

June 10, 2024

BY EMAIL

Lisa French
Vice-President, Sustainability Standards
Canadian Sustainability Standards Board
277 Wellington Street West
Toronto, Ontario
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Dear Ms. French:

Proposed Canadian Sustainability Disclosure Standard (“CSDS”) 1 and 2 Exposure Drafts – Request for Comments

We are writing in response to the Canadian Sustainability Standards Board (the “**CSSB**”) request for comments in relation to Exposure Draft CSDS 1, *General Requirements for Disclosure of Sustainability-related Financial Information* (“**CSDS 1**”) and Exposure Draft CSDS 2, *Climate-related Disclosures* (“**CSDS 2**”).

We commend the CSSB for its ongoing efforts to ensure that investors and stakeholders have access to clear, consistent and comparable sustainability-related financial disclosures by adapting the International Sustainability Standards Board’s (the “**ISSB**”) Sustainability Disclosure Standards for the Canadian context. Given that the Canadian Securities Administrators will consider the CSSB standards in finalizing its climate-related disclosure rule, our key comment relates to clarifying the scope of the obligation to disclose greenhouse gas (“**GHG**”) emissions under CSDS 2.

From the outset of the Financial Stability Board’s work on climate-related financial disclosures, it has emphasized that disclosure recommendations would incorporate the principle of materiality and weigh the balance of costs and benefits. For the reasons discussed below, we respectfully submit that the CSSB should take a balanced and pragmatic approach by requiring an express materiality assessment to climate-related financial disclosures.

MATERIALITY AND GHG EMISSIONS DISCLOSURE

CSDS 1

CSDS 1 generally incorporates a materiality assessment. Paragraph 1 of CSDS 1 states that the objective of the standard is to require the disclosure of information about an entity’s sustainability-

related risks and opportunities that is useful to primary users of general-purpose financial reports in making investment decisions. Such decision-useful information, according to paragraphs 2 and 3 of CSDS 1, consists of information about sustainability-related risks and opportunities that could reasonably be expected to affect an entity's cash flows, access to finance or cost of capital. Such risks and opportunities are considered, for the purposes of CSDS 1, as risks and opportunities that could reasonably be expected to affect the entity's prospects. Risks and opportunities that could not reasonably be expected to affect an entity's prospects are expressly stated in paragraph 6 to be outside of the scope of CSDS 1.

Further, paragraph 17 of CSDS 1 requires an entity to disclose "material information"¹ about the sustainability-related risks and opportunities that could reasonably be expected to affect the entity's prospects.² A material fact in Canadian securities law is a fact that would reasonably be expected to have a significant effect on the market price or value of securities. The definition of "material information" in CSDS 1 seems to suggest a different concept of materiality. Given the importance of "materiality" in determining what disclosures are required under CSDS 1, we recommend that the CSSB incorporate within CSDS 1 a definition of "material information" that is aligned with the concept of "materiality" used in Canadian securities laws.

CSDS 2

As with CSDS 1, the stated objective of CSDS 2 is to require the disclosure of information about an entity's climate-related risks and opportunities that is useful to primary users of general-purpose financial reports in making investment decisions.

Despite this objective, CSDS 2 contains no express materiality assessment that would limit the scope of disclosure obligations to an entity's material GHG emissions. For example, paragraph 29 stipulates that an entity shall, among other things, disclose its absolute gross GHG emissions – Scope 1, Scope 2 and Scope 3 – that are generated during the reporting period, expressed as metric tonnes of carbon dioxide equivalent.³

The CSDS 2 approach would be inconsistent with the U.S. Securities and Exchange Commission (the "**SEC**") final rules requiring mandatory climate-related disclosures dated March 6, 2024 (the "**Final**

¹ Information is material, according to paragraph 18 of CSDS 1, if omitting, misstating or obscuring that information could reasonably be expected to influence the decisions of primary users of general-purpose financial reports.

² Paragraph 19 also states that to identify and disclose material information, an entity shall apply paragraphs B13 – B37 of the Application Guidance (Appendix B to CSDS 1, the "**Application Guidance**"). Paragraph B25 of the Application Guidance provides that an entity need not disclose information otherwise required by a CSDS if the information is not material. This is the case even if the CSDS contains a list of specific requirements or describes them as minimum requirements.

³ This approach is generally similar to: TCFD guidance, which provided that issuers should disclose absolute Scope 1 and Scope 2 GHG emissions (independent of a materiality assessment); and mandatory climate disclosure laws recently passed in California, which require disclosure of Scope 1, 2 and 3 emissions, regardless of materiality.

Rules”). In general, the SEC’s Final Rules only require the disclosure of Scope 1 and Scope 2 GHG emissions, and only if material.⁴ No Scope 3 GHG emissions disclosures are required.

It is our view that CSDS 2 should align with the SEC’s Final Rules – i.e., that only material Scope 1 and Scope 2 GHG emissions disclosures should be required, and that Scope 3 GHG emissions should be excluded from CSDS 2 altogether. Given the integrated nature of the Canadian and U.S. economies, such an alignment would serve to mitigate any competitive advantage that may be afforded to reporting issuers operating under a less stringent disclosure regime. We respectfully submit that this approach would maintain a relatively level playing field, thereby serving the Canadian public interest.

Further, as noted above, the definition of “materiality” should be aligned with the definition of materiality under Canadian securities laws, and this materiality threshold should expressly apply to reporting under both CSDS 1 and CSDS 2.

Scope 3

Our experience working with reporting issuers suggests that there continues to be significant challenges to collect high-quality Scope 3 data, as well as uncertainties associated with Scope 3 calculations. As a result, in the event that the CSSB ultimately decides to include Scope 3 disclosure in CSDS 2, it is our view that the CSSB should:

- acknowledge the inherent challenges of estimating accurate Scope 3 emissions; and
- apply an express materiality assessment for Scope 3 disclosure.

The following lawyers at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

Yours truly,

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⁴ GHG emissions disclosure under the SEC’s Final Rules is further restricted to the two largest types of registrants – i.e., “large accelerated filers” and “accelerated filers”.