November 21, 2014

Steering Committee
Initiative for Responsible Mining Assurance

Sent by email to: info@responsiblemining.net

Re: Request for Stakeholder Feedback – Initiative for Responsible Mining Assurance Standard

We are writing to offer comments from an investor perspective on the draft Initiative for Responsible Mining Assurance (IRMA) Standard[1]. We appreciate the opportunity to provide input and commend IRMA for embracing a broad multi-stakeholder approach in the creation and refinement of the Standard.

With approximately C$6 billion in assets under management (AUM), NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders, and provide higher risk-adjusted returns to shareholders. The company evaluations, corporate engagement and research activities that we conduct to fulfill our responsible investment commitments give us insight into Canadian companies' progress in responding to ESG risks, the obstacles they face, and how appropriate standards could support their efforts. In this context, we would like to offer the following comments.

General Comments

In general, the draft Standard is a strong document that clearly reflects current best practices. A mine site that was compliant with the Standard as it is currently proposed would safely be considered a leader in responsible mining. In this respect, investors who consider the various material ESG risks facing the mining industry could utilize the IRMA certification as a proxy for identifying ESG leaders. In turn, if the verification and grievance mechanisms are robust, certification to the Standard could conceivably act as a value driver for company valuations. Currently, the complexity of understanding actual performance against human rights and environmental expectations at the mine site is an extremely challenging task for investors. We would certainly value having a tool that would provide a relatively high degree of assurance that these risks are being effectively mitigated.

The efforts of IRMA to ensure compatibility with other relevant standards and systems are welcome. We agree with the assessment that efforts to align the language and expectations of IRMA with these standards (where possible) will both ease the reporting burden of companies utilizing other standards and provide a logical progression towards IRMA certification. We would suggest that continued consultation with other standards bodies should focus on making the link

[1] http://www.responsiblemining.net/the-irma-process/stakeholder-feedback/

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between conformity with those standards and conformity with IRMA more explicit. There should be a clear understanding of how companies who meet these other standards (e.g. Towards Sustainable Mining) would fare against IRMA and where the gaps lie. This was not entirely evident from viewing the current standard.

We note the emphasis placed on transparency and disclosure throughout the Standard. We very much support the focus on transparency and as investors who treat these issues as material we rely on adequate disclosure in our own due diligence. We would only add that this disclosure should to the largest extent possible mirror the disclosure frameworks of other relevant standards.

We note that the grievance mechanism for IRMA is yet to be developed[2]. At this time we would only state that having a robust and transparent grievance process will be crucial to the success of the endeavour and we look forward to its creation. Part of the challenge for investors looking to ensure the mining companies they own are respecting human rights and protecting local environments is that there are often several competing voices sharing radically different narratives about the impacts of a mine. A grievance mechanism that is respected by all stakeholders will do much to reduce this confusion (and more importantly should act as an effective remedy to ultimately resolve conflict).

One high-level concern that we want to bring forward is whether the current single hurdle approach to certification (i.e. you are either IRMA certified, or not) is the most effective way to create systemic change in the mining industry. In our opinion, we currently have a small number of leaders (relative to the mining industry at large) who are actively pushing themselves to follow or create best practices. As the current IRMA standard reads, it will be very difficult to achieve certification. In some respects, this is as it should be for a standard that seeks to embody best practice. However, because the hurdle is so much higher than the vast majority of the industry could currently make, the demanding nature of the Standard could act as a disincentive for companies to even contemplate participation.

A potential risk of the current approach is that we are still only left with a handful of leading companies. A small cohort of leaders could possibly influence the rest of industry by raising the expectations of host governments and communities – and that in itself would be a positive impact of the proposed standard. However, it is an open question as to whether this would maximize the potential of IRMA to affect industry-wide change.

We would suggest that IRMA consider some form of tiered certification that provides formal recognition to companies looking to ultimately progress to IRMA certification. This would allow for companies that have traditionally not dedicated the resources to achieving ESG best practices to consider a pathway to improved performance. By keeping the requirement of external verification and transparency at each tier, IRMA would ultimately be driving performance across a much broader swath of the industry. If there are concerns about diluting the value of IRMA certification (for example, by achieving the lowest tier certification and remaining there for years) there could be expectations or limits on how long a company can remain at a lower tier, along with certain absolute requirements (e.g. human rights expectations). If not a formal tiered system, then perhaps there is room to be creative in addressing how the Standard can acknowledge companies that are genuinely working towards certification.

We have the following, specific comments that are relevant to the respective chapter of the Standard.

[2] Understood to be the grievance mechanism for stakeholders to raise concerns with an IRMA certified mine site – not the requirement of each mine site to have a robust grievance mechanism in place.

Chapter 1.2 – Revenue and Payments Transparency

We agree that revenue and payment transparency should be considered mandatory. This transparency benefits companies, communities and host governments alike. We note that the Canadian government has just recently tabled legislation that would mandate revenue transparency, similar to what has occurred in both Europe (EU Transparency Initiative) and the US (US Dodd-Frank Act)[3]. We expect that the resulting requirements will be similar in scope to what is expected under the European and American legislation. As such, we would anticipate that there will be an equivalency agreement for companies that report under any of these frameworks in order to reduce the reporting burden. For companies not covered by these jurisdictions we agree that the reporting requirements of EITI should be followed.

Chapter 2.4 – Human Rights Due Diligence and Compliance

We have some specific feedback on this chapter but in general support the expectations iterated within it. This is clearly a key material issue for the sector and the effort to build on the UN Guiding Principles on Business and Human Rights (Guiding Principles) is appreciated, as the Guiding Principles are widely recognized as the emerging best practice. Further, the inclusion of human rights impact assessment (HRIA) as a mandatory expectation is in line with our assessment of current best practice and as such we support its inclusion in the Standard.

2.4.4.4.
We strongly agree that a best practice HRIA is one that is inclusive of community concerns and is shaped through consultation with the potentially impacted community. Not only is this crucial to capturing the human rights concerns of the community, it is a critical opportunity for the company to develop a relationship with the community that is rights-based. We would note that the current wording of this section implies the company will undertake this initial consultation, which will in turn help determine who should undertake the HRIA itself (conceivably somebody with human rights experience). Our concern is that even this activity will require human rights expertise particularly if there are existing tensions or human rights issues that are pre-existing. Perhaps the Standard needs to be explicit about the requirement for human rights expertise (be it in-house or external) at all stages of the HRIA. Our preference is for independent, third-party expertise though we respect the desire of companies to build internal human rights expertise. In regions where trust is an issue, we doubt that internal experts will be viewed as impartial by communities.

In regard to the use of independent, third party experts, we wonder if there is a role for IRMA to develop a vetting process for organizations and individuals qualified to perform this work. We note that there is an expectation of companies to consult with affected stakeholders on the selection of an assessor. There may be genuine capacity constraints that do not allow the community to make an informed decision in this matter, which could have various unintended consequences. Having some form of assurance around the expertise and independence of the assessors would mitigate these risks and potentially lead to more positive outcomes.

2.4.4.8.
In our discussions with companies who are attempting to implement HRIAs, we have been consistent in advocating for transparency on the results of the HRIA – at the very least to the communities who took part in the assessment. We believe this transparency is crucial to ensuring an ongoing, trusting relationship is built with local communities and is a fundamental driver of accountability. However, we are sympathetic to the argument that full public disclosure of results that are highly critical of the host government could potentially do more harm than good. The Standard should consider if

[3] http://www.pdac.ca/policy/transparency

the current allowed exemptions (e.g. information that would compromise the safety of an individual) would apply to this situation, and if not, whether there is merit in considering how to address this sensitivity. Clearly there is a role for the company to push host governments to live up to their responsibility to protect human rights, but we believe these efforts do need to be nuanced and the Standard should allow for some flexibility in this regard. The perspective of companies who have had success in influencing host governments should be sought.

Chapter 2.10 – Free, Prior and Informed Consent

We are very supportive of the inclusion of Free, Prior and Informed Consent (FPIC) into the Standard. We would agree that current best practice expectations must include the achievement of FPIC from local communities and as such strongly recommend that this expectation remain in place for all new mines.

In the notes section (page 72) at the end of the chapter the question is posed as to whether FPIC should be a retroactive requirement for all mines (through some form of corrective action) or whether it should only be required for major changes to the project, similar to what the International Finance Corporation requires. This is a challenging decision that has potentially negative ramifications either way. On the balance of things, we favour the latter approach. Our rationale is that one of the end goals of IRMA certification should be to affirm and respect Indigenous rights, and consideration should be given to what will achieve this goal most effectively. We believe the latter approach has a greater chance of driving broad change.

A retroactive requirement for FPIC is unlikely to improve the circumstance of Indigenous rights in that there would be no incentive for companies to undertake a retroactive process (if that is what is envisaged by the term "corrective action"), and thus no resulting benefit to communities. We believe that it would be highly unlikely for a company to try to achieve FPIC retroactively for an operating mine that is a material interest to the company. Further, if it tried, and could not meet the standard, the company would simply remove the mine from the IRMA process (and not cease operations), since there is little reason to certify a mine that can't operate. We do not see the benefit to either company or community in that situation.

However, the requirement that all material changes to the mine meet the FPIC standard would be more readily embraced and would thus have the very real impact of affirming the Indigenous right to FPIC. It is not a perfect solution, but one which would be in line with current international efforts. We would expect that in those instances where a mine is facing significant opposition from Indigenous communities that is rooted in a violation of Indigenous rights then that mine would not meet the human rights expectations as expressed in Chapter 2.4. As such we would assume that the risk of certifying a mine despite overwhelming Indigenous opposition would be negligible.

Chapter 3.1 Water Quality, and 3.2 Water Quantity

The World Economic Forum identifies water security as one of the most tangible and fastest-growing social, political and economic challenges faced today[4]. Mining operations typically consume or impact large sums of water and as such the Standard should have clear expectations in this regard. The draft Standard has provided guidelines for publishing historical data on water quality and quantity. We recommend that the Standard also require disclosure on company-wide objectives (qualitative) and targets (quantitative) for water consumption and wastewater treatment in line with the reporting

[4] http://www.weforum.org/issues/water

expectations of the CDP Water disclosure initiative[5]. We believe disclosing objectives and targets serves as an incentive for companies to continuously improve their environmental performance.

Chapter 3.3 Mine Waste Management

3.3.1.3.2.
In regard to the question of whether to allow certification for mines that use lakes or oceans for tailings disposal, we would suggest that the Standard should at least follow the current practice in Canada. Namely, there are certain cases where disposal into lakes is allowed, but these are limited in nature[6]. Submarine Tailing Disposal (STD) into oceans is effectively banned. There is no literal ban on STD, but the Total Suspended Solids (TSS) concentration requirements for the tailings effluent being disposed are so rigorous as to be near impossible to meet[7]. Perhaps the Standard could adopt a similar strategy that sets a robust effluent quality threshold. Otherwise, the current proposed approach is satisfactory to us.

Conclusion

In conclusion, we once again commend IRMA for its proactive effort to create a multi-stakeholder, independently verifiable responsible mining assurance system and for the opportunity to provide feedback. We see significant value in this certification and assurance framework. If you have any questions regarding this letter please contact **Jamie Bonham, Manager, Extractives Research & Engagement, NEI Investments (jbonham@neiinvestments.com; +1-604-742-8328)**.

Sincerely,

NEI Investments

Bob Walker
Vice President, ESG Services & NEI Ethical Funds

cc:
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[5] https://www.cdp.net/water/
[6] Disposal is allowed into water bodies listed in Schedule 2 of the Metal Mining Effluent Regulations (MMER) http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-222/page-15.html#h-49. Note that there are no marine (ocean) water bodies listed in Schedule 2.
[7] Schedule 4 of MMER outlines the requirements for effluent quality for those water bodies not listed under Schedule 2 http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-222/page-17.html#docCont.