



ASIC
Australian Securities &
Investments Commission

Committee	Joint Standing Committee on Trade and Investment Growth
Inquiry	Inquiry into the Prudential Regulation of Investment in Australia's Export Industries
Question No.	001
Reference	Spoken, 13 August 2021
Committee Member	Ms KEARNEY

Question:

Ms KEARNEY: I really only have one, and it's related to those financial disclosures. I note that the US Securities and Exchange Commission has started implementing—well, has started the process at least—the mandatory TCFD. I think that's just one of lots of countries around the world doing so. I know that Japan is definitely an example of someone in our own area. Have you done any analysis to assess the implementation of a mandatory TCFD scheme across the world? And can you tell us a little about the implications for Australia with the world moving in this direction?

Ms Armour: Our understanding is that the Securities and Exchange Commission in the United States has just consulted broadly on whether or not, and how, it might mandate climate related disclosures. That consultation has just finished, so I don't believe that final decisions have been made on that yet. We're aware that New Zealand and the United Kingdom are in the process of going through a legislative implementation, or consideration, of mandating climate related disclosures. For that to occur in Australia, like in those countries we would need to have a legislated requirement. So it's a matter for government and parliament. In Australia we've highlighted to Australian listed entities that in a number of elements of their disclosures—so prospectuses, the operating and financial review—where they describe the material risks, we expect them to consider and report on climate related risks to the extent those are maturing to those companies. Our advice has been to report using the system that is recommended by the Task Force on Climate-related Financial Disclosures. Does that help you?

Ms KEARNEY: Yes, that's very helpful. So your advice is to follow the framework, but it hasn't been legislated—it's not mandatory in Australia. I understand that. But what will happen? Once the UK has legislated it—and is it Japan that's going to legislate its members to disclose? I'm not sure about that but they might have.

Ms Armour: I'm not sure about that either. I'm happy to check and come back to you on notice about that.

Answer:

TCFD reporting in Japan is currently voluntary and supported by Japan's Financial Services Agency (FSA), the Ministry of Environment (MEI) and the Ministry of Economy, Trade and Industry (METI). ESG reporting in Japan is mandated under the Act on Promotion of Global Warming Countermeasures (Law No. 107 of 1998), however this is not currently aligned with the TCFD recommendations. The Japanese Government has publicly stated it will clarify the application of disclosure aligned with TCFD in the future.¹

¹See materials accompanying: Press Release: *Green Growth Strategy Through Achieving Carbon Neutrality in 2050*, December 2020, Japanese Ministry of Economy, Trade & Industry. Available here: https://www.meti.go.jp/english/press/2020/1225_001.html



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Committee	Joint Standing Committee on Trade and Investment Growth
Inquiry	Inquiry into the Prudential Regulation of Investment in Australia's Export Industries
Question No.	002
Reference	Spoken, 13 August 2021
Committee Member	Senator VAN

Question:

Senator VAN: Thank you, Commissioner, and your team, for appearing today. It's very, very helpful in our inquiry. I note that, at point 16 of your submission, you make a point of saying:

... ASIC adopts a position of neutrality with respect to the appropriateness of any particular industry or business model or the desirability of any particular investment.

As I put to APRA prior to you appearing, we've heard in this inquiry—more APRA than ASIC, but ASIC's name has come up as well—that companies have heard from banks and insurers that they won't be investing or participating in certain companies because of APRA's and ASIC's guidance. Do you agree with what Mr Byres said, in that that's actually an excuse—that that's not ASIC's position?

Ms Armour: Yes, as I've mentioned earlier, ASIC's position is ensuring that, if banks, insurance companies—I think the main companies you're referring to—are listed companies or if they're issuing financial products, they are properly disclosing the risks of their business, so the banks' and the insurance companies' business, and properly describing any of the products that they issue. So we are much more focused on disclosure. For example, if you had a look at the regulatory guide we've issued on prospectuses, we have a table which describes the sorts of risks that we would expect a director to think about when they're making a disclosure. We list a number of things, including supplier contracts, the impact of a system loss, whether there's substantial litigation. And we do list whether there are any climate change risks that are relevant to that business as one of those things. But it's a two-page list of examples of the sorts of things. So I do think that we are in a position of neutrality in the extent that we described in our submission.

Senator VAN: Right. So, if anyone who's extending a financial product that's covered by ASIC is saying that it's because of your advice, that's actually not correct; it's an excuse?

Ms Armour: Generally that is the case. We have flagged to them that there's an expectation—we have an expectation—that they consider whether climate risk poses a material risk for their business and, if it does, that that is described and disclosed. But there are plenty of other risks that we have also flagged. We have an expectation they're considered.

Senator VAN: Sure. In response to a question from the deputy chair, who asked about international investors, I think I took your evidence to be that some international investors are driving behaviour in ASIC regulated institutions or companies.

Ms Armour: Anecdotally we are receiving feedback from companies and directors that international investors are asking questions about how companies are addressing climate risk in their business operations.

Senator VAN: Could you provide to the committee, on notice, any examples, or all examples, that you've received of that advice?

Ms Armour: Probably what we could provide might be some examples of material that investor groups have issued more broadly on the question. We could provide some examples of that to you.

Senator VAN: I understand the need for not naming names, so, if you wanted to not disclose the names of organisations that have said that to you but give us those examples, that would also be very helpful.

Ms Armour: Sure. We will try to, but it will be anecdotal, so you need to understand that.

Answer:

Evidence supports the proposition that a wide range of international investors consider the assessment and management of climate change-related risks and opportunities to be an important factor for consideration when making investment decisions, and further, that this is driving engagement between investors and issuers, including in some cases Australian issuers. For example:

- a 2020 survey of over 130 international market participants and industry representatives conducted by the (then) Sustainable Finance Network¹ of the International Organisation of Securities Commissions (IOSCO)² found that:

*“many investors...report that ESG information is or can be relevant to their investment decisions and impacts investors’ pricing of securities. A growing number of investors, including institutional investors, are also increasingly integrating ESG-related issues into their investment strategies. Hence, there is an increased market demand from investors to both issuers and financial firms such as asset managers to provide information that enables them to consider ESG matters in their investment decisions and risk management processes.”*³

- the international investor-led initiative, Climate Action 100+, is comprised of more than 545 international investors across 32 markets representing \$US 52 trillion in assets under management and discloses that it *“focuses investor engagements on 160 global companies that have significant greenhouse gas (GHG) emissions and/or are critical to the net-zero emissions transition and to meeting the objectives of the Paris Agreement.”*⁴ The Climate Action 100+ programme of engagement includes a number of large Australian listed focus companies.⁵

ASIC’s anecdotal experience correlates with these broad trends. For example, in 2020 ASIC conducted a surveillance exercise examining the climate change disclosure and governance practices of a cohort of large listed companies. The surveillance programme included meeting, on a voluntary basis, with representatives of a number of companies. During these discussions, ASIC was advised that climate-related risks and opportunities remain topical in investor-company engagements.

¹ ASIC was a member of the IOSCO Sustainable Finance Network (and is now a member of its successor, the Sustainable Finance Taskforce).

² *FR 04/2020: Sustainable Finance and the Role of Securities Regulators and IOSCO*, April 2020, International Organisation of Securities Commissions. Available here: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD652.pdf>.

³ *Ibid* at pp23.

⁴ *2020 Progress Report*, November 2020, Climate Action 100+. Available here: <https://www.climateaction100.org/wp-content/uploads/2020/12/CA100-Progress-Report.pdf>

⁵ *Ibid*.



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Question No.	003
Reference	Spoken, 13 August 2021
Committee Member	Senator AYRES

Question:

CHAIR: I have some very brief questions, going to disclosure guidelines. We talked about them earlier—Regulatory Guide 65 outlines those obligations or disclosure from the guidelines. Under section 1013DA in the Corporations Act, in relation to claims about labour standards, environment and social considerations, these are supposed to be taken into account when realising investment, selecting investment or retaining an investment. A lot of emphasis has been put on the environmental, vis-a-vis the climate change, or climate risk, issue.

But let me go to social considerations. Do financial considerations have any disclosure obligations under section 1012DA of the Corporations Act in relation to the social costs of denying finance to lawful industries in this country?

Ms Armour: I'm going to ask my colleague Ms LaBouchardiere to answer this one. But I would preface her answer with the comment that the laws we administer are about making disclosures that help investors make an investment decision about a financial product. So they're not generally disclosures that go to those broader social issues—societal issues which I think were implicit in your question—

CHAIR: I have a question about that, given that you've mentioned it. Firstly, before I forget—and just to make sure the question I just asked is understood properly—I'm not asking about denying finance for real financial risk reasons. I'm talking about denying finance on the basis of the financial institution not wanting to engage with that particular company or sector because of what they do.

Senator AYRES: If, Ms LaBouchardiere, you could take that question on notice—I'll add to that question about the social cost of denying finance, if it's not something that needs to be disclosed, would ASIC look into that matter at all? Anyway, that can be answered on notice. Just getting back to our discussion there—what was the last thing that you just said?

Answer:

The ordinary application of the law would determine the answer to any question relating to disclosure of the 'social cost of denying finance.' Generally however, the laws ASIC administers are designed to assist investors or financial product consumers make investment decisions. Relevant disclosure requirements are set out for financial products and listed companies below.

Disclosure requirements for financial product issuers

Chapter 7 of the *Corporations Act 2001* (**Act**) relates to financial services and markets. Section 760A of the Act sets out the main objectives of Chapter 7 of the Act. These include, but are not limited to, promoting confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility, and innovation in the provision of those products and services.

Section 1013D of the Act (which sits in Chapter 7) sets out the main disclosure requirements for product disclosure statements (PDS) prepared by an issuer or seller of a financial product. This includes the following information, to the extent a person would reasonably require it for the purposes of making a decision as a retail client whether to acquire the relevant financial product:

- where a financial product being offered for issue or sale has an investment component (such as a superannuation product or managed investment product), the PDS must include a statement about the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment (paragraphs 1013D(1)(l) and section 1013D(2A) of the Act); and
- information about any significant benefits to which a holder of the financial product will or may become entitled to (paragraph 1013D(1)(b) of the Act);
- information about any significant risks associated with holding the product (paragraph 1013D(1)(b) of the Act); and
- the PDS content requirements in s1013D are modified for some products, including some superannuation products, simple managed investment schemes and standard margin lending facilities: see ASIC Information sheets 133 and 155. The disclosure provided under this modified regime is described as a “shorter PDS”. For example, in superannuation, a shorter PDS is generally 8 pages long, but further information can be incorporated by reference - the content requirements are set out in Schedule 10D of the Corporations Regulations 2001. Schedule 10D includes specific content requirements regarding risk and benefits of holding the product, as well as a requirement to describe in the form of a summary, the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of investment relating to the superannuation product. Similar content requirements apply to simple managed investment schemes: see Schedule 10E.

Disclosure requirements for listed companies

The Act sets out a principles-based disclosure regime for listed companies. Relevantly:

- paragraph 299A(1)(c) of the Act requires directors of listed companies to include in the annual directors' report information that members of the listed company would reasonably require to make an informed assessment of the business strategies and prospects for future financial years;
- section 710 of the Act requires a prospectus for the offer or sale of securities to include, to the extent which it is reasonable for investors and their professional advisors to find the information in the prospectus, the assets and liabilities, financial position and performance, profits and losses and prospects of the body that is to issue the shares;
- section 674 requires a listed company, on a continuous basis, to notify the market operation of specified events or matters as they arise if the information is not generally available and is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the securities of the listed company.

ASIC's role

ASIC is tasked with administering, and giving effect to, the Act. To this end, ASIC may scrutinise disclosures made by listed companies or product issuers across any subject matter. This may be for general purposes of ensuring compliance or if there is a specific concern about a particular piece of disclosure.