COMMENT TEMPLATE

INCR LISTING STANDARDS DRAFTING COMMITTEE CONSULTATION PAPER:

Proposed Sustainability Disclosure Listing Standard for Global Stock Exchanges

April 2013

Comments from NEI Investments

We have been in dialogue with the Toronto Stock Exchange (TSX) on ESG topics including listing standards since 2010. We support a global approach to adoption of baseline sustainability standards by stock exchanges.

In upcoming discussions on the Consultation Paper, it would be useful to clarify what aspects of listing standards are being targeted. Requirements exist both for the original listing of a company and for its continued listing. As well as annual disclosure of material information, companies must also fulfill timely disclosure requirements. ESG factors are relevant in all these cases.

2013 is a time of flux in ESG reporting standards: as noted in the Consultation Paper (p6) a variety of initiatives are in progress to define reporting strategies and indicators. We would urge that the listing standard proposal be reviewed through the coming year to take into account developments emerging from these initiatives.

PROPOSED LISTING STANDARD (3 SEGMENTS)

1) MATERIALITY ASSESSMENT (M1): Every company will discuss its process for determining the ESG factors material to its business, as well as the outcome of this materiality assessment, within its annual financial filings. The four key components of the materiality assessment are as follows:

- 1A) Companies will discuss how they determined their material ESG issues
- 1B) Companies will discuss who was involved in that process (including groups of stakeholders consulted, internal teams, and key management and board oversight)
- 1C) Companies will disclose which ESG issues were determined to be material and why, including a discussion of both the risks and opportunities each issue presents as well as its connection to financial performance and business strategy
- 1D) Companies will periodically review the materiality assessment, update as necessary, and report on the frequency of scheduled reviews.

Consultation Questions:

Q1: Are there any strong reasons not to mandate the materiality discussion?

We see value in mandating discussion of company priorities and strategy on key ESG issues. This important context is missing in many company reports. Where companies do outline non-financial risks in financial reporting, the disclosure is often boilerplate quality.

However, we have some concerns if this is described as a "materiality" discussion without further clarification. This could be an obstacle to disclosure of significant and relevant information. As noted in the Consultation Paper, definitions of materiality vary, and company decisions on which issues to report could vary depending on the definition chosen. We also share the concern that a purely risk-based approach to defining materiality may lead to inconsistent disclosure. In our ESG evaluations and engagement practice, we seek data on topics that are not necessarily risks to the company. We also wish to understand the ESG opportunities associated with the company – for example, if it has unusually low exposure to water risk within its sector because it has no operations in water-scarce areas or employs unique operational systems. In our dialogues we have encountered numerous examples of companies that have failed to disclose ESG opportunities and good practices, as well as risks. If an issue is generally considered a material risk in the sector, but because of the special circumstances of the company it is not a risk in this case, it would be helpful to investors and beneficial to the company to explain that in reporting. A further concern is that companies may fail to disclose data consistently from year to year if a topic is not considered a material risk in a particular year. We value annual reporting on a consistent set of indicators as this allows us to perform trend line analysis, as well as to compare companies across sectors.

Given the ambiguity surrounding the word "materiality", it would be helpful to include a definition within the standard. We favour a stakeholder-based theory of the firm, rather than one based on shareholder primacy, and it is clear from the Consultation Paper (p11) that the INCR working group shares this viewpoint. We would support including a definition of materiality that recognizes a wider group of stakeholders than shareholders alone, such as the definition used by Global Reporting Initiative (GRI) or the International Integrated Reporting Council (IIRC). Another option would be to include in the materiality assessment standard a requirement to explain the definition of "materiality" that the company is using.

Q2: Should the materiality assessment explicitly include short-, medium- and long-term, as well as 'indeterminate,' timeframes for reporting risks and opportunities?

This would be desirable, but as a minimum, companies should be advised to take into account a longer time horizon in assessing ESG factors than they might for financial factors.

Q3: Are there additional ways to address the lack of ESG risk reporting in financial filings?

In the Canadian context, some ESG reporting requirements are already associated with listing requirements. For continuing listing, according to the *TSX Company Manual*, companies should follow Canadian Securities Administrators (CSA) National Instrument 51-102 *Continuous Disclosure Obligations*. In 2010, CSA published Staff Notice 51-333 *Environmental Reporting*, which highlighted existing requirements to report on environmental issues. In its *Primer for Environmental and Social Disclosure*, TSX highlights these requirements, noting that they apply equally to material social issues. It also emphasizes the obligation under the timely disclosure policy to immediately disclose material environmental and social information through a news release. The original listing standards for mineral exploration and development stage mining companies include a special requirement for an advanced property report prepared in conformance with National Instrument 43-101 *Standards of Disclosure for*

Mineral Projects. This includes an obligation to "discuss reasonably available information on environmental, permitting, and social or community factors related to the project."

The fact that reporting on ESG issues is not provided consistently despite some existing requirements in this area, suggests that setting requirements is not sufficient: awareness-building and enforcement of requirements are also important considerations. In this context, we are encouraged that TSX now offers workshops for issuers on environmental and social disclosure.

2) GLOBAL REPORTING INITIATIVE (GRI) CONTENT INDEX (M2): Every company will provide a hyperlink in its annual financial filings to a GRI Content Index, which will inform investors about the availability and location of a company's ESG data.

Note: M2 does not mandate or endorse a GRI-based sustainability report, and completion of a GRI Content Index does not require the publication of a GRI-based report. A key impetus for investors engaging with stock exchanges on ESG disclosure was their frustration over the inconsistencies of ESG reporting, and the time-consuming task of locating any company's ESG reporting items spread across numerous reporting vehicles. A GRI Content Index will address this concern by eliciting, for each GRI Key Performance Indicator, whether the disclosures exist from a given company, and where they can be found.

Consultation Questions:

Q4: Is the GRI Content Index the best way to give investors some disclosure consistency without being overly prescriptive for companies? If not, please list other suggestions.

Wider use of the GRI Content Index would indeed be helpful to investors seeking ESG data. There is some risk that this could encourage a "template" approach to reporting, but we feel that this is outweighed by the positive aspects. We believe that the GRI Content Index is the best basis currently available, although we note that a variety of new and updated reporting tools will be released in 2013.

Although GRI is intended to be generally relevant, not every indicator will be relevant in practice for each company. It should therefore be made clear that it is acceptable to respond "Not Reported" for an indicator. A nil response is still of value to the ESG investor, as further time will not be wasted searching for data that does not exist. More importantly, some companies may face specific ESG risks or opportunities that are not covered in the GRI Content Index. Companies should be encouraged to add to the Index in this case.

It should be clarified if companies are required to use the GRI Sector Supplement indicators, where relevant.

The GRI indicators are each associated with a protocol document explaining how to prepare and report the indicator data. It should be clarified if there is a requirement to use the protocols to prepare reporting. If it is not mandatory to follow the protocols, it would be helpful if companies were required to indicate whether or not they have been used to prepare data: this would be helpful in comparing data between companies.

Some industry-based reporting standards exist, such as IPIECA for oil and gas industry. We note that in the case of IPIECA, the standard has been mapped to GRI, so using the GRI Content Index should not be unduly challenging.

Q5: Would it be preferable to include the GRI Content Index itself in financial filings, rather than a hyperlink to it?

Providing a link to the GRI Content Index (or providing the Index itself) within a financial filing implies that the Index must be ready before the financial filing is published. This might create practical difficulties for some companies. From our perspective it would be sufficient for the Index to be filed alongside the financial filings, within a reasonably short time period after those filings. In further discussions on the Consultation Paper, perhaps this "reasonably short time period" could be defined.

Q6: Should something other than the hyperlink to the GRI Content Index be included in the financial filings? If so, what and why?

Q7: Is five years an appropriate timeframe for the periodic review of the GRI Content Index and developments in the market?

We see merit in World Federation of Exchanges (WFE) reviewing the continuing relevance of the GRI Content Index on a global basis. A five year review schedule seems reasonable, but this should also be coordinated with GRI's own reviews to the extent possible.

3) CORPORATE ESG DISCLOSURE (M3): Every company will disclose information on the following categories of ESG issues, using a comply or explain approach for each category:

- Climate change
- Diversity
- Employee relations
- Environmental impact
- Government relations
- Human rights
- Product impact and safety
- Supply chain

Issuers will determine the format and location of the reporting, which could include one or more of the following: stand-alone sustainability reports, annual reports, financial filings, integrated reports, websites and other venues.

Mandate Guidance:

The corporate ESG disclosures will allow investors to gauge issuer performance over time. Comprehensive disclosures on the aforementioned categories should include both qualitative and quantitative information and should ideally incorporate the following aspects: policies and procedures, performance data (including regulatory fines and other legal actions), goals and timeframes, and related governance.

Examples of reporting topics in each category are provided below (note that these examples are provided for illustrative purposes and should not be considered to be an exhaustive list, or a set of minimum requirements):

- Climate change: *greenhouse gas emissions and reduction initiatives, physical risks and opportunities*
- Diversity: *employee, board and supplier diversity; training and recruitment programs*
- Employee relations: *labor relations and freedom of association, safety, employee turnover and demographics, training, remuneration*
- Environmental impact: *water, energy and materials consumption; emissions and waste; toxins; packaging*
- Government relations: *political involvement and spending, contracting and revenue payments, tax strategy*
- Human rights: *non-discrimination efforts, prevention of child and forced labor, compliance with international human rights norms*
- Product impact and safety: *cultural and community impacts, product life cycle assessments, recalls, product integrity and safety*
- Supply chain: *size and geographic scope, risks of disruptions (due to e.g. extreme weather events, labor disputes, etc.), impacts on local communities, labor and environmental compliance efforts*

M3 RECOMMENDATION:
Financial and ESG data are often reported to investors using different timeframes and/or reporting cycles and it is important that both sets of disclosures be aligned in the future, to avoid confusion and inaccurate analytics. Reporting timeframes should be aligned within three to five years of the implementation of the listing rule.

Consultation Questions:

Q8: Should the exchanges, rather than the issuers, determine the format and location of the sustainability reporting?

From an investor perspective, it is obviously helpful to know where to look for information, and also not to have to look at multiple documents. However, an "index" approach as outlined above would largely address the problem.

It should be noted that in some cases exchanges or securities regulators are already specifying the format and location of aspects of ESG reporting – for example, in the case of the Securities and Exchange Commission conflict minerals reporting requirements under Section 1502 of the Dodd-Frank Act. We would suggest, therefore, that the proposal be amended to read "where not otherwise defined by the exchange or securities regulators, issuers will determine the format and location of the reporting."

Q9: Do you agree with the current list of ESG issues and examples? If not, what ESG categories would you suggest removing or adding?

We strongly agree with a “comply or explain” approach, as it is helpful to us to know if a company is not reporting on an issue, to avoid time wasted looking for non-existent information.

It should be clarified that companies should report on the basic ESG topics and also on any other ESG matters that are locally-, sector- or company-relevant.

Given the proposal to mandate use of the GRI Content Index, we suggest the topics should be mapped as far as possible to GRI G4 after publication.

The list of key topics may require further discussion to ensure that it is globally relevant. For example, political spending is illegal or heavily restricted in some jurisdictions – a formulation such as “political influence activities” might be of wider application. We would suggest that reporting on anti-corruption measures and compliance may be globally relevant.

Although some of the topics listed are likely relevant to all companies, others are more relevant to specific sectors. For example, product safety and supply chain risk is extreme in some sectors (such as retailing) and less relevant in others. A missing topic for all companies with heavy physical impacts (such as mining or oil and gas) is community relations, and indigenous rights if relevant.

In our practice, we do not seek the same set of ESG information for companies in different sectors. Companies already face sector-specific expectations from exchanges and securities regulators regarding mandatory non-financial disclosure (e.g. production numbers for oil and gas). Consideration should therefore be given to listing certain topics as mandatory for some, but not all, sectors.

We spend considerable time trying to establish an accurate list of countries of operation of each company and its subsidiaries. This is a core factor for us in assessing ESG risk, but the information is not easily found. We know this information is seen as essential not only by ourselves but by various ESG research providers. We therefore suggest that this should be added to the list of required disclosures.

Our understanding is that standard corporate governance matters are not covered by the definition of ESG in the proposal. This could be a source of confusion, and should be clarified. In the Canadian context, we note that various corporate governance practices and disclosures are already included in listing and reporting requirements.

Q10: Is three to five years an appropriate timeframe for aligning reporting timeframes and if not, how long should it be?

We would distinguish two timeframes in the reporting context: the reporting period, and the publication schedule. The financial and ESG reporting periods should ideally be the same, to allow accurate normalization of information such as emissions data to revenues. It is less important that the information is published at the same time, though in both cases it should be timely. A key concern from our perspective is that ESG information is often dated by the time of publication.

For clarification: it is not important to us that all companies should have an identical reporting year. We do not see it as an obstacle in comparing companies that some may use January to December while others use October to September – we simply use the latest report. What is important to us is that ESG information is published annually, and that it is timely and consistent so that we can assess trend lines and compare company performance.

Q11: Are there situations where it would not be appropriate to synchronize financial and sustainability reporting timeframes, and if so, what are those situations?

At a smaller issuer, it might be challenging to publish financial and ESG reporting at the same time, but this should not be a constraint on using the same reporting period. However, we do recognize that there could be valid reasons to use a different reporting timeframe. At our own company, we report on the ESG Program using an October-September year because this matches better with the externally-driven cycle of our corporate engagement work. Companies could be asked to "comply or explain" regarding synchronization of reporting timeframes.

GENERAL RECOMMENDATION FOR ISSUERS

ASSURANCE

Data presented in the company's ESG disclosures should be independently assured within five to seven years of the listing requirement's issuance.

Consultation Questions:

Q12: Is an assurance requirement appropriate for all markets?

In the short term, our priority is to encourage more issuers to report more fully on ESG issues, and we are less concerned about assurance at this stage. We are also concerned that this could be an obstacle to adoption of ESG listing standards, as issuers may be concerned by the potential scope and expense of assurance obligations. Assurance may be particularly challenging to small issuers or issuers with a small corporate office, and the cost of assurance will not necessarily be reduced over time. It might be advisable to postpone the assurance discussion to a second stage – for example, after it has been possible to assess in practice the impact of the audit obligations included in the SEC conflict minerals rule.

Q13: Is the recommended time frame of five to seven years sufficient or too long or too short?

See above.

Q14: Should the recommendation be more specific in terms of what should be assured?

If assurance is incorporated into ESG listing standards recommendations, more specifics should indeed be provided.

ADDITIONAL RECOMMENDATIONS FOR EXCHANGES IN THE IMPLEMENTATION OF THE LISTING STANDARD

SIZE OF COMPANIES

Large issuers (as determined by the exchange) are expected to comply with all three mandates upon passage. If exchanges determine that smaller companies will require more time for compliance with these mandates, exchanges should set the market capitalization threshold and the maximum timeframe for compliance to achieve the goal of all companies reporting within a reasonable timeframe of three to five years. However, if items are material, they must be disclosed regardless of size.

Consultation Question:

Q15: Should small companies be granted additional time, and if so, how much is sufficient?

If the ESG obligations are very costly and time-consuming, very small issuers will be challenged to comply no matter how much additional time they are given. With larger issuers, more capital is at risk, and because they set the trend for the sector it is more damaging if they do not comply with ESG obligations. A sector specific approach may be appropriate, with small issuers in high risk sectors such as mining required to fulfill additional obligations.

EXCHANGE MONITORING OF REPORTING

A) Stock exchanges are strongly encouraged to assess the overall level of disclosure and reporting quality of the mandated disclosures (materiality assessment, GRI Content Index and corporate ESG reporting) after two years and every three years thereafter to reassess quality. If quality is poor, the exchange(s) should intervene and recommend best practices or means of improvement to ensure usefulness to shareholders and the market.
B) Each exchange is strongly encouraged to report publicly on its parameters for the oversight of the monitoring process, the methodology employed, and the outcomes of the assessment.
C) Exchanges are encouraged to seek investor feedback on the quality of the disclosures.

Consultation Questions:

Q16: Is the proposed timeframe reasonable (two years followed by every three years)? If not, what timeframe do you recommend for reviewing disclosures?

Before commenting on this, it would be helpful to have an overview of what review processes each exchange already has in place. Where reviews are already being conducted by exchanges or securities administrators on a regular basis, there may be no pressing need for change.

Q17: Who should conduct the review? Should the WFE or an independent third-party conduct reviews of the disclosure quality instead?

We defer to the exchanges on the question of who should conduct the review.

Q18: Is there any advice investors can offer on implementation of this monitoring recommendation?

Exchanges and securities administrators could raise awareness of mechanisms for investors to alert them that it is not possible to locate required ESG disclosures for specific issuers. This would be helpful for review purposes.

Contact:
Michelle de Cordova
mdecordova@NEIinvestments.com