

## Response to the Exposure Draft of the CFA Institute ESG Disclosure Standards for Investment Products

July 14, 2021

*This response was prepared in response to [CFA Institute's Exposure Draft of the ESG Disclosure Standards for Investment Products](#), and should be read in conjunction with the same. For more information, please contact [info@cfacanada.org](mailto:info@cfacanada.org).*

### General Comments

In order to encourage product manufacturers to adopt the Standards, it could be helpful for the working group to suggest creating a compliance checklist/cross-reference and other supplementary guidance documents, similar to what was done to assist with claiming compliance with the CFA Institute Asset Manager Code, and to help those creating compliant presentations get started on them based on existing disclosures. It will be important for the Standards to be continually developed and reviewed in light of the other global standards noted in the Exposure Draft and to encourage widespread adoption (particularly with respect to the obligations already placed on asset managers pursuant to SFDR). Separately, it is unclear how the Standards would propose to deal with emerging regional or country-specific social or historical realities that supersede the traditional E, S, or G classification, such as consideration of Indigenous peoples and their rights and consent through initiatives like the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the legacy of slavery, and wider concepts of equity and inclusion. The Standards should be governed go-forward with an eye to thoughtful integration of paradigm-shifting developments in societal and business/investment norms, and not be bound by the artifices and false comfort of familiar acronyms and established practice.

### Responses to Select Questions from the Exposure Draft

#### Questions for Investment Managers

**1. Are the draft provisions helpful in establishing or clarifying the type of information that should be included in an investment product's disclosures regarding the ESG-related aspects of the investment product's strategy?**

The Working Group believes that the draft provisions are generally helpful in establishing and clarifying the information that should be included in product disclosure regarding the ESG-related aspects of the product's strategy. The sample compliant presentations, however, are generally too high-level to be demonstrative of solutions to detailed disclosure challenges and could contain more specificity; for example, the sample exclusion for thermal coal refers to businesses "primarily" engaged in the mining of coal without requiring further definition of "primarily" to explain the exclusion to investors. As this can vary substantially from manager to manager, or by various materiality perspectives or frameworks, more specificity and quantification (or incorporation of external definitions or frameworks by reference) on these types of disclosures is of foremost importance for investors to be able to compare strategies and make an informed choice. This is also information that a manager would have available.

**2. To what extent are the draft provisions supportive of and complementary with local laws and regulations and other codes and standards? Would preparing and presenting a compliant**

**presentation in any way hinder your ability to comply with local laws and regulation or with other codes and standards?**

The Working Group felt that this question was somewhat ambiguously worded and as such did not reach consensus. However, it was a widely held belief that preparing and presenting a compliant presentation should not hinder the ability to comply with local laws and regulations or other codes and standards. While the draft attempts to demonstrate harmony, to the extent possible, with the most widely circulated and applicable international laws and regulations, we believe that it could be expanded (in either tabular or descriptive format) to discuss how a compliant presentation and adherence to the Standards could be interpreted vis-à-vis general marketing and solicitation regulatory considerations for investment products (e.g. 81-series National Instruments in Canada - particularly National Instrument 81-102 Investment Funds, SEC-administered marketing and distribution rules in the US such as the Investment Company Act of 1940, and similar regulation elsewhere). For instance, we note that we are aware that the SEC has strict marketing rules with respect to unsubstantiated claims, and that the sample compliant presentation #1 uses the word “superior”, which may not be permissible, or which might deter claims of compliance based on conservative legal/regulatory advice. The table included in the draft is particularly helpful in understanding the efforts made by CFA Institute to harmonize among sustainability-focused regulations, in particular SFDR, and thus achieve interoperability with regulatory requirements for those choosing to conform to the new standard.

**3. Do you expect it will be feasible and practical for your organization to provide the information required by the draft disclosure provisions and adhere to the draft fundamental provisions?**

The Working Group did not reach consensus on this question. A threshold question might be whether organizations plan to adopt the Standards and whether they judge there to be sufficient demand from their investors for them to do so. As investment managers are not proposed to be required to apply the standards to all products (ESG-marketed or otherwise), it provides for the potential to “cherry pick” (choose to claim compliance and disclose for some ESG products and not others offered by the same manager) the products for claims of compliance, and cause confusion in the marketplace as many product offerings by the same firm go by very similar names. Once a decision is made to comply however, at a high level, it should be possible for most organizations to provide the information required by the draft disclosure provisions and adhere to the draft fundamental provisions.

A few clarifications to the draft Standards may be required, as noted in our responses to the specific provisions/questions below.

There should be more guidance on what is considered material information that must not be omitted. The definition of material can vary from firm to firm, by framework, and strategy to strategy. Firms should be required to state the materiality threshold (either directly or by reference) that is used in its policies and procedures.

It might be more practical for some investment managers if elements of the compliant presentation could be drawn programmatically directly from portfolio management systems rather than being entirely narrative. Some elements of the draft disclosure may be difficult to prepare by smaller firms, as there is a reliance on external ESG providers to provide input information to some disclosure criteria, which can be quite costly.

**4. To what extent would a compliant presentation proactively provide to asset owners, consultants, and advisors the ESG-related information they commonly request in their Requests for Proposals (RFPs), Due Diligence Questionnaires (DDQs), and other types of questionnaires?**

The extent to which a compliant presentation will proactively provide the ESG-related information commonly requested in documents such as a DDQ will be firm-specific and depend on the asset-owner,

consultant and/or advisor. While for some consultants/asset owners/advisors the presentation will likely answer most of their questions relating to the disclosure of ESG-related information, others employ very specific ESG questions and specialized due diligence as they relate to that firm's approach and thus the presentation would not proactively provide the information in the requisite format or depth of detail for those firms. The presentation could in fact add to the due diligence review burden due to the potential of multiple reports, and thus a summary which highlights exceptions and material issues clearly could be useful. For smaller firms that perform desk-based research to gather information on managers, having compliant presentations will be extremely useful as a common baseline for disclosure information. The Working Group agrees that the compliant presentation will not entirely replace RFPs or DDQs from consultants/owners/advisors. These presentations may however be requested, or managers will want to attach them to the RFP/DDQ responses, if the format permits. The Working Group suggested proactive engagement with vendors that facilitate the RFP/DDQ transmission process to accommodate attachment/sending of compliance presentations, and/or programmatic solutions to the same end.

#### **5. Would it be helpful if the Standards contained a recommended format or template for compliant presentations?**

Yes, the Working Group universally agreed that it would be helpful for the Standards to contain a recommended (but not mandatory) format/template. The template could provide a few examples of the level of detail (in varying levels of specificity) and format that would be helpful to investment managers and acceptable under the Standards. The Standards will be easier to digest and compare in a standard format (ideally with machine-readability and/or further technological enablement). Some members of the Working Group queried whether the term "compliant presentation" is an ideal name however, given the fact that prior to GIPS 2020, GIPS Reports were also called 'compliant presentations' and people could be confused if the same name is now being used for an entirely different document/product, with entirely different purpose. We might suggest a more intuitive name, such as the "ESG Disclosure Document for [Name of Product]".

#### **Questions for Investors and Asset Owners**

##### **1. After reviewing the draft provisions and the sample compliant presentations, do you think a compliant presentation would help you understand how and why an investment product uses ESG information or addresses ESG issues?**

Generally, the Working Group believes that a compliant presentation will help investors and asset owners understand how and why an investment product uses ESG information or addresses ESG issues, although some will still want to communicate this information themselves to their beneficiaries and clients through other channels or means. We note that allowing investment managers the option to choose which products to which they will apply the Standards may cause confusion in the marketplace, particularly in markets where complementary labelling standards don't exist. Some Working Group members felt that sophisticated discussion of how an asset manager is integrating ESG requires a deeper conversation and analysis, but that the Standards provide a solid footing and base which allows investors and asset owners to perform a first run to compare products and their managers/strategies.

##### **2. To what extent would a compliant presentation provide the ESG-related information that you typically request in your Requests for Proposals (RFPs), Due Diligence Questionnaires (DDQs), and other types of questionnaires? Is there information that you would like to see disclosed in a compliant presentation that is not required by the draft provisions? Is there information required by the draft provisions that is not necessary?**

The Working Group believes a compliant presentation could better address whether the ESG analysis by the investment manager (including identifying and assessing material ESG issues) is being performed internally (by either an ESG team or the investment managers) or is being performed by an external

service provider. It also believes that identification of external ESG data sources either for reporting or as a decision input used should also be identified in a compliant presentation.

**3. Would the provision of compliant presentations by investment managers complement, streamline, or otherwise improve any of your existing processes, e.g., due diligence, certification, or reporting?**

Yes, the Working Group believes that provision of compliant presentations should complement the due diligence process for many investment managers, although some large institutional investors could find the information too high-level and qualitative, negating the comparative utility between managers, strategies, or products that greater granularity would provide. As the need for further ESG information arises relating to specific issues or initiatives, such as the progress to net zero greenhouse gas emission portfolios, the Standards should evolve to reflect these developments. The Working Group agrees that compliant presentations will not entirely replace RFPs or DDQs from consultants/owners/advisors, and likely instead be a supplementary disclosure item.

**4. Would you find it helpful if the Standards contained a recommended format or template for compliant presentations?**

Yes, users of the ESG disclosure information would likely appreciate a standardized format to help them compare different investment managers and their products. It might otherwise be difficult to summarize and analyze the information.

**Questions for Consultants and Advisors**

**1. After reviewing the draft provisions and the sample compliant presentations, do you think a compliant presentation would help you understand how and why an investment product uses ESG information or addresses ESG issues?**

Yes, the Working Group believes that a compliant presentation would help users understand how and why an investment product uses ESG information or addresses ESG issues, however the ability to pick individual products to which the Standards will be applied may cause confusion in the marketplace (as stated previously). It may be helpful to either require investment managers to comply for all products of a certain type or naming convention based on the attributes of the product (e.g. those that purport to be “ESG-focused”), as would having a complementary firm-level standards framework. In the former case, it may be more strategically beneficial for the Standards to be a highly interoperable tool of a complementary (and perhaps country or region-specific) product labelling/classification framework. The Working Group believes that in the absence of developed teams and proprietary capabilities relating to ESG that smaller consultants will probably benefit the most from the Standards.

**2. Would a compliant presentation help facilitate client discussions regarding ESG-related needs and preferences and suitable investment products?**

Yes, the Working Group believes a compliant presentation would help facilitate these client discussions.

**3. To what extent would a compliant presentation provide the ESG-related information that you or your clients typically request in Requests for Proposals (RFPs), Due Diligence Questionnaires (DDQs), and other types of questionnaires? Is there information that you would like to see disclosed in a compliant presentation that is not required by the draft provisions? Is there information required by the draft provisions that is not necessary?**

The Working Group believes that a compliant presentation will provide the necessary information to some degree, but not entirely. It could be helpful to know if ESG issues are integrated into an investment

analyst's/team's role(s), or whether there is a separate, dedicated ESG-specific team, either internal or via an external service provider, for ESG analysis, engagement and proxy voting. It would also be helpful to be able to identify the linkage(s) and integration(s) between the ESG analysis and security selection and decisions to buy, hold or sell a security or more generally in portfolio construction and/or risk-related decision-making. In addition, being able to benchmark some of the data within the compliant presentation (e.g. carbon intensity as of Dec 31 of the previous year) would be useful. In addition, some reference to the ESG-related initiatives that the manager has committed to such as the net-zero asset manager initiative would be useful information. Note that the signatory would need to be the manager directly managing the fund and not the ultimate parent if there was not direct influence on the investment strategy. For smaller advisors/consultants without advanced/specialized ESG-specific analytical capabilities, the Working Group believes that having compliant presentations will be extremely useful. The Working Group agrees that the compliant presentation will not replace in its entirety the information that clients typically request in RFPs and DDQs.

**4. Would the provision of compliant presentations by investment managers complement, streamline, or otherwise improve any of your existing processes, e.g., investment product due diligence or overall assessments of investment managers' capabilities?**

Yes, the Working Group believes that the provision of compliant presentations should complement the due diligence process.

**5. Would you find it helpful if the Standards contained a recommended format or template for compliant presentations?**

Yes, the Working Group believes that this would be highly additive to the adoption and usage of the Standards, with representative examples of varying complexity and with interoperability with prevailing technologies used by the consultant community being particularly useful. Similar requirements and guidance exist for GIPS Standards reports and has worked well for all market participants.

**Questions for Database Providers and Users**

**1. To what extent would a compliant presentation provide the ESG-related information that users are looking for?**

While the Working Group believes that a compliant presentation will provide much of the ESG-related information that many users are looking for, given the discretion to the investment manager as to inclusion of items and application of the Standards, the presentation is unlikely to provide all needed information on all relevant products. We note that in the quickly-evolving world of both issuer and investment-product ESG-related data sources, new and useful information may emerge that exceed in detail or are not covered by the requirements that are proposed to be included and covered by the Standards. The Standards should be nimble and responsive to such changes, without undue burden to investment managers to constantly be having to update compliant presentation content and format. It may be difficult for both an investment manager and sources of investment product data for users to highlight which products offered by the same firm conform to the Standards, as investment managers often refer to a suite of products rather than one product specifically in their marketing materials. In addition, some investment product informational databases have not yet fully adopted conformity with the presentation and transmission requirements of the GIPS Standards (a very mature industry standard) and may thus be unlikely to facilitate storage/presentation/transmission of compliant presentations for ESG standards, as technology changes can present challenges. Typically, users of these databases look for data on investment products and managers that is both narrative and comparable, which would demand comparable ESG-related disclosures in a machine-readable format from the Standards or a compliant presentation to be useful.



**2. Is it necessary, or would it be helpful, for compliant presentations to be in a standardized format? Would it be helpful if a machine-readable template was developed?**

Yes, the Working Group believes that a standardized and machine-readable format would facilitate comparability usage and improve the compliant presentations by increasing usability of more structured, quantitative data elements. The industry may be moving quickly toward more timely and quantitative disclosures around ESG products, and machine readability would position the Standards well to be responsive to this evolution. The development of an XBRL or other standardized and tagged machine-readable compliant presentation format might be a useful development.

**Questions for Regulators and Investment Professionals**

**1. Are the draft provisions helpful in establishing or clarifying the type of information that should be included in an investment product's disclosures regarding the ESG-related aspects of the investment product's strategy?**

Yes, the Working Group believes that the draft provisions are helpful in clarifying the type of information that should be included in the referenced disclosures. It would be helpful to further clarify the interoperability of the Standards' requirements with prevailing regulatory demands on investment product disclosure, such as how the description of "fundamental investment objectives" and investment strategies as required by Items 6 and 7 of Mutual Fund Prospectus Disclosure Form 81-101F1 Contents of Simplified Prospectus under National Instrument 81-101, particularly relating to impact objectives. The Working Group notes that the definition of an investment fund is relatively narrow in Canada and would not include many of the investment products intended to be covered by the Standards; we query how discussion of impact objectives generally is interoperable with regulatory requirements, either for prospectus or non-prospectus offered products, investment funds or otherwise. It would be beneficial to have more clarity on whether the complaint presentation would be considered a marketing or disclosure document for regulatory purposes in major markets (as mentioned previously).

Finally, as the needs/regulatory requirement for further prescriptive or specialized ESG information/disclosure arises, such as relating to climate change exposure and risk metrics, the Standards should evolve to reflect this.

**2. Is there information that you would like to see disclosed in a compliant presentation that is not required by the draft provisions? Is there information required by the draft provisions that is not necessary?**

While Provision 1.A.16 requires that a log of material errors in a compliant presentation be kept, there is no explicit requirement to keep a log of persons to whom the presentation itself was sent (similar to certain requirements of the GIPS Standards). In addition, a greater focus on ESG data versus a description of an investment manager's policies and philosophies could be more helpful for institutional or specialist investment professionals.

**3. Would the Standards be helpful in maintaining a commitment to professional ethics and integrity?**

The Working Group believes that additional clarity on whether this was supposed to be from the firm's standpoint or the individual's would be needed here to answer accurately. Answering in generalities, the Working Group believes that the Standards could be helpful in maintaining or communicating such commitments, but the integration with CFA Institute's Code and Standards from an ethical practice standpoint remains unclear, and the implicit value-normative judgment in linking ethics, integrity, and certain ESG-specific practices or disclosure may not be additive to the development and widespread adoption of the Standards. Further complication is introduced between the individual vs firm-level ethical commitments and obligations (i.e. a charterholder's obligations if he/she believes that ESG disclosure

provided by his/her employer are inaccurate, especially if the individual is not the person responsible for preparing or approving the disclosure). The Working Group felt that there could be a useful and future exploration of potential linkages between the Standards and the CFA Institute Asset Manager Code. The Working Group overwhelmingly felt that the development and adoption of the Standards should be recognized as contributing to improved transparency of disclosures and as a potential tool in reducing the risks and frequency of investment product 'greenwashing', but should not be confused or equated with ethical standards or judgments relating to an investment product or its manager.

#### **4. Would the Standards be helpful in providing investor protection through product transparency?**

Yes, the Working Group felt that the Standards are generally helpful in providing investor protection through improved product transparency, however additional work may be required for the Standards to be effective for retail investors, who may not have the expertise or the time to devote to assessing investment products at depth, yet may desire to invest in products with specific ESG features.

#### **5. Would the Standards be useful in serving as a mechanism to help investors align their ESG-related objectives with those of suitable products?**

While the Working Group believes that ESG integration and the alignment of ESG-related objectives to products is a conversation that can be had at depth beyond the disclosure requirements of the Standards, the Standards set a common baseline for disclosure and comparability between investment products, strategies, and to some degree their managers. To facilitate this alignment of objectives to products across different types of investors, additional audience-specific investor-centric tools will need to be developed, and development of complementary firm-level standards could be helpful in this regard to help investors more easily determine if their needs are truly in alignment with those of the product. The sample compliant reports may leave too much latitude to managers in defining ESG generally and specific ESG-related features, and requiring incorporation (where applicable) of external references to widely understood industry standards such as SASB may help to alleviate these definitional concerns on features and materiality concerns. Development of a complementary firm-level standard could provide additional assurances, better messaging and disclosures to the marketplace, and solve for outstanding regulatory concerns.

#### **6. Would the Standards be useful in serving as a mechanism to develop product labelling in your country?**

The Working Group believes that there is potential for the Standards to be useful as a building block/tool in development of a complementary classification or product labelling standard in Canada. The Working Group is aware of certain efforts under development, such as the Responsible Investment-related proposals from the Canadian Investment Funds Standards Committee (CIFSC), and potentially prescriptive disclosure requirements relating to specific ESG-related considerations such as the Declaration of the Rights of Indigenous Peoples Act in the Province of British Columbia. Consideration should be given in future versions of the Standards to developing classification and labelling standards across jurisdictions, and for potential conflict with new issue-specific or more general regulatory or legislative reporting requirements.

### **Further Comments on Select Provisions and Other Elements**

#### **SECTION 1: FUNDAMENTAL REQUIREMENTS AND RECOMMENDATIONS**

##### **Comments on Provision 1.A.4:**

As noted previously, it is not clear what would constitute “material information” that must not be omitted, and whether, if the determination is left up to the investment manager or by reference to external definitions/materiality frameworks. The manager’s process/framework for determination should be clearly set out in its policies and procedures.

**Comments on Provision 1.A.8:**

It is not clear whether the notes are only included for the purposes of the exposure draft, or if it will be clear in the final standards that the compliant presentation can (or should) be presented as a standalone document or as part of an existing document, along with discussion of regulatory implications.

**Comments on Provision 1.A.10:**

The expectation with respect to how often the Standards (and thus, compliant presentations) are expected to be updated is unclear. It is also unclear how changes to the Standards will be communicated and how long investment managers will be given to update their presentations. Additional clarity is needed for whether the revised presentation would have to be provided to previous prospective investors or if procedures regarding such updates must be part of an investment manager’s policies and procedures.

**Comments on Provision 1.A.12:**

We support the requirement for investment managers to make available their proxy voting records. While SEC-regulated investment managers already have to provide this information publicly via EDGAR by August 31 in each year, that system is not easy to navigate. This provision could make stewardship efforts more transparent. The section could be clarified to provide information on how a compliant presentation could be sent to investors, and whether for example, a link embedded in an investment manager’s Relationship Disclosure Information document or related required regulatory disclosure documents would be sufficient.

**Comments on Provision 1.B.2:**

The term “examination” could be confusing to the marketplace, as typically the term is used for regulatory examinations of an investment manager. We query whether the Standards should instead be more focused on ‘verification’ and utilize that term instead, which is similar to the wording used in GIPS 2020. If this change is made, then “Examination” should be removed from the Glossary as well.

**SECTION 2: GENERAL INFORMATION**

**Comments on Provision 2.B.1:**

This provision recommends that a compliant presentation include a list of third-party ESG-related labels and certifications with which the investment product complies. This provision should also address classification information that is assigned and not only voluntary, such as third-party product or manager ratings, if those ratings are communicated to investors. It is also unclear whether this provision is where a firm would indicate whether they comply with firm-level standards such as PRI.

**GLOSSARY**

**General comments on Glossary:**

The definition refers to “information required” by the Standards, but does not reference “recommended” information. It is thus not clear that recommended information can also be part of the compliant



presentation, or rather forms supplemental information to the compliant presentation itself. If so, it is unclear whether it would follow the same guidelines as GIPS supplemental information. It would be helpful generally if there were a cross-reference of glossary terms with those of the GIPS Standards to ensure consistency for firms/products that are subject to/claim compliance with both Standards regimes.

***Our sincere thanks to the generous efforts of Working Group members in compiling this response.***

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