA185A. There is a rebuttable presumption that an entity should consult and have disclosed such consultation with Indigenous Peoples in its sustainability report. This presumption may be rebutted by a practitioner's assessment according to this section.
CA185A. Evaluation of the entity's consultation with Indigenous Peoples may assist the practitioner:	Evaluation of whether an entity ought to have, and did so consult ~~the entity's consultation~~ with Indigenous Peoples may assist the practitioner:
(a) to evaluate the suitability of the criteria, appropriateness of the scope of the assurance engagement (paragraph 71), and whether the engagement has a rational purpose (paragraph 74);	No changes
(b) to consider and determine materiality (paragraph 91); and (c) to assess risk (paragraph 110L and 110R).	No changes.
The entity's consultation with Indigenous Peoples may not be relevant for all entities:	The entity's consultation with Indigenous Peoples may not be relevant for all engagements ~~entities~~:
(a) the consultation's nature, extent and timing may vary; and	[We did not understand what the intent of this provision was. We recommend that this be redrafted, as follows:] Where the entity has consulted with Indigenous Peoples [insert re-drafted language capturing intent] Based on their assessment, the practitioner must decide whether they must evaluate the entity's consultation process.
(b) the consultation may not apply to all sustainability matters, topics, or aspects of topics. For example, consultation on emissions technical calculations may be less important than consultation regarding reporting the entity's plans to mitigate impacts of emissions on Indigenous communities	Where the entity has consulted with Indigenous Peoples, the practitioner should evaluate whether the consultation applies ~~the consultation may not apply~~ to all sustainability matters, topics, or aspects of topics. For example, consultation on emissions technical calculations may be less important than consultation regarding

Current Draft	Proposed Changes
	reporting the entity's plans to mitigate impacts of emissions on Indigenous communities. In such a case, the practitioner may determine it is not necessary to evaluate the entity's consultation process.
	(c) The practitioner should determine whether the entity (1) operates on Indigenous lands or territories; (2) or is operating in an Indigenous intensive industry. Where the practitioner is satisfied that the entity meets either (c)(1) or (2), the practitioner must evaluate the entity's consultation process.

2. Paragraphs CA185C: Regarding the process, practitioners should also consider whether, through its consultation process, the entity:

- Sought free, prior, and informed consent from the impacted Indigenous Peoples;
- Consulted with the impacted Indigenous Peoples early, often and throughout.

In terms of the practitioner's assessment, the practitioner may need some assistance with what may be a new and unfamiliar area. The AASB should provide additional information regarding these items:

- Regarding "transparency", this will include whether the entity's materials were provided in an appropriate language and deliverable (e.g. paper documents; websites; PDFs). Many northern, remote and rural Indigenous communities do not have sufficiently reliable internet services or computer access for websites and downloadable PDFs to be a suitable way of engaging with a community.
- Assessment of the deliverable (e.g. paper documents; websites; PDFs; choice of language used) will also allow the practitioner to assess whether the process was "respectful of the First Nations, Métis, and Inuit communities".

This additional information could be enclosed either in CSSA 5000 or in the accompanying explanatory memorandum.

III. FINAL COMMENTS

TRC Call to Action 92 calls on Canada's corporate sector to adopt UNDRIP as a reconciliation framework, and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. The AASB's inclusion of Indigenous-specific amendments in CSSA 5000 tells us that the AASB is taking seriously this call to action. We offer the foregoing comments to the AASB in order to make CSSA 5000 an even stronger step in the right direction of reconciliation, whilst strengthening the standard for the benefit of sustainability report users.

Please do not hesitate to contact the undersigned if you have any questions.

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

Per: _____

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Deputy Chief Executive Officer