



July 14, 2021

Via Electronic Submission

The CFA Institute

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Re: Exposure Draft – CFA Institute ESG Disclosure Standards for Investment Products

OVERVIEW

The Portfolio Management Association of Canada (**PMAC**), through a working group consisting of CFAs and ESG experts and through its wider Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit the following comments regarding the CFA Institute's consultation on its Exposure Draft ESG Disclosure Standards for Investment Products (the **Consultation** and the **Standard**, respectively).

PMAC represents over [300 investment management firms](#) registered to do business in Canada as portfolio managers. Some firms manage large mutual funds or pooled products, and others manage separately managed accounts on behalf of private clients or pension plans and foundations. In addition to this primary registration, most of our members are also registered as investment fund managers and/or exempt market dealers. PMAC's members encompass both large and small firms managing total assets in excess of \$2.8 trillion for institutional and private client portfolios.

BACKGROUND ABOUT PMAC & PORTFOLIO MANAGERS

The following context about PMAC's members is important to our comments on this Consultation and will help inform the CFA Institute's understanding of our perspective on the Standard. Our member firms range from asset managers that operate globally and are subject to a plurality of legal and regulatory requirements to smaller firms that operate solely within Canada.

PMAC's mission statement is "advancing standards." As part of our effort to support that mission, upon applying for PMAC membership we require all member firms to attest that: 1) they have adopted the CFA Institute Asset Manager Code of Professional Conduct; or 2) that the firm's code of ethics/conduct complies with the six principles of conduct of the CFA Institute Asset Manager Code of Professional Conduct.

Additionally, in order to become registered as an advising representative (**AR**) or associate advising representative (**AAR**) with a portfolio management firm with the various members of the Canadian Securities Administrators (**CSA**), an individual must meet stringent proficiency requirements. One of two ways to meet these proficiency standards is by having the CFA Charter and 12 months of relevant industry experience (for ARs) or having Level 1 of the CFA and 24 months of relevant industry experience (for AARs). As such, the vast majority of our members' individual registrants hold a CFA Charter.

PMAC responded to the CFA's 2020 Consultation and we are pleased to have the opportunity to continue to provide feedback.

KEY RECOMMENDATIONS

The following are PMAC's key recommendations to the CFA Institute with respect to the Consultation:

1. **Implement a minimum standard for claiming ESG and provide more definitional clarity to avoid greenwashing.**

Without (a) providing clear definitions of different ESG strategies, (b) establishing a minimum standard for claiming ESG, or (c) articulating explicit standards for categorizing ESG investment products, there is a concern that the Standards may be of limited utility for investors to compare and identify distinct ESG investment products. This could lead to greenwashing which we believe to be detrimental to investors and investor confidence.

2. **Focus on ESG indicators to provide additional comparability of ESG products.**

To assist with transparency and comparability of products, PMAC recommends maintaining a focus on ESG indicators with the ability to provide context around such indicators.

3. **Set expectations for compliant presentations without creating the risk of additional liability.**

PMAC generally supports principles-based regulation and notes that the Standards are adaptable for a variety of asset managers. However, we believe additional clarity is needed, especially around material change disclosure and certain terminology, as discussed below. This will set appropriate expectations around compliant disclosures without increasing the risk of liability for managers that adopt the Standards.

These recommendations and others are discussed in further detail in the body of this letter.

GENERAL COMMENTS

Members question whether the Standards will achieve the desired outcome of transparency and comparability of investment products. While there were some challenges with respect to the originally proposed “features” approach to the Standards in 2020, some members believe that there would have been more opportunity for comparability and transparency using the original approach. Members suggest that a focus on providing some indicators – with the ability to provide context around such indicators – would be a superior approach.

The shift from the features-based approach to this broader approach increases the challenges that some firms will face in implementing the Standards. PMAC believes these challenges could contribute to an unintentional rise in “greenwashing” due to diminished specificity. PMAC appreciates the complexities and additional regulatory and compliance challenges in establishing a minimum threshold for claiming ESG. However, the absence of such a threshold will require a careful review and oversight to ensure that the Standard is not being used to mislead investors about a product’s ESG *bona fides*.

To address these concerns, PMAC members suggest the following amendments to the Standards: 1) retain the “features” approach but do not imply each feature to be mutually exclusive. The CFA could list all possible features and language that ESG products may use and allow asset managers to use their professional discretion to select what applies. The Standards could also then allow for brief descriptions to elaborate on any ESG methodologies that asset managers wish to disclose; 2) in addition to the methodology features, list ESG factors that can be used and allow asset managers to select which ones they consider and allow for a brief description of additional ESG methodologies that asset managers wish to disclose.

We are pleased to see that third-party verification is recommended as opposed to required under the Standards and look forward to providing comments. We believe that allowing internal audit of the Standards provides an appropriate level of review and rigour. There are numerous complexities that PMAC members identified with respect to verifying ESG for investment products, especially with private investment managers.

PMAC will also be responding to the recently published International Organization of Securities Commission (**IOSCO**) Consultation on sustainability-related regulatory and supervisory expectations in asset management which we believe dovetails with the Standards on several issues. In particular, we note IOSCO’s comments around the clear need to protect investors by addressing greenwashing and, regarding firm-level disclosure, the need to address the challenges associated with the reliability and comparability of ESG data and rankings.

RESPONSES TO SELECTED CONSULTATION QUESTIONS

Our members have the following comments on certain questions set out in the Consultation. We have used the numbering found in the Consultation, but for brevity did not include the questions to which members did not respond. As such, the numbering is non-sequential.

Questions for Investors and Asset Owners

Question 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?*

Subject to the comments below, especially as they relate to Section 6 and 7 of the Standards, PMAC generally agrees that the draft provisions are helpful in clarifying the type of information to be included. We do have some concerns about the extent to which firms will be able to disclose certain aspects in detail without risking disclosure of their intellectual property in terms of investment strategy.

Question 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?*

PMAC notes that while firms may find the Standards feasible to implement, they will represent an additional layer of compliance for asset management firms. They will likely need to be adopted alongside labeling and certification standards to provide investors with additional information.

With respect to Sections 1.A.15 and 1.A.16 [correcting material errors in compliant presentations], the requirement to make "every reasonable effort" to provide a correct compliant presentation to every investor is a very high standard that may be unable to be met. Secondly, members are concerned that the requirement to correct material errors raises potential liability issues in that this could trigger statutory rights regarding misrepresentations. This could be viewed as an admission of liability and used in support of a civil action against the investment manager and/or issuer. Securities laws for public funds already include timely disclosure requirements; for example, a manager must take certain disclosure steps in the event of a material change in respect of a fund.

Members found the definitions of "must", "require" and "requirement" to be ambiguous and it is unclear whether they only relate to mandatory requirements under the Standards (which we believe to be the CFA's intention) or whether they relate to other requirements mandated by applicable local laws. Clarification of these terms and their intended meaning, especially as they tie into the concept of when a material error must be corrected, would help resolve this concern.

We also note the following potential issue with respect to the difference between retail client and institutional client-focused compliance under Section 1.A.12. Based on the requirement to disseminate information to all investors, the most feasible option for retail mutual funds and ETFs is incorporating the compliant presentation into regulatory disclosures that are required to be provided to investors; however,

the information required to be included in these documents (e.g. Fund Facts or ETF Facts) is specified by the Canadian Securities Administrators (CSA) and for example, does not allow for precise investment process steps, evidence of engagements, changes throughout time to ESG related processes, etc. Additionally, some managers disclose a product's benchmark, unless it is a passively managed strategy. As a result, in order to generate a compliant presentation, the Standards require the creation of a separate document with multiple iterations for each client type. Based on the above, updated disclosures would have to be made through the website (point (2) above) with a presumption that they can be viewed and accessed by the retail investor / advisor. In this regard, asset managers would not be "choosing which investors" are presented a compliant presentation. The presumption is the advisor / client must review the firm's site for updates, which does not concord with our understanding of how most investors review and understand disclosure.

PMAC seeks clarification as to the disclosure timing contemplated by the Standard under Section 1.A.10 which reads:

The INVESTMENT MANAGER MUST update an INVESTMENT PRODUCT'S COMPLIANT PRESENTATION WHEN:

- a. Changes are made to the CFA Institute ESG Disclosure Standard for Investment Products REQUIREMENTS or INTREPRETIVE GUIDANCE that apply to the INVESTMENT PRODUCT.
- b. Changes are made to the INVESTMENT PRODUCT that affect information included in the COMPLIANT PRESENTATION.

Notes: As soon as a change to an investment product becomes effective, or a change to the Standards' requirements or interpretive guidance becomes effective, the compliant presentation for that investment product must reflect the change.

We are concerned with the wording "as soon as," and whether it is intended to modify both changes to the investment product AND the Standard. If that is the intention, that disclosure requirement would be unworkable in the absence of sufficient lead-time and communication of up-coming changes to the Standards, and only if these changes are not so frequent as to create an unreasonable regulatory and compliance burden.

PMAC notes that Section 7 – ESG Information in Financial Analysis and Valuation is one of the most salient components of the Standards disclosure as well as one of the most challenging aspects to comply with. It is not clear that the Standard in general and Section 7 specifically will reduce confusion or reduce greenwashing.

Question 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 questionnaires?*

Unless both asset owners and consultants replace their questionnaires with the Standards, instead of saving time and effort when responding to DDQs and other questionnaires, the Standards could double the effort if the terminology used is not the same as in the Standard.

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

Members agree that it would be helpful for all parties to have either a recommended format or template.

Questions for Consultants and Advisors

Question 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?*

Members note that since there is no minimum requirement for most investment products (other than perhaps the impact aspect), it is unclear how products can be compared by investors. This is because the disclosure and descriptions will be subjective and contain differing levels of detail. For example, the use of the term “best-in-class” could mean different things when compared amongst products. The same concern applies to terms such as “negative screening” and “exclusions”. While we recognize the challenge of creating more defined standards, we believe that some additional definition may be needed to address these ambiguity and comparability concerns.

Questions for Regulators and Investment Professionals

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

While PMAC believes that the Standards can assist in maintaining a commitment to professional ethics and integrity and supports measures that serve this purpose, we believe that the Standards will de facto become mandatory for CFA charterholders for this reason. We believe that linking adherence to the Standards with professional ethics and integrity makes sense but does somewhat undermine the voluntary nature of the Standards. Would a CFA charterholder that advises on ESG investment products who does not comply with the Standards face more exhaustive reviews, disciplinary consequences or other negative impacts in the event of an investor complaint?

CFA charterholders have asked whether the linkage between the Standards and professional ethics means that if their sponsoring firm does not offer ESG products, the CFA holder is obligated to ask the firm to do so for the CFA holder to meet their individual CFA obligations.

Question 4: *Would the Standards be helpful in providing investor protection through product transparency?*

PMAC members have expressed concern that the Standards could lead to boilerplate language. Additionally, members flagged the concern that some firms may seek to disclose their processes only at a very high level of detail to avoid disclosing too much of their intellectual property.

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

PMAC believes that, with sufficient detail and transparency, the Standards can help investors align their objectives with suitable products in a helpful way.

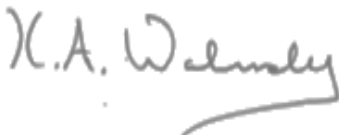
CONCLUSION

We would like to thank the CFA Institute for the opportunity to respond to this Consultation. We are supportive of your goal of increasing disclosure and comparability of ESG products for investors. As outlined in our submission, we believe that including additional flexible minimum standards for claiming ESG as well as clarifying certain terminology and definitions may help to prevent the risk of greenwashing.

If you have any questions regarding the comments set out above, please do not hesitate to contact Melissa Ghislanzoni at 416-504-1118 ext. 202.

Yours truly,

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