Environmental, Social and Governance (ESG) Issues in Institutional Investor Decision Making

Chartered Accountants of Canada

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Preface

The Canadian Performance Reporting Board (CPRB) of the Canadian Institute of Chartered Accountants (CICA) is committed to advancing the measurement and reporting of organizational performance.

Mainstream institutional investors are beginning to incorporate environmental, social and governance (ESG) factors into their decision making. Such investors are accordingly expressing their expectations for corporate disclosures beyond what is currently provided in financial reporting. A number of international and domestic organizations, including the Ontario Securities Commission, are working towards improving corporate ESG disclosures.

This Discussion Brief aims to stimulate informed dialogue among interested parties about the demand for and supply of ESG disclosures used by institutional investors. It discusses the findings of interviews with institutional investors, reviews existing regulatory requirements and relevant literature and initiatives, and offers options for enhancing the provision and use of ESG disclosures.

The Discussion Brief is available electronically from CICA's web site at www.cica.ca/cpr

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Table of Contents

1. Introduction

This Discussion Brief focuses on the needs of institutional investors[1] for environmental, social and governance (ESG[2]) information used in their decision making. It aims to stimulate informed dialogue among interested parties about the demand for and supply of ESG disclosures used by these investors. The Brief reviews current market and regulatory trends and existing regulatory disclosure requirements related to ESG issues. It presents options for improving the provision and use of ESG disclosures for investor decision making.

Part 2 discusses current forces and trends in capital markets regarding ESG disclosures. In addition, it discusses investors' current approach to incorporating ESG issues into their decision making. To obtain information about investors' approach to using ESG information, 15 institutional investors and 2 investment research service providers were interviewed. The interviews focused on what ESG information these investors seek, where they obtain it, how they use it and how satisfied they are with the information they obtain.

Part 3 discusses the current state of regulatory reporting of ESG issues. It presents relevant regulatory disclosure requirements about ESG issues in Canada and elsewhere and the results of compliance reviews in Canada.

Part 4 offers options for closing the ESG disclosure gap between what investors want and what they get and enhancing the integration and use of ESG information in investor decision making.

Appendix 1 summarizes organizations and initiatives driving improvement in ESG disclosures. Appendix 2 lists interviewees and Appendix 3 provides links to useful websites about ESG issues in investor decision making, including sources of ESG information.

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1 This Discussion Brief does not aim to deal with the information needs and decision making practices of investors other than institutional investors. Throughout this document, the term "investors" should be interpreted as institutional investors.

2 The acronym "ESG" is used by many investors in preference to broader but more vague terms such as "corporate social responsibility" and "sustainability".

2. ESG Information Used in Investor Decision Making

2.1 Market Forces and Trends

Institutional investors, who tend to have a longer investment time horizon, are increasingly showing signs of interest in ESG factors. These investors more and more are expressing their expectations for corporate disclosures beyond what is currently provided in financial reporting.[3]

While ESG information was originally seen to be of interest only to "socially responsible" and/or "ethical" investors, there is evidence that ESG issues are increasingly of interest to mainstream institutional investors in Canada and worldwide.

Statements of Mainstream Capital Market Interest in ES&G Information

"It is becoming increasingly clear that sustainable development will be one of the major drivers of industrial change over the next 50 years, and that there is a growing demand from both companies and institutional investors to understand its financial impacts." (Colin Monks, Head of European Equity Research, HSBC)[4]

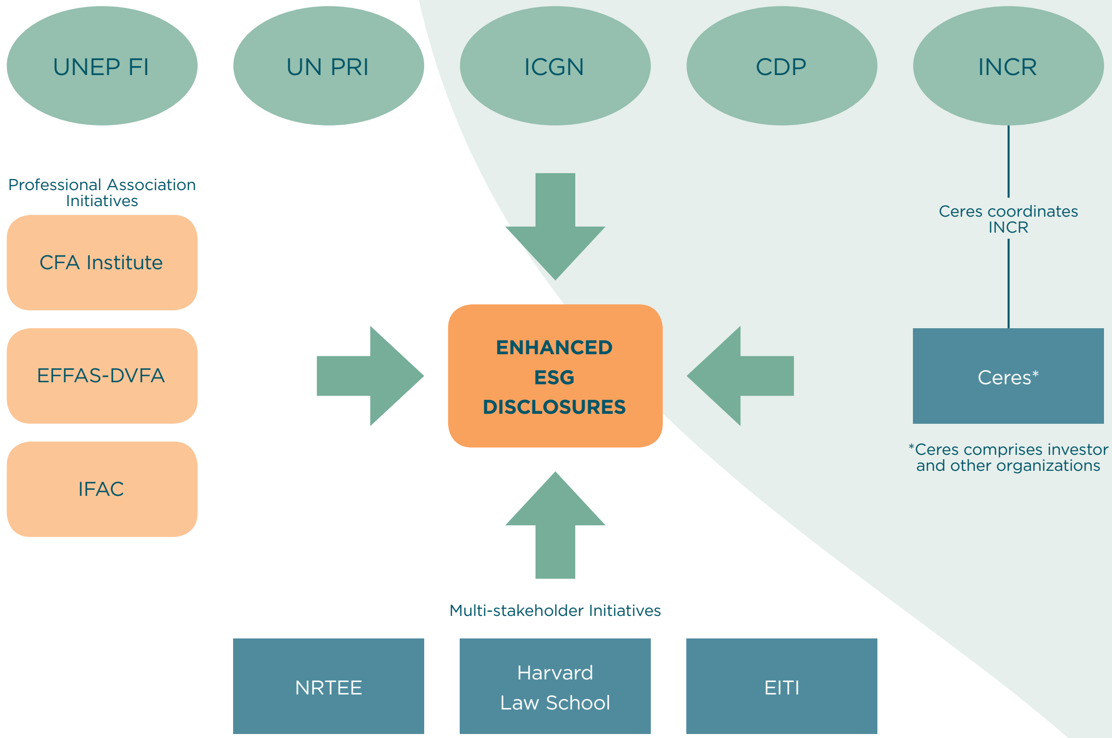
"The current crisis has moved the role and influence of hidden risks embedded in investment portfolios to the forefront. We believe that this needs to be accompanied by a move to objective views of long-term risk from environmental, social and governance (ESG) perspectives."[5] (Societe Generale)

A number of international and domestic organizations and initiatives are seeking improvement in ESG disclosures of various types. A summary of twelve such organizations and initiatives (see diagram below), many of which are investor-driven, is provided in Appendix 1 of this Discussion Brief.

3 For example, the International Corporate Governance Network *Statement and Guidance on Non-financial Business Reporting*, December 2008 and the International Accounting Standards Board exposure draft on *Management Commentary*, May 2009.

4 Innovest Strategic Value Advisors, Analysis of the Financial Impact of Sustainable Development in a Natural Resource Industry February 2005. Page 4

5 Societe Generale. The SRI Navigator. May 19, 2009. Page 4.



The signatories to some of these investor driven initiatives are mainstream institutions managing large portfolios of assets. The number of investors choosing to be signatories to such initiatives is increasing. For example, the 2009 report was issued on behalf of 475 signatories with assets under management of $55 trillion; the 2004 Carbon Disclosure Project report was issued on behalf of 95 signatories with assets under management of $10 trillion. Further, at the end of 2009, there were 650 signatories to the UN Principles for Responsible Investment representing over $18 trillion in assets (up from 20 signatories with assets of $2 trillion at the launch in 2006).

While a few Canadian institutional investors were early adopters of integrating ESG issues into investment decision making, more now appear to be doing so. Further, as capital flows are increasingly global, investment policies and practices in other jurisdictions around the world may, in future, be expected to impact Canadian capital markets and issuers.

As a result of two significant legal interpretations about the principle of fiduciary responsibility of investment trustees, there has been a fundamental shift in consideration of ESG matters in investment decision making. In particular, in the past, trustees may have argued that it was beyond their fiduciary responsibilities to consider ESG matters in an investment decision. Today, it may be considered a breach of fiduciary duty not to consider such matters.[6]

6 UNEP FI AMWG *A legal framework for the integration of environmental, social and governance issues into institutional investment* October 2005. UNEP FI AMWG *Fiduciary Responsibility Legal and Practical Aspects of Integrating Environmental, Social and Governance Issues into Institutional Investment*. 2009.

Materiality is a crucial issue when considering ESG disclosures. A 2010 publication by UNEP FI and the World Business Council for Sustainable Development found agreement between companies and financial institutions that

> "ESG factors can have long-term consequences on a company's financial performance, either for better or for worse."[7]

However, it identified:

> "…misconceptions between companies and investors on ESG factors and their financial materiality. Companies found that they have unique expertise on how and why ESG factors are material and core to their business—they understand their business best. Meanwhile, asset managers have not gained access to this information through current ESG questionnaires and desk research, and tend to focus on reputational issues…There is widespread acknowledgement among companies that ESG factors can have a material impact on their intrinsic value, and that ESG factors should have a corresponding impact on their market capitalization. However, many investors continue to think that ESG is narrowly concerned with reputation and brand issues, or only corporate governance matters."[8]

The issue of materiality is discussed in a number of the initiatives summarized in Appendix 1.

2.2 Interview Findings

In the last quarter of 2009, interviews were conducted with staff involved with ESG analysis at 15 mainstream institutional investors and 2 service providers (see Appendix 2 for a list of the interviewees) to investigate institutional investors' use of ESG information in their decision-making.[9] The interviews focused on what ESG information these investors seek, where they obtain it, how they use it and how satisfied they are with the information they obtain.

Investors interviewed reported that, to varying degrees across sectors, geographies and asset classes, they sought and used ESG information for one reason or another—see section 2.2.3.

7 UNEP FI and World Business Council for Sustainable Development Translating ESG into Sustainable Business Value. March 2010. Page 7.

8 UNEP FI and World Business Council for Sustainable Development Translating ESG into Sustainable Business Value. March 2010. Page 7.

9 The interviews were conducted by Toby Heaps, the editor-in-chief and chief executive of *Corporate Knights Magazine*

Some institutional investors are beginning to look to ESG information not only to better understand risks but also because they see the possibility for a “sustainability alpha”.[10] It is still early days, however; this is currently not a widespread approach to evaluating risk and opportunity.

Goldman Sachs, one of the interviewed investors, noted in one of its publications that it does factor ESG information into its investment decision making:

> “Some companies do not view ESG impacts as sufficiently material to company performance to warrant quantification and public disclosure and therefore do not publish performance indicators. However, we believe that the indicators we use to assess performance with respect to environmental, social and corporate governance issues are essential to analyze a company’s ability to sustain competitive advantage over the long term.”[11]

2.2.1 What Information Investors Seek

Based on their responses, interviewees indicated that they seek and use a wide range of ESG information. Currently, governance is the most standardized and available category of ESG information. Due to pressures from regulators and market participants, environmental disclosures, especially regarding climate change, are becoming more available and standardized. Social information remains the least standardized category, especially with respect to the provision of relevant metrics.

To identify the types of information they seek, the interviewees typically follow a top down process. In doing so, each analysis provider, pension consultant and ESG investment firm develops its own proprietary model for assessing companies. There are, however, some general similarities in approach for integrating ESG into financial analysis.

Many begin their ESG integration analysis through a lens of overarching themes or trends that they develop or identify. Such themes or trends might include, for example, increasing urbanization, demographics, climate change, energy security, water, the significant economic power shift to Brazil, Russia, India and China (BRIC), population growth outside developed countries, pace of change of industrialization in China. It is considered important to understand the business environment in which companies operate in order to assess the potential materiality of ESG issues.

Through the lens of the overarching themes or trends, information is sorted into categories of economic, environmental, social and governance matters. Within these categories, a number of issues are identified and listed.

For example, in the oil and gas industry, social issues would include labour, stakeholder relations, operations in emerging markets, pipeline safety, energy security, anti-corruption, human rights. Environmental issues would include climate change,

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10 Investment alpha is seen as returns achieved above the costs of the risks assumed.

11 Goldman Sachs, *GS Sustain*, June 30, 2008, Page 52.

renewable energy, water, pollutant releases, biodiversity, site remediation and decommissioning, land use, chemical regulations, resource use and efficiency, vehicle fuels and engine technologies, markets for environmental services.

For each issue, relevant industry performance indicators and measures are used, where available, in the proprietary model. In some cases, investors create their own industry wide performance indicators and measures.

For example, for labour, including employee relations, performance indicators might include percentage of employee turnover, percentage of workforce unionized, the ratio of lowest wage to minimum wage, ratio of average wage to minimum wage, and ratio of jobs offered to jobs accepted. As ASSET4 reported, one particular ESG data point that companies have increasingly disclosed is the turnover of employees. This measure is seen to be important as an indicator of employee satisfaction and as a critical cost factor for companies because replacing experienced staff is expensive.[12]

For resource usage and efficiency, performance indicators might be energy intensity (gigajoules/cubic metre of total production) and water withdrawal intensity.

These indicators are calculated from an inventory of data points that are accumulated from a variety of raw sources, including companies themselves, NGOs, possibly data providers, and other sources.

This overall approach is most often applied to individual industry sectors to identify the most relevant information about companies within sectors.

> "In terms of competitiveness, sustainability performance is of greatest relevance to shareholder value creation when assessed in relative terms. As a result, SAM identifies the leading and lagging companies in each sector."[13]

Interviewees confirmed that assessments are generally made on a sector by sector basis to identify best and worst of class companies. They specified numerous performance indicators and measures that they seek regarding environmental, social and governance issues.

In 2010, UNEP FI and the World Business Council for Sustainable Development published a document *Translating ESG into Sustainable Business Value*, which among other things, set out a list of sample ESG considerations by sustainability theme and by sector.[14]

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12 Thomson Reuters ASSET4. *The Next Phase of Integrating Environmental, Social and Governance (ESG) Information into Mainstream Investing*. 2010.

13 SAM White Paper Alpha from Sustainability. page 5

14 UNEP FI and the World Business Council for Sustainable Development, *Translating ESG into Sustainable Business Value*, 2010. Pages 18-20.

As noted in Appendix 1 of this Discussion Brief, the 2008 CFA Institute's manual *Environmental, Social and Governance Factors At Listed Companies* offered a number of specific examples of types of ESG information that CFA charterholders may seek and use.

The European Federation of Financial Analysts Societies (EFFAS) and the Society of Investment Professionals in Germany (DVFA) published in 2010 an exposure draft setting out a list of key sectoral ESG performance indicators for a range of industries for use in financial analysis and corporate valuation—see Appendix 1 for more information.

2.2.2 Where ESG Information is Found

Interviewees reported that they obtain their ESG information from regulatory filings and a range of other sources. Information required by regulators is summarized in Section 3 of this Discussion Brief. Other sources of ESG information include:

1. companies themselves (beyond regulatory filings);
2. data providers;
3. ESG research firms;
4. pension consultants;
5. investment firms with ESG products;
6. non-governmental organizations (NGOs); and
7. other.

Appendix 3 includes the web addresses of several sources of ESG information.

1. **Companies themselves (beyond regulatory filings)**

   ESG information comes from companies themselves, whether in company sustainability reports, in discussions with management,[15] on corporate websites or through site visits. One-on-one meetings with management were regarded as particularly important because nuggets of information could be obtained, that in themselves, are not material but when combined with other information might be seen as helpful for investor decision-making. One interviewee noted that large institutional investors can get all the information they want by asking directly of the companies. However, as they own thousands of companies, it is not practical to contact each one.

2. **Data Providers**

   A number of data providers now exist. Until 2009, the two dominant financial news information sources, Thomson Reuters and Bloomberg, did not have a dedicated ESG data service. Bloomberg launched an ESG data service in 2009 to provide its clients and their financial analysts with access to their list of publicly-available ESG data. ASSET 4, purchased in November 2009 by Thomson Reuters, provides predominantly ESG but also financial data to enable investors to better compare

15 Information that has already been publicly disclosed or is seen as non-material forms the basis of these discussions as management is aware of selective disclosure rules.

the performance of companies on both ESG and financial indicators. Organizations such as the Carbon Disclosure Project (CDP) provide detailed information on selected topics—in the case of CDP on climate change. Trucost offers environmental data to assist investors, fund managers and analysts in their decision-making.

Many investors who are signatories to the Carbon Disclosure Project (CDP) and who responded to a survey conducted by CDP, stated that CDP data is the source of climate change information most often used, closely followed by information provided by companies themselves.[16]

3. **ESG Research Firms**

Firms in this area go beyond only providing data to actually analyzing, evaluating and monitoring the ESG performance of companies. These research providers include MSCI which in 2010 purchased RiskMetrics (which in turn had acquired companies such as Innovest and KLD), Jantzi Sustainalytics, EIRIS, ECPI, FTSE-4Good and Sustainable Asset Management (SAM). Many of these research firms also have developed indices that take ESG performance into account.

The firms collect data on companies, develop broad trends (such as climate change, demographics, energy security) and translate these into industry specific challenges/opportunities. Based on answers to industry specific questionnaires, analysis and information from industry sources, non-governmental organizations, meetings with companies, etc, ESG research firms identify best-in-class companies.

Some of these firms concentrate only on governance issues—for example, Governance Metrics International.

4. **Pension Consultants**

Mercer has developed a pool of ESG ratings spanning all asset classes. As a consulting firm, it has also committed to rating all fund managers on an ESG basis. These fund manager ratings can be used by asset owners to compare managers across regions and asset classes and over time.

Towers Watson offers research that encompasses ESG issues.

> "We believe macro factors such as environmental, social and governance (ESG) issues must be considered in asset management as they will undoubtedly influence future returns."[17]

5. **Investment Firms with ESG Products**

Sell-side or broker research from firms such as Goldman Sachs, Societe Generale and Citi provide research reports that are available to the market.

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16 Mercer. *Investor Research Project—Investor use of CDP data* Carbon Disclosure Project. 2009. page 2.

17 See http://www.towerswatson.com/press/1063

Buy-side firms, such as TD Asset Management and RBC Asset Management, develop proprietary research that informs their investor decision-making but is not released to the public.

6. **Non-Governmental Organizations (NGOs)**

   There are a number of NGOs that highlight different sector and economy-wide ESG issues. These include: World Resources Institute, the Pembina Institute, Heidelberg Institute, Pacific Institute and World Wildlife Fund. Universities are also a source of information.

7. **Other**

   There are a variety of other sources of ESG information such as newspapers, conferences, specialized magazines, or industry associations.

Interviewees cited ESG information obtained outside regulatory filings as being the more useful for investment purposes. Some interviewees, however, noted that a thorough mining of information in regulatory filings can produce valuable insights into a company's ESG profile (e.g. whether compensation is linked to ESG metrics, whether boards have ESG related committees, whether there is gender diversity on boards, taxes paid as a percentage of taxes owed over time, liabilities related to site remediation).

2.2.3 How Investors Use ESG Information

Interviewees reported that they use ESG information in a variety of ways related to investments in public equities and also investments in corporate debt, private equities, infrastructure and real estate.

As British Columbia Investment Management Corporation has stated:

> "Our view is that ESG issues directly affect long-term investment returns. As a result, we are active equity owners and encourage positive ESG practices through our proxy voting decisions, direct engagement with companies, and interactions with regulators and policy makers. Our real estate program incorporates responsible property investing initiatives such as responsible building design, retrofits and energy efficiency technology. We are also moving to expand our environmental and governance initiatives to include our private equity investments."[18]

Interviewees were asked if they were prepared to share any instances where environmental, social or governance factors not disclosed in regulatory filings directly impacted buy, sell or hold decisions. In general, while interviewees confirmed that ESG factors contribute to the investor decision-making process, they were not prepared to comment on specific transactions.

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18 BCIMC Annual Report 2008 Page 3

Interviewees offered five main reasons for the use of ESG information. They are: to inform risk and return potential, evaluate management quality, engage with companies and inform proxy voting, develop customized investment products or portfolios, and assess asset managers.

Inform Risk and Return Potential

Interviewees reported that ESG information is used to:

- identify risks e.g., carbon price risk;
- provide knowledge and expertise on specific subjects which could apply to many portfolios and industry sectors;
- identify investment themes e.g. water, alternative energy;
- inform risk assessment of different geographical or political issues that would influence geographic asset allocations;
- identify promising new technologies; and
- identify red flags or potential red flags.

Some institutional investors have begun to try to integrate ESG information into proprietary investment analysis models used by analysts or portfolio managers. But it is still early days. Part of the difficulty is a lack of comparable ESG data across companies within industry sectors, inhibiting useful best-of-sector investment analysis. Data on key metrics, such as water, energy and carbon is, however, now becoming more available. Larger companies are increasingly reporting performance on these key metrics.

Evaluate Management Quality

Interviewees often regard ESG issues as a proxy for the quality of management in a changing business world. The best managed companies would be expected to drive superior returns.

It would seem that companies themselves agree with interviewees as, according to a February 2009 issue of *The McKinsey Quarterly,* 80% of chief financial officers, more Europeans than North Americans, believe that ESG information can serve as a proxy for the quality of a company's management.

In assessing management quality, Goldman Sachs looks for managements' responses to ESG performance in five broad categories:

> "We believe companies need to perform well in five broad categories to capitalize on the opportunities of our changing world while minimizing the impact from environmental and social side-effects.
>
> - Corporate governance is a key focus for investors, securities regulators and stock exchanges in the wake of corporate accounting scandals, heightened focus on competition laws in M&A situations and increasing protectionism from national governments of strategic assets.

- Leadership is crucial for company positioning on strategic environmental and social issues and can be shown through accountability and transparency in reporting and incentive schemes.

- Employee recruitment and retention is needed in a world of human capital shortages. Superior policies and practices on compensation, career development, health and safety, and labour standards will be needed to win the war for talent.

- Stakeholder relationships are critical to maintaining reputation and the licence to operate, from community investment and philanthropy to business ethics and corruption, to responding to shifting consumer needs and supply chain management.

- Environmental management systems, policies and tracking key performance indicators such as energy, carbon, water and waste can improve operating efficiency, reduce costs and minimise risks."[19]

Engage With Companies And Inform Proxy Voting

Interviewees reported that ESG information is helpful in:

- considering shareholder proposals;
- engaging with company management, whether on a particular investment issue such as climate change or human rights, or on the possibility of excluding a company from a portfolio on the basis of particular screens;
- informing the analysis of a specific issue on which institutional investors may wish to take a position; and
- informing proxy voting—identify red flags or potential red flags such as concerns about executive compensation.

Results from a 2009 survey of investors who are signatories to the CDP noted that corporate engagement was the leading area in which investors used CDP data on climate change.[20]

Develop Customized Investment Products or Portfolios

Increasingly, investment houses are developing customized product offerings that offer investment returns based on investing related to ESG issues. Examples include:

- RBC Jantzi Funds
- BMO Sustainable Funds
- TD Global Sustainability Fund
- Acuity SRI Funds

In developing such products or portfolios, investment houses use ESG information.

19 Goldman Sachs, *GS Sustain*, June 30, 2008, Page 52

20 Mercer. *Investor Research Project—Investor use of CDP data* Carbon Disclosure Project. 2009. page 2

Assess Asset Managers

In one case, an interviewee reported that its organization uses ESG information in assessing its external asset managers. It engages with its asset managers to understand how, if at all, they take ESG issues into account in investment decision making and what resources they employ to do so. In addition, it hires ESG research firms to review how holdings compare to a benchmark score. The results of this comparison are used for discussions with asset managers that have invested in companies that were red-flagged from an ESG perspective.

2.2.4 Improvements Needed in the Quality of ESG Information and Research

Interviewees' Comments on ESG Disclosure

As noted in the previous section, interviewees commented on shortcomings in the quality of ESG information. They were consistent in their call for the following:

1. **Format Standardization**

   Mining data is very time-consuming. The existence of a standard format or template for presenting information would assist investors in locating the data they want for decision making.

   Interviewees noted that companies may use very different units in reporting their ESG performance. They may only report data for a portion rather than all company facilities. In addition, they sometimes provide ESG data in the form of ratios, charts or other graphical form without providing absolute numeric values.

2. **Comparability**

   A key issue for interviewees was the lack of standardized, comparable, sector-based metrics that are updated regularly (and possibly audited by an independent party). Metrics need to be consistently and comparably defined and calculated. This would serve to enhance the usefulness of ESG data points, enabling them to be incorporated with more confidence into models used by fundamental analysts.

   Although the Global Reporting Initiative's (GRIs) sustainability reporting guidelines and accompanying protocols have aided in the standardization of ESG reporting, companies continue to report differing degrees of compliance with the GRI.[21] To be comparable across all companies, and thus useful for mainstream investment analyses, it is important that ESG information be transformed into consistent units and presented in a balanced and understandable manner. As noted previously, the key performance indicators provided in the exposure draft issued by The European Federation of Financial Analysts Societies and the Society of Investment Professionals in Germany would, if adopted, provide greater comparability.

21 See http://www.globalreporting.org/Home The GRI sustainability reporting guidelines and accompanying protocols do not specifically address investor information needs. However, sustainability reports prepared in accordance with the GRI guidelines may include ESG information useful to investors, but not necessarily comparable across companies and industries.

3. **Availability**

   Asset managers and ESG research providers can only assess companies on which they have been able to obtain data. Companies that adopt best ESG disclosure and management practices may benefit by having access to a larger and growing pool of investment capital.

   In the past, the lack of disclosure has forced investors using ESG themes to compromise on the indicators they use from the "ideal" to "what is available". The published list of ESG indicators tracked by a mainstream firm may be more a statement of what is available than what would be more useful. Currently, large data providers such as Bloomberg are engaging with regulators such as the U.S. Environmental Protection Agency to identify how they can better specify and provide the relevant data that investors need.

   Northwest and Ethical Investments (not an interviewee) points out difficulties in collecting data from corporate disclosures:

   > "Data-collection proved a daunting task. While a few companies stood out for the transparency of their reporting, in other cases even the most basic statistics were buried in obscure regulatory filings, amalgamated with other information, or simply not disclosed."[22]

4. **Timeliness**

   ESG information may not be available on a timely basis for investors to integrate with financial and operational data.

   Some companies, for example, provide annual sustainability reports but they are not normally published at the same time as the annual financial reports; other companies only provide sustainability reports every two years or on a less frequent basis.

5. **Reliability**

   Interviewees stated that they held management accountable for the reliability of information provided by companies, regardless of whether information is provided in regulatory reports or not.

   While interviewees may take this view, companies may not have systems, procedures and controls for ESG information comparable to those they have for financial data.

6. **Analysis**

   One interviewee, an ESG research firm, opined that the number one complaint he heard from investors about ESG research is that the analysis fails to spell out adequately the strategic, competitive and financial implications of ESG data.

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22 Northwest and Ethical Investments. Media Release November 30, 2009. *Oil Sands: More Questions Than Answers For Investors.*

An important implication of this to this interviewee is the readiness and willingness of institutional investors to pay for the analysis necessary to assess the implications of the data for a company's strategy, competitiveness and financial condition.

The comments of the interviewees about the quality of reported information are consistent with the eight principles concerning investor expectations about the quality of reported information set out in the International Corporate Governance Network's *Statement and Guidance on Non-financial Business Reporting*.[23]

23 See http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc_id=5312&userservice_id=1

3. Regulatory ESG Disclosures

3.1 Developments in Regulatory Disclosure

There is evidence that existing regulatory disclosures do not necessarily meet investors' needs for ESG information.

This may reflect a lack of compliance with existing regulatory disclosure requirements or perhaps an interpretation of materiality that results in the omission of these disclosures from regulatory filings. It could also indicate the need for changes to regulatory requirements.

In April 2009, a motion was passed unanimously by the Ontario Legislature calling on the Ontario Securities Commission (OSC) to enhance corporate disclosures with a standardized reporting framework for both quantitative and qualitative environmental, social and governance information. In December 2009 the OSC issued Staff Notice 51-717 indicating the steps to be taken in response to the motion.

In some European jurisdictions (e.g. Denmark and France) and in South Africa, mandatory ESG reporting is required. In North America, the approach is to mandate the disclosure of material information in regulatory filings, leaving the determination of materiality to the judgment of the reporting issuer. In February 2010, the Securities and Exchange Commission (SEC) in the U.S. issued an interpretive release about climate change (an ESG issue) disclosures in MD&As.

Best practice guidance on useful disclosures is being developed by accounting institutions. The International Accounting Standards Board (IASB) is currently in the process of developing guidance on Management Commentary.[24] The proposed content elements are broadly stated but would encompass ESG disclosures material to the business. In 2008 the CICA issued guidance on MD&A disclosures about climate change[25] and in 2009 a Directors Briefing on climate change[26] — a major ESG issue.

24 See http://www.iasb.org/Current+Projects/IASB+Projects/Management+Commentary/Management+Commentary.htm

25 See http://www.cica.ca/research-and-guidance/mda-and-business-reporting/mda-publications/item12846.pdf

26 See http://www.rogb.ca/abstracts-directors-series/item28951.pdf

3.2 Current State of Play

3.2.1 Existing Regulations

Canadian Securities Administrators' (CSA) regulatory disclosure requirements include six filings that call for ESG information of various types. These filings are:

1. Financial Statements (NI 51-102)
2. Management's Discussion & Analysis (MD&A) (Form 51-102 F1)
3. Annual Information Form[27] (AIF) (Form 51-102 F2)
4. Information Circular (Form 51-102 F5)
5. Executive Compensation (Form 51-102 F6)
6. Disclosure of Corporate Governance Practices (Forms 58-101 F1 and F2)

Each filing represents a source of information that may be relevant to investors who wish to use ESG factors in their decision making.

The annual financial statements are subject to independent audit, while the other disclosures are not.

Further, the annual financial statements, MD&A and AIF are subject to chief executive officer (CEO) and chief financial officer (CFO) certification. CEOs and CFOs of reporting issuers are required to certify that their financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of issuers.[28] In the view of OSC staff, meaningful discussion of material environmental matters, where applicable, in MD&As and AIFs is necessary to achieve fair presentation of financial condition in all material respects.[29]

1. **Financial Statements**

   For financial years beginning on or after January 1, 2011 financial statements of reporting issuers must be prepared and presented in accordance with international financial reporting standards (IFRS).[30] Until then, Canadian generally accepted accounting principles apply. Financial statements (including notes) may, where material, provide disclosures about:

   - environmental costs and liabilities—contingencies and commitments (e.g. contractual obligations);
   - asset retirement obligations, including site remediation and restoration costs;
   - pension plan expenses, assets and obligations;

27 Venture issuers are not required to file AIFs.

28 NI 52-109, Certification of Disclosure in Issuers' Annual and Interim Filings

29 OSC Staff Notice 51-716

30 There may be differences when reporting under IFRS versus Canadian GAAP. For example, under IFRS, the recognition threshold for environmental liabilities is lower than under Canadian GAAP. Measurement of environmental liabilities may be higher under IFRS and more disclosures will be required.

- employee benefit expenses;
- stock-based compensation arrangements;
- taxation, such as corporate income tax expenses and liabilities; and
- assets, liabilities, expenses and revenues related to transactions arising from emissions trading or climate change related laws, regulations and commitments

2. **MD&As (Form 51-102 F1)**

The purpose of the MD&A is stated by the CSA as follows:

> "Your MD&A should
>
> - help current and prospective investors understand what the financial statements show and do not show;
>
> - discuss material information that may not be fully reflected in the financial statements...;
>
> - discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future; and
>
> - provide information about the quality, and potential variability, of your company's earnings and cash flow, to assist investors in determining if past performance is indicative of future performance."[31]

Much ESG information sought by investors is not provided in financial statements, so the MD&A is one of the regulatory filings in which such disclosures could be made.

Further, the MD&A Form F1 requires management to disclose and discuss in the MD&A:

> "commitments, events, risks or uncertainties that you reasonably believe will materially affect your company's future performance..."[32] and
>
> "known trends, demands, commitments, events, or uncertainties that are reasonably likely to have an effect on your company's business."[33]

To the extent that such matters relate to environmental issues, climate change or employee or other social issues, and are material to investors, MD&A disclosure is required. While Canadian issuers, other than SEC registrants, are not bound by the SEC's interpretive release in February 2010, the release underscores the need to disclose in MD&As material information regarding climate change issues.[34]

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31 National Instrument 51-102F1, Part 1(a).

32 National Instrument 51-102F1, Part 2, Item 1.4(g).

33 National Instrument 51-102F1, Part 2, Item 1.2.

34 SEC Commission Guidance Regarding Disclosure Related to Climate Change. February 2010.

MD&As of non-venture issuers are also expected to provide an analysis of critical accounting estimates (e.g. those related to estimation of environmental liabilities). This should include the assumptions underlying such estimates and any known trends, commitments, events or uncertainties that management reasonably believes will materially affect the methodology or the assumptions described.

3. **AIFs (Form 51-102 F2)**

The AIF is:

> "a disclosure document intended to provide material information about your company and its business at a point in time in the context of its historical and possible future development. Your AIF describes your company, its operations and prospects, risks and other external factors that impact your company specifically."[35]

Specific AIF disclosures called for include:

- the financial and operational effects of environmental protection requirements on the capital expenditures, earnings and competitive position of the company in the current financial year and the expected effect in future years;
- the number of employees as at the most recent financial year-end or the average number of employees over the year, whichever is more meaningful to understand the business;
- description of any social or environmental policies the company has that are fundamental to its operations and the steps taken to implement them, such as policies regarding the company's relationship with the environment or with the communities in which it does business, or human rights policies;
- risk factors, including environmental & health risks, regulatory constraints, economic or political conditions;
- description of any aspect of the company's business that management reasonably expects to be affected in the current financial year by renegotiation of contracts or sub-contracts, and the likely effect;
- for companies with mineral projects, disclose (among many other things) all environmental liabilities to which projects are subject, and the location of all known mineralized zones, mineral resources, mineral reserves and mine workings, existing tailing ponds, waste deposits and important natural features and improvements; and
- description of any penalties or sanctions imposed by a court or regulatory body against the company that would likely be considered important to a reasonable investor in making an investment decision.

Some of the above disclosures explicitly refer to environmental and social matters; others might be applicable where they relate to environmental or social issues or factors that affect or are likely to affect the company's business and financial results or prospects.

35 National Instrument 51-102F2, Part 1 (a)

4. **Information Circulars (Form 51-102 F5)**

   Information circulars must provide prescribed disclosures about, among other topics, directors, executive compensation and corporate governance practices (per Forms 58-101F1 and F2, Disclosure of Corporate Governance Practices, see below). The disclosures about executive compensation in most cases consist of the inclusion of Form 51-102F6, Statement of Executive Compensation (see below). Where companies do not issue an Information Circular, the disclosures about directors, executive compensation and corporate governance practices are to be included in the AIF, including all the compensation disclosures called for in Form 51-102F6 (see below).

5. **Statement of Executive Compensation (Form 51-102 F6)**

   The Statement of Executive Compensation calls for detailed quantitative and narrative disclosures about the direct and indirect compensation of the directors and Named Executive Officers ("NEO"s): the CEO, CFO and the three most highly compensated executives each of whose total compensation exceeded $150,000.

6. **Disclosure of Corporate Governance Practices (Forms 58-101 F1 & F2)**

   Disclosure of corporate governance practices may be located in information circulars, AIFs or MD&As.[36]

   The types of corporate governance disclosure called for relate to the composition of the board of directors, including their independence and membership on other boards, the board mandate and position descriptions, orientation and continuing education, codes of ethical business conduct, process for nomination of directors, process for determining directors' and officers' compensation, board committees and assessments.

   The disclosures for venture issuers are similar to but less detailed and extensive than those for non-venture issuers.

3.2.2 Compliance with Regulatory Requirements

Periodically, the Canadian Securities Administrators conduct reviews of compliance with their continuous disclosure requirements.

Environmental Disclosures

In February 2008, OSC staff reported on its review of environmental disclosures provided in financial statements, MD&As and AIFs (where applicable) by 35 reporting issuers (22 TSX-listed issuers, 13 venture issuers).[37] In general, OSC staff found that improvements needed to be made in environmental disclosures.

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36 Information circulars that accompany proxy solicitations about election of directors must contain disclosures about corporate governance practices. Otherwise, these disclosures must be provided in the AIF or, where no AIF is prepared, in the annual MD&A.

37 OSC Staff Notice 51-716

The staff notice highlighted the issue of materiality ("information is likely material if a reasonable investor's decision whether or not to buy, sell or hold securities of the issuer would likely be influenced or changed if the information was omitted or misstated")[38] and noted that issuers should consider both quantitative and qualitative factors in determining materiality.

The staff notice focused on issues related to:

- environmental liabilities and related critical accounting estimates;
- MD&A and AIF disclosures about contingent environmental liabilities, whether or not disclosed in financial statements;
- asset retirement obligations, including site remediation costs and liabilities;
- financial and operational effects of environmental protection requirements;
- environmental policies fundamental to operations;
- environmental risks; and
- the consistency of information on websites.

Regarding CEO/CFO certifications, staff stated that they were of the view that meaningful discussion of material environmental matters, where applicable, in an issuer's MD&A and AIF is important to achieve fair presentation of the issuer's financial condition in all material respects.

In addition, staff noted that under Multilateral Instrument 52-110 *Audit Committees*, an audit committee is required to review an issuer's financial statements and MD&A before the issuer publicly discloses this information.

An October 2009 submission to the OSC by the Climate Change Lawyers Network, Ceres, British Columbia Investment Management Corporation and Climate Action Network Canada found that, based on a review of 2008 filings by 35 large companies in seven sectors, climate change related disclosure was poor.

Corporate Governance Disclosures

In 2007, CSA staff reported[39] on its review of disclosures made on corporate governance practices.[40] It reviewed disclosures by a sample of 100 reporting issuers (65 TSX, 35 venture issuers). The review assessed compliance with eight required disclosure categories for TSX listed issuers. Numerous deficiencies were found in the quality of disclosures made.[41]

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38 OSC Staff Notice 51-716.

39 CSA Staff Notice 58-303

40 Form 58-101 Disclosure of Corporate Governance Practices

41 27 TSX issuers and three venture issuers were required to address deficiencies in their next filings. Eight venture issuers did not provide any corporate governance disclosure and were required either (in 2 cases) to refile their management information circulars or (in 6 cases) to include the required disclosures in imminent filings.

Social Disclosures

To date CSA staff has done no targeted CSA continuous disclosure review reports on compliance regarding disclosures about social issues in financial statements, MD&As or AIFs. However, they have offered comments about disclosures regarding social issues upon occasion; for example, they have commented on the need for enhanced MD&A disclosure of pension information.[42]

ESG Disclosure Compliance in US

In June 2009, Ceres and the Environmental Defense Fund published a joint report on their analysis of climate risk disclosures in the 2007 fiscal year SEC filings of 100 companies in five sectors. The report concluded that:

> "investors are not getting the climate information they need in SEC filings, even from industries facing clear, immediate risks from climate change".[43]

In addition, the report found that the SEC was not properly overseeing climate disclosure practices in relation to its own disclosure requirements.

In 2009 also, Ceres, the Environmental Defense Fund, and the Centre for Energy and Environmental Security reported on an analysis of climate change disclosures of nearly 6,400 10-K filings by S&P 500 companies spanning 1995 through to 2009. It concluded that there was "*an alarming pattern of non-disclosure by corporations regarding climate risks*".[44]

In 2007, the Attorney General of New York State issued subpoenas to a number of energy companies, expressing concern that these companies had not disclosed to their shareholders, including the New York State Common Retirement Fund, the financial risks relating to greenhouse gas emissions. Since then some of the companies have voluntarily agreed to settle with the Attorney General. A key element of each settlement was that the company agreed to henceforth include within its Form 10-K securities filings key disclosures about risks, governance and strategic analysis related to climate change.

A February 2010 report by Ceres noted that:

> "…for companies operating in sectors and regions of the world facing significant water risk, disclosure of risk and corporate water performance was surprisingly weak."[45]

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42 CSA Staff Notice 51-329 July 2009

43 CERES and Environmental Defense Fund, *Climate Risk Disclosure in SEC Filings*, page v.

44 CERES, the Environmental Defense Fund, and the Centre for Energy and Environmental Security, *Reclaiming Transparency in a Changing Climate: Trends in Climate Risk Disclosure by by the S&P 500 from 1995 to the Present*, page 1.

45 CERES. *Murky Waters? Corporate Reporting on Water Risk A Benchmarking Study of 100 Companies*. February 2010. page 30.

The study found that many disclosures were provided in voluntary reports, not regulatory 10-K filings. Disclosures that were provided in 10-K filings tended to be boilerplate, lacking quantification and monetization of the issues.

As JPMorgan stated:

> "Corporate disclosure of water-related risks is seriously inadequate and is typically included in environmental statements prepared for public relations purposes rather than in the regulatory filings on which most investors rely."[46]

In response to the perceived lack of compliance with existing SEC disclosure regulations, the SEC in 2010 released, as previously noted, guidance regarding disclosure related to climate change, an important ESG issue. The SEC guidance calls for MD&A disclosure in four areas: impact of existing and pending climate change legislation and regulation, international accords; indirect consequences of regulation or business trends, and physical impacts of climate change. Importantly, the SEC has stated that unless the legislation or regulation is not reasonably likely to be enacted, management must determine whether, if enacted, it would be reasonably likely to have a material effect on the company, its financial condition or results of operation. If in doubt, the trend may become to err on the side of disclosure.

3.2.3 Stock Exchange Requirements

In addition to securities regulators' disclosure requirements, several countries have stock exchange listing requirements related to the provision of ESG disclosures. Some examples are presented below.

The NYSE Euronext, a combination of NYSE Group, Inc. and Euronext N.V. launched April 2007, is the world's largest and most liquid exchange group. Its listing requirements mandate the disclosure of governance practices including the availability of a listed company's required code of business conduct.

While environmental and social disclosures are not explicitly called for in the listing requirements, the importance of these issues has been acknowledged by NYSE Euronext:

> "Environmental, social and governance (ESG) issues have now become very important factors affecting a company's overall performance and risk profile," said Joseph Mecane, EVP and Chief Administrative Officer, U.S. Markets, NYSE Euronext."[47]

46 Marc Levinson et al. *Watching water: A guide to evaluating corporate risks in a thirsty world.* JPMorgan Global Equity Research. March 31, 2008.

47 NYSE Euronext News Release May 19, 2009.

Furthermore, in May 2009, NYSE Euronext and ASSET4 launched an initiative to provide tools to help NYSE-listed companies benchmark their "extra-financial policies and practices". Extra-financial includes ESG issues.

As presented below, both the Johannesburg and Australian Stock Exchanges require disclosure of the extent of compliance with principles set out in corporate governance codes. To the extent that principles are not followed, the reasons for not following them must be disclosed.

The Johannesburg Stock Exchange (JSE) requires that all listed companies provide a narrative statement in their annual reports of how they have applied the principles set out in the King Code, the extent of the company's compliance with the King Code and the reasons for non-compliance with any of the principles in the Code. The King Code[48] calls for disclosures of a wide range of environmental, social and governance issues.

The Australian Stock Exchange (ASX) requires a listed entity to disclose the extent to which it has followed the Recommendations set by the ASX Corporate Governance Council. If a Recommendation has not been followed, the reasons for not following it must be disclosed.[49]

Principle 2 of the ASX Corporate Governance Principles and Recommendations addresses the issue of structuring the board to add value. Principle 3 calls for the promotion of ethical and responsible decision-making. Principle 8 calls for fair and responsible remuneration and Principle 7 addresses the issue of risk recognition and management. In determining material business risks the commentary notes that:

> "…these risks may include but are not limited to: operational, environmental, sustainability, compliance, strategic, ethical conduct, reputation or brand, technological, product or service quality, human capital, financial reporting and market-related risks."[50]

48 It may be noted that King III becomes effective March 1, 2010. Both King II and King III call for substantial ESG disclosures.

49 ASX Listing Rules. Section 4.10.3.

50 Corporate Governance Principles and Recommendations 2nd Edition ASX Corporate Governance Council 2007. Page 32.

4. Options for Enhancing the Provision and Use of ESG Disclosures

Section 2 documents that interviewees want ESG information but they are either not obtaining all of the information they seek or find that it is not always of the quality required for their purposes. Appendix 1 provides information about market forces and trends that generally reinforce the views of interviewees.

Section 3 points out that existing CSA continuous disclosure instruments provide both general and specific requirements for disclosures of material ESG information. Section 3 provides evidence, however, of a need for improvement in compliance with and enforcement of the regulations, at least in so far as environmental and governance disclosures are concerned.

Following are some options for closing the ESG disclosure gap between what investors want and what they get and for the use of ESG information in investor decision-making.

4.1 Voluntary Market Actions

Institutional Investors

While some institutional investors are already doing the following, the opportunity exists for more of them to:

- include within requests for proposals for investment managers, consultants and advisors a requirement that they report on how they are assessing the risks and opportunities associated with ESG issues. Thereafter, on a regular basis, they could assess actual performance on integrating ESG issues into investment decision-making;
- disclose the extent to which, if at all, they take ESG factors into consideration in their investment decision-making;
- develop compensation plans that appropriately reward investment research service providers for obtaining and analyzing sound ESG data;
- develop compensation plans that reward investment managers, consultants and advisors based on performance over a multi-year rolling period;[51] and
- support initiatives that investigate the usefulness of integrating ESG issues into mainstream financial reporting.

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51 For example, Canada Pension Plan Investment Board's compensation system measures performance against market based benchmarks over rolling four-year periods—see http://www.cppib.ca/files/PDF/CPPIB_Mgt_Compensation_Backgrounder_English__.pdf

Research

Professional, industry, academic, governmental and other organizations and associations could:

- sponsor or encourage research into the definition and implementation of key ESG performance metrics by industry to enable the disclosure of consistent and comparable relevant information;
- sponsor or otherwise encourage research into analyst methodologies and models for valuing companies and how these models might practically factor ESG issues into broker research and assessments;[52]
- sponsor or encourage research into the needs and availability of supportive data collection, recording, monitoring and reporting systems, processes and controls;[53]
- investigate further the linkage between superior ESG performance and superior longer term financial performance—such research might drive demand for and supply of better ESG disclosure; and
- research instances where there is a difference between what companies have disclosed as a liability for an ESG issue (e.g. site remediation) in financial statements and the eventual full amount of the liability.[54]

Education

Professional and educational institutions could consider the advisability of enhancing the integration of ESG issues into the education requirements and programs for MBAs, CFAs, CAs, other accountants, lawyers, directors, pension fund trustees, etc. and, as necessary, making changes to such requirements and programs.[55]

Stock Exchanges

The opportunity exists for the TMX Group to:

- host market openings to heighten awareness of ESG capital market initiatives;
- develop and deliver educational products and/or workshops on ESG and investor decision making; and
- establish an ESG focused investment index.[56]

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52 Canadian Institute of Chartered Accountants, *Financial Reporting Disclosures about Social, Environmental and Ethical (SEE) Issues: Background Paper for the Capital Markets and Sustainability Program of the National Round Table on the Environment and the Economy*. 2004, page 27.

53 Canadian Institute of Chartered Accountants, *Financial Reporting Disclosures about Social, Environmental and Ethical (SEE) Issues: Background Paper for the Capital Markets and Sustainability Program of the National Round Table on the Environment and the Economy*. 2004, page 27.

54 e.g. Robert Repetto. *Silence is Golden, Leaden, and Copper: Disclosure of Material Environmental Information in the Hard Rock Mining Industry*. 2004

55 Innovest, Finance and the Environment in North America: The state of play on the integration of environmental issues into financial research, 2005, page 77. National Round Table on the Environment and the Economy, *Capital Markets and Sustainability: Investing in a Sustainable Future*, 2007, page 10.

56 For example, FTSE in the UK has created an ESG focused investment index (FTSE4Good Index).

The Canadian Institute of Chartered Accountants

In addition, there are opportunities for the Canadian Institute of Chartered Accountants to extend its existing work in the ESG area[57] by:

- publishing another guidance document in its Building a Better MD&A series, this time on ESG disclosures;
- publishing a Directors' Briefing about ESG risks and opportunities and related disclosures; and
- developing and maintaining a web site of best practice disclosure of ESG issues, organized in a manner similar to the CICA publication *Financial Reporting in Canada*.

4.2 Regulatory Actions

Stronger Enforcement

The CSA could:

- perform more frequent targeted reviews focused on ESG disclosures;
- ensure that ESG issues are included within regular continuous disclosure reviews of issuers' filings; and
- use available enforcement mechanisms.

Interpretive Guidance

The CSA could:

- provide interpretive guidance about the application of existing disclosure requirements to ESG issues;[58,59]
- provide guidance on materiality and, in particular, on the time frame involved in deciding what ESG disclosures would be material; and
- refer reporting issuers to guidance documents and/or best practice websites provided by other competent bodies, e.g. the CICA.

New Disclosure Requirements

While some interviewees felt strongly that improved disclosure requirements were needed, others preferred to see companies voluntarily improve their ESG disclosures, without the imposition of more regulations. Even these, however, recognized that companies may not improve their ESG reporting without regulatory requirements.

> "Regulation is a blunt instrument and should be used as a last resort; however, sometimes it is required—e.g. reasonable governance reform around allowing shareholders to have a vote on individual directors is 'like pulling teeth' so regulatory rules may be the only way to achieve change."

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57 For example, the CICA has been a leader in producing guidance on climate change disclosures and is a participant in the Prince of Wales' Accounting For Sustainability project.

58 An example of this would be the SEC Interpretation issued February 2010.

59 Staff Notice 51-717 December 2009 communicated the OSC's intention to issue a guidance document dealing with environmental issues.

The CSA could therefore:

- amend (modify or add to) the text of existing continuous disclosure instruments and related instructions to more specifically address ESG issues; and
- consider the structure and inter-relatedness of the various regulatory filings to develop an enhanced standardized reporting framework for both quantitative and qualitative environmental, social and governance information.[60] For example, some environmental, social and risk disclosures called for within the AIF (required only for non-venture issuers) might be more appropriately located within the MD&A.

Stock Exchange Listing Requirements

The TMX could:

- establish principles or guidelines calling for disclosures of material environment and social issues and any governance issues beyond those specified by the CSA.[61]

4.3 Conclusion

Some of the options set out above address the demand for and use of ESG information in investor decision making, others address the supply of such information.

To the extent that institutional investors want ESG information, there are various ways in which they can influence the supply and usefulness of such information.

Regulators have a responsibility to ensure that material information needed by capital markets is provided in regulatory filings. Enhancement of ESG disclosures may entail a combination of better enforcement, interpretive guidance and/or changes to regulations.

Other organizations, such as industry associations, academic institutions, professional bodies and non-governmental groups, could assist capital markets by conducting necessary research, developing key performance indicators by industry, and working to develop a more integrated reporting framework that would deliver comparable, consistent and reliable information for investor decision making.

This Discussion Brief encourages all capital market participants to assess the merits of enhancing the supply and use of ESG disclosures for investor decision making and to provide their comments on the usefulness of the suggested options.

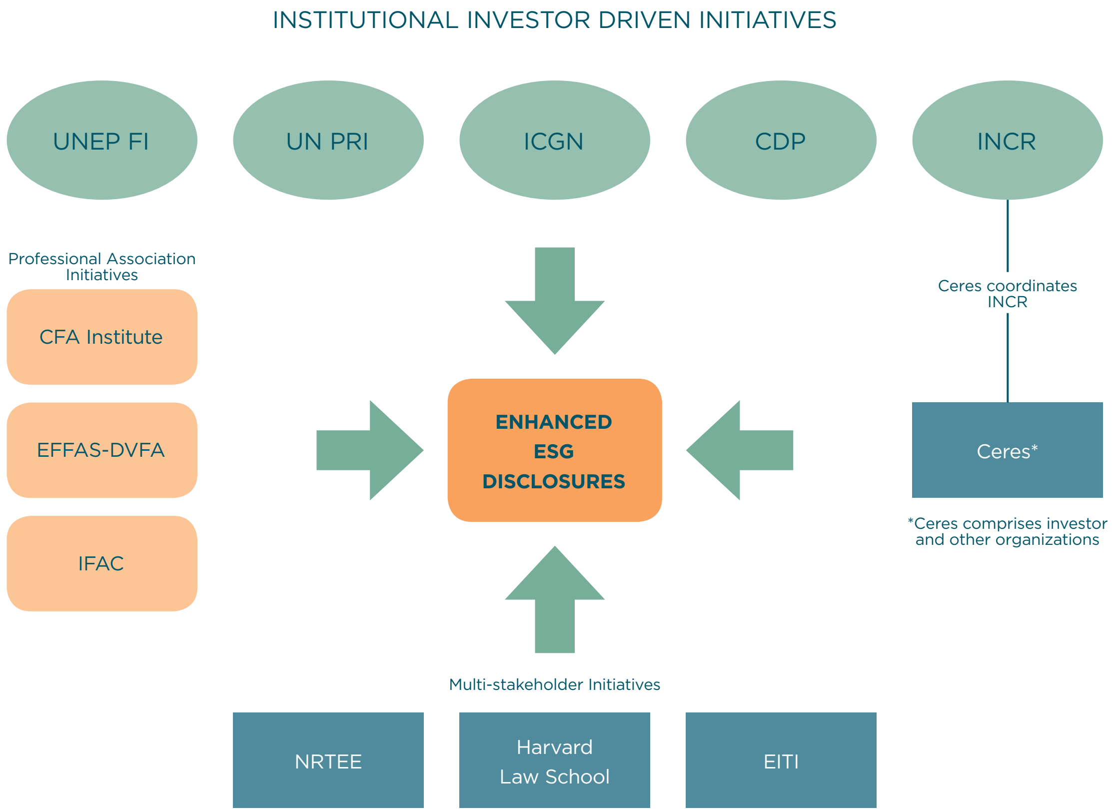
60 Laurel Broten Ontario Legislature private member's resolution April 2009

61 NI 58-101.*Disclosure of Corporate Governance Practices*

Appendix 1: Drivers for Improved ESG Disclosures

A number of organizations and initiatives are advocating and seeking improvement in ESG disclosures. The diagram below shows some of the leading organizations involved, followed by a brief summary of the contributions of each of these organizations.

Examples of Market Forces & Initiatives Driving Enhancement of ESG Disclosures



United Nations Environment Programme Finance Initiative (UNEP FI)

In 2009, the Asset Management Working Group (AMWG) of the United Nations Environment Programme's Finance Initiative (UNEP FI) issued a report entitled *Fiduciary Responsibility Legal and Practical Aspects of Integrating Environmental, Social and Governance Issues into Institutional Investment*. It was a follow up to its 2005 "Freshfields Report"[62] and, for ease of reference, is known as "Fiduciary II". The 2005 "Freshfields Report" concluded that a failure to take ESG issues into consideration in investment decision-making might be a breach of fiduciary duty:

62 UNEP FI AMWG *A legal framework for the integration of environmental, social and governance issues into institutional investment* October 2005

> "...integrating ESG considerations into an investment analysis so as to more reliably predict financial performance is clearly permissible and is arguably required in all jurisdictions."[63]

Fiduciary II offers recommendations intended to help institutional investors move more quickly along the path of integrating ESG issues into investment decision-making.

In March, 2010 UNEP FI, together with the World Business Council for Sustainable Development, published a document *Translating ESG into Sustainable Business Value*.[64] It provided takeaways and key insights for both companies and investors. In addition, it offered sample ESG considerations by sustainability theme and industry sector.

United Nations Principles for Responsible Investment (UN PRI)

In 2005, the United Nations invited a group of the world's largest institutional investors to join a process to develop principles for responsible investment. The six resulting principles, named the Principles for Responsible Investment (PRI), all focused on the provision and use of ESG information, are:

1. **"We will incorporate ESG issues into investment analysis and decision-making processes.**

   Possible actions:

   - Address ESG issues in investment policy statements
   - Support development of ESG-related tools, metrics, and analyses
   - Assess the capabilities of internal investment managers to incorporate ESG issues
   - Assess the capabilities of external investment managers to incorporate ESG issues
   - Ask investment service providers (such as financial analysts, consultants, brokers, research firms, or rating companies) to integrate ESG factors into evolving research and analysis
   - Encourage academic and other research on this theme
   - Advocate ESG training for investment professionals

2. **We will be active owners and incorporate ESG issues into our ownership policies and practices.**

   Possible actions:

   - Develop and disclose an active ownership policy consistent with the Principles
   - Exercise voting rights or monitor compliance with voting policy (if outsourced)
   - Develop an engagement capability (either directly or through outsourcing)

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63 UNEP FI AMWG *Fiduciary Responsibility Legal and Practical Aspects of Integrating Environmental, Social and Governance Issues into Institutional Investment*, July 2009. page 13

64 UNEP FI and World Business Council for Sustainable Development. *Translating ESG into Sustainable Business Value*. March 2010.

- Participate in the development of policy, regulation, and standard setting (such as promoting and protecting shareholder rights)
- File shareholder resolutions consistent with long-term ESG considerations
- Engage with companies on ESG issues
- Participate in collaborative engagement initiatives
- Ask investment managers to undertake and report on ESG-related engagement

3. **We will seek appropriate disclosure on ESG issues by the entities in which we invest.**

   Possible actions:

   - Ask for standardised reporting on ESG issues (using tools such as the Global Reporting Initiative)
   - Ask for ESG issues to be integrated within annual financial reports
   - Ask for information from companies regarding adoption of/adherence to relevant norms, standards, codes of conduct or international initiatives (such as the UN Global Compact)
   - Support shareholder initiatives and resolutions promoting ESG disclosure

4. **We will promote acceptance and implementation of the Principles within the investment industry.**

   Possible actions:

   - Include Principles-related requirements in requests for proposals (RFPs)
   - Align investment mandates, monitoring procedures, performance indicators and incentive structures accordingly (for example, ensure investment management processes reflect long-term time horizons when appropriate)
   - Communicate ESG expectations to investment service providers
   - Revisit relationships with service providers that fail to meet ESG expectations
   - Support the development of tools for benchmarking ESG integration
   - Support regulatory or policy developments that enable implementation of the Principles

5. **We will work together to enhance our effectiveness in implementing the Principles.**

   Possible actions:

   - Support/participate in networks and information platforms to share tools, pool resources, and make use of investor reporting as a source of learning
   - Collectively address relevant emerging issues
   - Develop or support appropriate collaborative initiatives

6. **We will each report on our activities and progress towards implementing the Principles.**

   Possible actions:

   - Disclose how ESG issues are integrated within investment practices
   - Disclose active ownership activities (voting, engagement, and/or policy dialogue)

- Disclose what is required from service providers in relation to the Principles
- Communicate with beneficiaries about ESG issues and the Principles
- Report on progress and/or achievements relating to the Principles using a 'Comply or Explain' approach
- Seek to determine the impact of the Principles
- Make use of reporting to raise awareness among a broader group of stakeholders"[65]

As of March 2010, there were over 700 signatories to the UNPRI, including 29 from Canada.[66] Some of the Canadian signatories are BC Investment Management Corporation, Canada Pension Plan Investment Board, Public Service Alliance of Canada (PSAC) Pension Fund, Caisse de dépôt et placement du Québec, TD Asset Management Inc. and Vancity Investment Management.

Annually, signatories must reply to a survey reporting on their activities and progress towards implementing the principles.[67]

In March 2010, the UNPRI, which represented institutional investor assets of $20 trillion at the time, announced its intention to launch a public policy network to lobby regulators and policy makers on ESG investment and disclosure issues.

International Corporate Governance Network (ICGN)

The ICGN is a global organization of institutional and private investors, corporations and advisors from 45 countries, Canada included, with a goal of improving standards of corporate governance. As of February 2010, investor members were responsible for global assets of $10 trillion.

In 2008, ICGN issued a statement and guidance on non-financial business reporting, which encompasses ESG issues.[68] The ICGN considers it an obligation of institutional investors, in discharging their fiduciary duties, to seek and take account of both finan-

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65 http://www.unpri.org/principles/

66 Asset Owners: British Columbia Municipal Pension Plan, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, Comité syndical national de retraite Bâtirente, Public Service Alliance of Canada (PSAC) Pension Fund, Régime de Retraite de l'Université de Montréal, Régime de retraite de l'Université du Québec, Société d'assurance-vie inc. (SSQ);

Investment Managers : AlphaFixe Capital Inc., BC Investment Management Corporation, Bentall LP, Blue Marble Capital Management Limited, Cordiant, Fiera Capital Inc, Growthworks Capital, Inhance Investment Management Inc, Meritas Financial Inc, Natcan Investment Management, Northwest & Ethical Investments LP, Presima, TD Asset Management Inc., Vancity Investment Management;

Professional Service Partners: Caisse d`économie solidaire Desjardins, Corporate Knights Research Group, Groupe Investissement Responsible, Les Actuaires-Conseils Bergeron & Associés inc., RRSE, Shareholder Association for Research and Education—SHARE, Strategic Sustainable Investments.

67 Failure to comply with this requirement results in delisting from the initiative.

68 See footnote 2 of this Discussion Paper.

cial and non-financial disclosures. The ICGN statement sets out disclosure criteria to assist companies in meeting the expectations of investors both as to the content and quality of disclosures.

Carbon Disclosure Project (CDP)

Since 2003, CDP, an independent not-for-profit organization, has surveyed annually the world's largest corporations requesting information on greenhouse gas emissions, the potential risks and opportunities related to climate change and strategies for managing those risks and opportunities. In 2009, CDP was backed by 475 institutional investors representing more than US$55 trillion of funds under management. Reports on the results of the surveys are published each year.[69]

In 2009, Mercer prepared a report written for the CDP, on the investor use of CDP data. It found, among other things, that:

- "CDP data is the source of climate change information most used by respondents, closely followed by other information supplied by companies (including CSR reports).
- Corporate engagement emerged as the leading area in which investors are using CDP data—both as a stand alone resource and 'to back up information from other sources'."[70]

In 2010, CDP extended its disclosure program by surveying companies on water management. CDP sees a strong link between climate change and water and recognizes that investors need disclosures about how companies are managing water-related issues.

Investor Network on Climate Risk (INCR)

INCR was launched in 2003 to promote better understanding of the business risks and opportunities of climate change among institutional investors. By 2010, its membership stood at over 80 investors managing over $8 trillion of assets.

In September 2007, members of INCR petitioned the Securities and Exchange Commission (SEC) for guidance on mandatory climate risk disclosure in regulatory filings. In June 2009, 41 INCR members wrote the SEC asking it to improve disclosure of material climate-related and other ESG risks in securities filings by:

- issuing interpretive guidance;
- recognizing shareholder rights to submit resolutions related to material climate change and other ESG issues; and
- enforcing existing disclosure requirements.

69 See https://www.cdproject.net/en-US/Pages/HomePage.aspx

70 Mercer, Investor Research Project—Investor use of CDP Data Carbon Disclosure Project. Page 2

In 2008, INCR developed an action plan that included a requirement that investment managers, consultants and advisors report on how they are assessing climate risks and opportunities.

In October 2009, the SEC issued a Staff Legal Brief addressing shareholders' right to submit resolutions related to material climate change and other ESG issues. In February 2010 it issued interpretive guidance on disclosures related to climate change.

INCR filed record-breaking numbers of ESG-related shareholder resolutions seeking both disclosure and corporate action, with many resolutions withdrawn after successful negotiations with the companies.[71]

INCR has also prepared reports and guidance to assist investors in better evaluating companies on climate change and other ESG issues. For example, it published a scoring of 100 leading global companies on their governance practices and responses to climate change risks and opportunities.[72]

In January 2010, INCR published a report *Investors Analyze Climate Risks and Opportunities: A Survey of Asset Managers' Practices*. It reported on results of a survey conducted in early 2009 of the world's 500 largest asset managers. 84 asset managers managing $8.6 trillion in assets completed the questionnaire. Almost 75% of these respondents reported that they do not expressly consider climate risks in their overall due diligence. 44% reported that they did not consider climate change financially material to investment decision-making. According to Mindy S. Lubber, president of Ceres and director of the Investor Network on Climate Risk:

> "Despite the growing recognition of the far-reaching impacts climate change will have on the global economy, only a handful of asset managers are integrating climate risks and opportunities throughout their investment practices. These findings make clear that the investment community is overly focused on short-term performance and ignoring longer-term business trends such as climate-related risks and opportunities. The recent subprime mortgage meltdown is a painful reminder of the fallout for investors who ignored 'hidden' long-term risks."[73]

The media release accompanying the report stated:

> "A key problem identified in the report is that asset owners, such as pension funds and other institutional investors, are either not asking their asset managers to include climate risk and opportunity analysis, or are only beginning to raise the subject. This is hugely important because nearly half of the respondents—nearly 49 percent—said they did not analyze climate risks because their investor clients did not ask them to."[74]

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71 See http://www.ceres.org/Page.aspx?pid=1221

72 *Corporate Governance and Climate Change*

73 Media release January 6, 2010

74 Ibid.

The report offered a number of recommended actions to develop best practices for analysts' due diligence, corporate disclosure, rating agencies and other key market drivers. For example, the report recommended that institutional investors push their asset managers to boost the attention paid to climate-related issues through "requests for proposals (RFPs), other hiring procedures or as part of managers' performance reviews."

Ceres

Ceres, a national coalition of investors, environmental groups and other public interest organizations, coordinates the Investor Network on Climate Risk and works with companies to address sustainability challenges such as water scarcity and climate change.

In March 2010, Ceres released a landmark report, *The 21st Century Corporation: The Ceres Roadmap for Sustainability.*[75] The report proposes expectations and action steps in four key areas: governance, stakeholder engagement, disclosure and performance. The report calls for companies to disclose material sustainability issues in financial filings:

> "A company's financial filings should include discussion of material environmental and social risks, including strategy, performance data and forward looking information as appropriate. Companies should disclose sustainability-related liabilities and costs in financial statements even where contingent or difficult to quantify. A number of groups, including the International Federation of Accountants and the Canadian Institute of Chartered Accountants, are already developing standards to address particular disclosure challenges, such as climate change."[76]

The report notes that financial filings are one of several channels, including annual reports, websites, stand-alone reports and social media, through which such disclosures could be made.

In February 2010, Ceres issued a benchmarking report that highlighted the need for disclosures about water and provided recommendations to companies and investors about water related disclosure.[77] It referred to the SEC's February 2010 Commission Guidance on Disclosure Related to Climate Change:

> "Changes in the availability or quality of water...can have material effects on companies."[78]

75 See http://www.ceres.org/ceresroadmap

76 Ceres. *The 21st Century Corporation: The Ceres Roadmap for Sustainability*. March 2010. Page 36

77 Ceres, Murky Waters? Corporate Reporting on Water Risk A Benchmarking Study of 100 Companies. February 2010.

78 SEC Commission Guidance Regarding Disclosure Related to Climate Change. February 2010. Page 6.

Similarly, in 2009 Ceres issued *Water Scarcity and Climate Change: Growing Risks for Businesses & Investors.* This report too provided recommendations to companies and investors about water related disclosure.

In partnership with the Institutional Investors Group on Climate Change (Europe) and the Investor Group on Climate Change (Australia/New Zealand), Ceres (North America) produced a publication *Global Climate Disclosure Framework for Oil & Gas Companies* in March 2010. The publication noted that investors require improved disclosure to enable a full assessment of the value impacts of climate change on the industry. The document offered a reporting framework for oil and gas companies and was the third sector-based disclosure framework, following ones for the electric utilities industry and the automotive sector.

Extractive Industries Transparency Initiative (EITI)

The EITI, a coalition of governments, companies, civil society groups, investors and international organizations, was launched in 2002 to set a global standard for transparency in the oil, gas and mining industries. EITI requires companies to publish what they pay to governments and governments to publish what they receive.

While investors use ESG information, Foreign Affairs and International Trade Canada has noted that others also seek ESG data particularly in the extractive industry:

> "Investors, insurers, consumers and other market actors are increasingly seeking reliable information on how extractive sector companies are managing their social and environmental impacts."[79]

Harvard Law School—Pensions and Capital Stewardship Project

The Harvard Law School initiated a labour and worklife program within which it established a pensions and capital stewardship project. Following international, multi-stakeholder consultation, this project produced among other papers *Quantifying Labor and Human Rights Portfolio Risk*.[80] The paper investigated how pension funds and other investors might obtain data on the long-term sustainability risks posed by the labour and human rights activities of global corporations, particularly in their supply chains. The paper proposed ways in which current financial reporting could be augmented by statements on labour and human rights practices.

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79 Foreign Affairs and International Trade Canada. *Building the Canadian Advantage: A Corporate Social Responsibility(CSR) Strategy for the Canadian International Extractive Sector.* March 2009. Page 6.

80 Aaron Bernstein, *Quantifying Labor and Human Rights Portfolio Risk* June 2009 Pensions and Capital Stewardship Project Labor and Worklife Program Harvard Law School

National Round Table on the Environment and the Economy (NRTEE)

In 2007, NRTEE published *Capital Markets and Sustainability—Investing in a Sustainable Future.*[81] The report included recommendations to encourage the integration of ESG factors into capital allocation decisions. These recommendations included:

> "**Recommendation 1.2** That all fiduciaries, including institutional investors, money managers, and fund trustees, adopt voluntary practices to disclose (a) ESG considerations and (b) investment policy, and that they be encouraged to sign on to the UN sponsored Principles for Responsible Investment.
>
> **Recommendation 2** That federal, provincial, and territorial governments or regulators enact guidelines or, where appropriate, regulations to clarify that the fiduciary obligation of the trustee includes the consideration of ESG issues that are financially material to investment decisions.
>
> **Recommendation 5.1** That the Canadian Institute of Chartered Accountants (CICA) and the Canadian Securities Administrators, in consultation with the federal and provincial governments, establish an outreach and education program for capital issuers so as to increase understanding of the material ESG issues that should form part of the Management Discussion and Analysis (MD&A) section of annual reports.
>
> **Recommendation 5.2** That institutional investors, money managers, and trustees engage capital issuers (companies) on the potential materiality of ESG issues, adopt a policy regarding ways of addressing ESG factors in the decision-making process, and encourage the refinement and use of standardized ESG reporting.
>
> **Recommendation 5.3** That the Canadian Securities Administrators encourage the disclosure of financially material ESG issues through publication of a guidance or interpretation statement and encourage Canadian firms to be guided by established reporting frameworks such as the Global Reporting Initiative (GRI).
>
> **Recommendation 5.4** That securities regulators support the existing MD&A disclosure requirements as they relate to ESG considerations and, when required, enforce the ESG disclosure requirement.
>
> **Recommendation 7** That institutional investors assess the impact on sustainability of their investment policies and practices, paying particular attention to the quality of the investment research and the alignment of fund manager compensation practices with long-term performance."

81 The Canadian Institute of Chartered Accountants was represented on the NRTEE Task Force that produced the report.

International Federation of Accountants (IFAC)

In 2009, IFAC released its Sustainability Framework.[82] It offers a web-based tool for professional accountants in business to help them grasp the aspects of sustainability that are important to their organizations. The framework offers pragmatic information and guidance from four perspectives: business strategy, internal management, financial investors and other stakeholders.

From the financial investors' perspective, the framework advocates disclosures in financial statements and narrative reporting:

> "Understanding and reporting on the impact of sustainability issues in financial reports and statements is necessary to (a) ensure compliance with financial reporting standards, and (b) provide investors' with material information highlighting sustainability impacts, risks, and opportunities. The pressure for organizations to improve their reporting of sustainability issues in their annual reporting comes from investors and other stakeholders such as NGOs [non-governmental organizations] and, in some jurisdictions, from government. The investors' perspective deals with disclosure and reporting of direct relevance to investors, the primary users of financial reporting. Disclosures to investors in securities filings and annual reports (and financial statements) will typically be under greater board and management oversight."[83]

The European Federation of Financial Analysts Societies (EFFAS) and Society of Investment Professionals in Germany (DVFA)

In May 2010, EFFAS[84] and DVFA issued an exposure draft *KPIs for ESG: A Guideline for the Integration of ESG into Financial Analysis and Corporate Valuation.* It lists KPIs for ten major industrial sectors and within these offers KPIs for 114 subsectors; some of the KPIs apply to all industries, many are sector specific. It also offers basic principles for ESG reporting and recommendations for the presentation of ESG data and, in particular, the use of table formats.

CFA Institute Centre for Financial Market Integrity

In 2008, the CFA Institute[85] issued a manual, *Environmental, Social and Governance Factors at Listed Companies,* to assist investment professionals identify and evaluate the risks and opportunities that ESG issues present. The publication outlined a number of

82 See http://web.ifac.org/sustainability-framework/overview

83 See http://web.ifac.org/sustainability-framework/ip-introduction

84 "The European Federation of Financial Analysts Societies (EFFAS) is a Pan-European grouping of the National Societies of Financial Analysts, bringing together leading experts from all of Europe's Equity and Fixed Income markets." See http://effas.net/index.php?option=com_content&view=article&id=50:effas-organisation&catid=34:effas&Itemid=64

85 The CFA Institute is the global association of investment professionals that awards the CFA and CIPM designations.

ESG issues to consider—see the box on the following page. While this is not an exhaustive list, nor is it organized by industry sector, it indicates a broad range of matters CFA charterholders might increasingly consider in assessing potential financial impact.

The discussion of the organizations and initiatives above highlights drivers for improved ESG disclosures for investor decision making. Research indicates, however, a number of factors that may impede the use of such ESG information. For example:

- not enough asset owners are demanding that their asset managers integrate ESG factors into their investment analysis;[86]
- there is a need for more research analysts who have the expertise and time to identify and use relevant ESG information;[87]
- in some quarters, there remains the belief that consideration of ESG factors is contrary to asset owners' fiduciary responsibilities;[88] and
- asset managers' compensation is often tied to short-term investment performance.[89]
- uncertainty about the application of the definition of materiality, particularly to the extent that the market price test for materiality has been interpreted to mean that information would need to move the stock price within a few days of its disclosure to be deemed material whereas ESG factors may have longer term implications

86 INCR Investor Network on Climate Risk Action Plan 2008. Innovest, *Finance and the Environment in North America: The state of play on the integration of environmental issues into financial research*. 2005, page 72.

87 Innovest, *Finance and the Environment in North America: The state of play on the integration of environmental issues into financial research*. 2005, page 36.

88 Fiduciary II, July 2009. Innovest, *Finance and the Environment in North America: The state of play on the integration of environmental issues into financial research*. 2005, pages 28-29.

89 Innovest, *Finance and the Environment in North America: The state of play on the integration of environmental issues into financial research*. 2005, page 71.

ENVIRONMENTAL
Carbon emissions, greenhouse gas emissions, disclosure/measurement and reporting
Climate change; effect on Company/risk exposure/opportunities
Ecosystem change
Facilities citing environmental risks
Hazardous waste disposal/cleanup
License to operate in communities
Pollution
Renewable energy
Resource depletion
Toxic chemical use and disposal
SOCIAL
Animal welfare
Child labor
Community relations
Discrimination
Diversity (employee/Board diversity)
Facilities, citing social risks
Genetically modified organisms
Living wage disputes
Predatory lending
Political contributions
Political risk of involvement in troubled markets, countries
Sexual harassment
Shareowner advisory vote on executive compensation
Slave labor
GOVERNANCE
Cumulative voting
Dual-class share structure
Executive compensation (pay for performance, pay equity)
Majority voting
Poison pills
Say on pay
Separation of chairman/CEO position
Shareowner rights
Staggered Boards
Takeover defenses/market for control

Appendix 2: Interviewees

Investors

Acuity Funds

British Columbia Investment Management Corporation*

Beutel Goodman Investment Counsel

BMO Investments Inc.

Caisse de depot et placement du Quebec*

Canada Pension Plan Investment Board*

Franklin Templeton Investments

Goldman Sachs

OMERS

Ontario Public Service Employees Union

Ontario Teachers Pension Plan

RBC Asset Management

Scotia Capital

Societe Generale*

TD Asset Management*

*signatories to the UN Principles for Responsible Investment

Others

ASSET4—data provider

Innovest (now RiskMetrics, which is owned by MSCI)—ESG research firm

Appendix 3: Useful Websites

ASSET 4
www.asset4.com/

Carbon Disclosure Project
www.cdproject.net/en-US/Pages/HomePage.aspx

CIBC Wood Gundy
https://www.woodgundy.com/wg/reference-library/topics/investment-solutions/investing/socially-responsible-investing.html

Clarington Inhance
http://www.feelgoodinvesting.com/

ECPI
http://www.ecpindices.com/index.asp?IdSEZ=5

EFFAS
http://www.effas-esg.com/

Eiris
http://www.eiris.org/

Ethical Funds
https://www.ethicalfunds.com/en/Investor/Pages/default.aspx

Goldman Sachs GS Sustain
http://www2.goldmansachs.com/ideas/environment-and-energy/goldman-sachs/gs-sustain/index.html

Governance Metrics International
http://www.gmiratings.com/(jgi0vj55004y51azxmkedk55)/Default.aspx

Heidelberg Institute
http://www.hiik.de/en/index.html

ICGN
http://www.icgn.org/

INCR
http://incr.org

Jantzi Sustainalytics
http://www.jantziresearch.com/

Mercer
http://www.mercer.com/homepage.htm?siteLanguage=100

Pembina Institute
http://www.pembina.org/

RBC Asset Management
http://www.rbcam.com/RBC:SriSJawWAA4AEgA6qiU/news/socially-responsible-investing.html

RiskMetrics
http://www.riskmetrics.com/

Societe Generale
http://www.sgresearch.com/

Sustainable Asset Management (SAM)
http://www.sam-group.com/htmle/main.cfm

TD Asset Management
http://www.csrwire.com/press/press_release/13697-TD-Asset-Management-Enhances-Sustainable-Investment-Research-with-ASSET4-Data

Towers Watson
http://towerswatson.com

Trucost
www.trucost.com/newsweek/

UN PRI
http://www.unpri.org/about/

United Nations Environment Programme Finance Initiative
http://www.unepfi.org/

World Business Council for Sustainable Development
http://www.wbcsd.org/templates/TemplateWBCSD5/layout.asp?MenuID=1

World Federation of Exchanges
http://www.world-exchanges.org/

World Resources Institute
http://www.wri.org/

World Wildlife Fund
http://www.wwf.org/

Chartered Accountants of Canada

The Canadian Institute of Chartered Accountants
277 Wellington Street West
Toronto, Ontario M5V 3H2
www.cica.ca