
ISSB meeting

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Project	General Sustainability-related Disclosures
Topic	Commercially sensitive information about opportunities
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This paper has been prepared for discussion at a public meeting of the International Sustainability Standards Board (ISSB). This paper does not represent the views of the ISSB or any individual ISSB member. Any comments in the paper do not purport to set out what would be an acceptable or unacceptable application of IFRS[®] Sustainability Disclosure Standards. The ISSB's technical decisions are made in public and are reported in the ISSB *Update*.

Objective

1. This paper presents the staff's recommendations based on feedback received from respondents on [Draft] IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* ([draft] S1) and [Draft] IFRS S2 *Climate-related Disclosures* ([draft] S2) regarding the disclosure of information about sustainability-related opportunities which may be commercially sensitive.
2. The objectives of this paper are to:
 - (a) summarise the stakeholder feedback on particular disclosure requirements proposed in [draft] S1 and [draft] S2 that could result in the disclosure of commercially sensitive information;
 - (b) seek the ISSB's feedback on the staff's analysis and recommendations regarding information to be disclosed; and
 - (c) seek decisions from the ISSB on the staff's recommendations.

Summary of recommendations

3. The staff recommends the ISSB introduce an exemption in [draft] S1 that would permit entities, in limited circumstances where information is not already publicly available, to exclude information about a sustainability-related opportunity if the information is commercially sensitive. This recommendation is described in more detail in paragraphs 24–48 and 31–51.

Structure of the paper

4. This paper is structured as follows:
 - (a) background (paragraphs 5–19);
 - (b) staff analysis and recommendations (paragraphs 20–55);
 - (c) questions for the ISSB (paragraph 56); and
 - (d) appendices
 - (i) Appendix A – Climate-related regulatory precedents
 - (ii) Appendix B – Illustrative examples

Background

5. The ISSB published [draft] S1 and [draft] S2 in March 2022 and the comment periods ended in July 2022. The ISSB began its redeliberations in September 2022, considering feedback received on the exposure drafts. Paragraph 58(d), 71(f) and 147 of [Agenda Paper 3A, Summary of comments](#) (September 2022) and Paragraphs 43, 64 and 66 of [Agenda Paper 4A, Summary of comments](#) (September 2022) describe some of the concerns raised by respondents about disclosing commercially sensitive information.

Summary of feedback received

6. At its September meeting, the ISSB discussed stakeholder feedback on [draft] S1 and [draft] S2. As it relates to the disclosure of commercially sensitive information, the staff noted, among other things:
- (a) many respondents raised concerns about the disclosure requirements proposed in [draft] S1 which could result in the disclosure of confidential or commercially sensitive information. Some respondents requested requirements that would allow preparers to omit information that is considered confidential or sensitive.
 - (b) a few respondents provided feedback on the requirements proposed in [draft] S2 whereby entities must disclose the process used to identify, assess and manage climate-related opportunities, noting that this could involve disclosure of commercially sensitive information.
7. While there were broad comments regarding the potential for disclosure of commercially sensitive information, a **pervasive theme emerged regarding stakeholder concerns about being required to disclose commercially sensitive information related to opportunities**. Respondents were concerned that disclosure of such information could:
- (a) reveal too much detail associated with corporate strategy and planned actions, which is integral to competitive advantage; and
 - (b) enable competitors to reverse engineer strategic decisions and obtain deep insights into the company's strategy or gain a direct competitive advantage.
8. As a result, respondents said they would be reluctant to disclose this information because it may reduce their competitiveness in the market or otherwise be commercially harmful. In such situations, respondents requested an exemption from disclosing commercially sensitive information related to sustainability-related opportunities.

Sustainability reporting and commercial sensitivity: standard setting and regulatory precedents

9. The disclosure of commercially sensitive information in sustainability reporting is an area that other regulators and standard setters have recently addressed.
10. The [US Securities and Exchange Commission \(SEC\) The Enhancement and Standardization of Climate-Related Disclosures for Investors](#), published in March 2022, (herein referred to as the 'the SEC Climate Proposal') would permit an entity, as an option, to disclose information about any climate-related opportunities it may be pursuing when responding to the proposed disclosure requirements concerning governance, strategy, and risk management in connection with climate-related risks. The optionality of this disclosure is intended to allay any anti-competitive concerns that might arise from a requirement to disclose a particular business opportunity.

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11. [\[Draft\] ESRS 1 General requirements](#), published in November 2022, (ESRS guidance):
- (a) permits information corresponding to intellectual property, know-how or the results of innovation to be omitted if it meets specific criteria. In such circumstances, entities must disclose all required information with the exception of that specific piece of information.
 - (b) leverages the definition of a ‘trade secret’ from EU Trade Secret Laws as the criteria for whether information is deemed commercially sensitive, including:
 - (i) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - (ii) it has commercial value because it is secret; and
 - (iii) it has been subject to reasonable steps by the undertaking to keep it secret.
 - (c) requires entities to make every reasonable effort to ensure that beyond the omission of the specific information, the overall relevance of the disclosure is not impaired.
12. Task Force on Climate-related Financial Disclosures [Guidance on scenario analysis for non-financial companies](#), and [Guidance on metrics, targets, and transition plans](#) (TCFD guidance):
- (a) prescribes that an entity should not default to business confidentiality as a reason for avoiding disclosure.
 - (b) directs entities, as a matter of principle, to err on the side of disclosure when evaluating whether to disclose specific information, and to consider, among other things:
 - (i) whether the information provides the organisation with an economic benefit that translates to a competitive advantage because the information is unknown to competitors; and
 - (ii) whether making such information public would cause the company to incur an economic loss.
13. Appendix A to this paper provides more detail regarding the guidance provided by the SEC, ESRSs and the TCFD.

Financial reporting and commercial sensitivity: standard setting and regulatory precedents

14. The disclosure of commercially sensitive information in **financial reporting** is an area that other regulators and standard setters, including the International Accounting Standards Board (IASB), have addressed.
15. IFRS Accounting Standards have addressed the disclosure of commercially sensitive information in various standards. Depending on the specific circumstance, the IASB’s response to concerns about disclosure of commercially sensitive information has ranged from requiring disclosure despite concerns, to amending requirements to permit non-disclosure. Overall, the situations in which this results in exemptions from disclosure is targeted and fairly limited.

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16. The following summarises how select IFRS Accounting Standards, and a recent IASB tentative decision in one of its current projects, have addressed the disclosure of commercially sensitive information:
- (a) [IAS 37 Provisions, Contingent Liabilities, and Contingent Assets](#): allows an exemption ‘in extremely rare cases’, when disclosure can be expected to prejudice seriously the position of the entity in a dispute with a party. Paragraph 92 of IAS 37 allows entities to not disclose the information. Instead, entities are required to disclose general information regarding the topic, together with the fact that, and reason why, the information has not been disclosed.
 - (b) [IFRS 8 Operating Segments](#): IFRS 8 does not allow any exemption to disclosure of commercially sensitive information. As described in paragraphs BC43–BC45 of the Basis for Conclusions on IFRS 8, the IASB concluded that entities would be unlikely to suffer competitive harm from the required disclosures since most competitors have sources of detailed information about an entity other than its financial statements. The IASB flagged concerns that a ‘competitive harm’ exemption would provide a means for broad non-compliance with IFRS Accounting Standards.
 - (c) [IFRS 7 Financial Instruments](#): An exposure draft issued in the development of that Standard proposed disclosure of particular information that respondents said would result in the disclosure of commercially sensitive information. As described in paragraphs BC35W – BC35X of the Basis for Conclusions on IFRS 7, the IASB ultimately decided to not require that information to be disclosed to protect entities from potentially providing competitors with insight to commercially sensitive information.
 - (d) [Business Combinations—Disclosures, Goodwill and Impairment¹](#): the IASB has tentatively decided to create an exemption which would allow entities to not disclose particular information in situations in which disclosing that item of information can be expected to prejudice seriously the entity’s business combination objectives. In this case entities would be required to consider whether information could be provided in an aggregated manner to address commercial sensitivity rather than omitting disclosure.
17. The [International <IR> Framework](#) directs entities, when including information about ‘material matters’ dealing with competitive advantage, to consider how to describe the essence of matters without identifying specific information that might cause a significant loss of competitive advantage (IR Framework guidance).
18. The Australian Securities & Investments Commission allows an entity to not provide information that is likely to result in ‘unreasonable prejudice’ to the entity. The Australian Securities & Investments Commission published [Regulatory Guide RG 247](#), which explains how that exemption should be applied (ASIC guidance).
19. [European Regulation \(EU\) No 575/2013](#) allows an entity to not provide information that contains proprietary or confidential information. The European Banking Authority published [Guideline EBA/GL/2014/14](#) explaining how that exemption should be applied (EBA guidance).

¹ This project is ongoing, and final discussions and decisions are pending.

Staff analysis and recommendations

20. The staff considered the feedback from respondents, as well as the standard setting and regulatory precedents on commercial sensitivity, to determine an appropriate recommendation that would provide users of general purpose financial reporting with the information necessary to meet the objectives of [draft] S1, while also addressing concerns raised by respondents.
21. The staff acknowledges that some concerns may be due to a misunderstanding of the level of detail required by [draft] S1, and therefore we think that these concerns will be addressed as entities apply the disclosure requirements and better understand the level of detail required for disclosure.
22. The staff thinks that disclosure of commercially sensitive information about opportunities, that would otherwise not be available, could have negative economic consequences for an entity. Entities operate in a competitive environment, and maintaining competitive advantage is a critical component of an entity's overall business strategy. This is particularly evident in situations where the commercially sensitive information about opportunities provides the entity with an economic benefit that translates to a competitive advantage because the information is unknown to competitors.
23. The staff thinks that an effective way to address these concerns, while considering standard setting and other regulatory precedents related to commercial sensitivity, would be to design an exemption that targets a particular situation (when disclosure about opportunities would be expected to prejudice seriously the benefits the entity is able to realise in pursuing the opportunity), with accompanying requirements.

Staff recommendation

24. The staff recommends the ISSB introduce an exemption in [draft] S1 that would permit entities, in limited circumstances where information is not already publicly available, to exclude information about a sustainability-related opportunity when the information is commercially sensitive. Specifically, the staff recommends:
 - (a) this exemption be based on addressing a particular situation—that is, permitting entities to not disclose a particular item of information in situations when disclosing that item of information related to an opportunity 'can be expected to prejudice seriously' the economic benefits the entity is able to realise in pursuing the opportunity. When assessing such situations, entities would first consider whether it is possible to disclose the information about the opportunity at a sufficiently aggregated level that would resolve the entity's concerns about commercial sensitivity, while still meeting the objectives of the disclosure requirements (paragraphs 31–40); and
 - (b) to include the following additional requirements associated with the exemption:
 - (i) entities must identify a specific reason for non-disclosure of information, and that to qualify for the exemption, the information must provide an entity with an economic benefit that translates to a competitive advantage because the information is not publicly available (paragraphs 41–42);
 - (ii) by item of information omitted, disclose the fact that information has been omitted, and the general reason why the information has been omitted (paragraphs 43–46); and
 - (iii) reassess whether the information qualifies for the exemption from disclosure at each reporting date (paragraphs 47–51).
25. The staff also recommends that it be specified that this exemption would not:

- (a) be applicable to information which is already publicly available. The disclosure of information that is already contained in continuous disclosure notices, investor presentations, briefings to analysts or other publicly available documents is unlikely to give rise to unreasonable prejudice to the economic benefits the entity is able to realise in pursuing the opportunity;
 - (b) permit broad non-disclosure, with commercial sensitivity being used as a justification; and
 - (c) permit non-disclosure of information about risks.
26. These recommendations would apply to the disclosure of information about sustainability-related opportunities in [draft] S1 and would therefore also be applicable to information about climate-related opportunities in [draft] S2, as well as to future IFRS Sustainability Disclosure Standards, unless stated otherwise. The staff thinks this is appropriate in the context of the overarching role of [draft] S1 – specifically that the proposal requires the disclosure of ‘material information about all of the [significant] sustainability-related risks and opportunities to which it is exposed’ (emphasis added).
27. The staff acknowledges that may create an asymmetry between disclosure of information about risks and the disclosure of information about opportunities. We think this is appropriate, as further analysed in paragraphs 52–55.
28. Appendix B of this paper sets out some illustrative examples of the application of this exemption.

Advantages of this exemption

29. The staff considered the advantages of introducing an exemption for disclosure of commercially sensitive information about opportunities, including:
- (a) **Protection of value:** disclosure of commercially sensitive information about opportunities could reveal information that would enable competitors to reverse engineer strategic decisions and gain a direct competitive advantage. This could be harmful to an entity, as entities operate in a competitive environment, and maintaining competitive advantage is a critical component of an entity’s overall business strategy. This is particularly evident in situations where the commercially sensitive information about opportunities provides the entity with an economic benefit that translates to a competitive advantage because the information is unknown to competitors. By providing such an exemption, entities will be able to protect such information from competitors.
 - (b) **Consistency in global sustainability reporting:** as described in paragraphs 9-19, some jurisdictions prohibit disclosure in the event that disclosure would reveal commercially sensitive information. Therefore, introducing this exemption is more aligned with other climate-related regulatory pronouncements and would enhance comparability in reporting across entities in different jurisdictions.
 - (c) **Alignment in approach with IFRS Accounting Standards:** as described in paragraph 16, this is consistent with the approach taken in IFRS Accounting Standards; in the limited circumstances when an exemption from disclosures has been considered appropriate, the IASB has permitted non-disclosure of commercially sensitive information. In particular, when included the exemptions focus on the likelihood that the disclosure of the information would have a negative consequence for an entity².

² IAS 37 provides an exemption when disclosure ‘can be expected to prejudice seriously the position of the entity in a dispute’ and the tentatively agreed approach for disclosures about business combinations would

- (d) Balanced response to users of general purpose financial reporting and preparers: introducing this exemption would be a practical way to balance the need to provide users with decision-useful information and preparers' concerns about commercial sensitivity regarding opportunities. Preparers will still typically be required to disclose information about opportunities, and will be permitted to omit disclosure only in specific circumstances.

Disadvantages associated with this exemption

30. The staff considered several disadvantages associated with introducing an exemption for disclosure of commercially sensitive information about opportunities, including:
- (a) the exemption could be difficult to apply consistently, particularly when entities operate in different markets and regulatory environments, which could lead to tension among preparers, regulators and auditors;
 - (b) it might be difficult to develop robust criteria that effectively targets specific concerns because of the unique circumstances surrounding each opportunity. Management may be in the best position to assess whether it is in the interest of an entity to disclose particular information about specific opportunities, therefore it may be difficult for the ISSB to develop specific criteria for the exemption;
 - (c) by definition an exemption will result in circumstances when information about opportunities that is material for investors will not be disclosed resulting in incomplete information about an entity's sustainability-related risks and opportunities; and
 - (d) an exemption permitting entities to omit specific information may be overused, which could lead to an incomplete set of sustainability related disclosures.

The exemption and accompanying requirements

The exemption

31. To design such an exemption, the staff considered existing principles in regulatory pronouncements and in IFRS Accounting Standards, as well as feedback from stakeholders.
32. Both the ASIC guidance and the EBA guidance require an entity to consider the likelihood of negative consequences when deciding whether to apply the exemption. The ASIC guidance states that for an entity to apply the exemption, the unreasonable prejudice must be 'more probable than not'. The EBA guidance states that a mere possibility of negative consequence is not sufficient for the use of the exemption. In addition, the exemption in paragraph 92 of IAS 37 permits an entity to not disclose some information required by paragraphs 84-89 of IAS 37 if disclosure 'can be expected to prejudice seriously the position of the entity in a dispute with other parties on the subject matter of the provision, contingent liability or contingent asset'. We think the phrase 'can be expected to prejudice seriously' implies an assessment of the likelihood of serious prejudice occurring. We think this implicit probability assessment in paragraph 92 of IAS 37 could help an entity assess when the exemption should be applied.
33. Given that this phrase is used in IFRS Accounting Standards, the staff thinks many preparers, users, regulators and auditors will have experience in its use and application. Consequently, we think the ISSB should use similar wording in designing an exemption.

allow entities to not disclose information in situations when that can be expected to prejudice seriously any of the entity's objectives for the business combination.

34. Entities pursue opportunities because of the benefits that can be realised from achieving the opportunity. When information related to an opportunity is commercially sensitive, but is disclosed, an entity's ability to realise that benefit (or the extent to which it can be realised) may be at risk.
35. The staff illustrates this concept further in Example 1 of Appendix B.
36. The staff thinks that the realisation of economic benefits is a critical reason an entity pursues opportunities. Therefore, we think the ISSB should also use the concept in designing the exemption.
37. Considering this, **the staff recommend this exemption be based on addressing a particular situation—that is, permitting entities to not disclose a particular item of information in situations when disclosing that item of information related to an opportunity 'can be expected to prejudice seriously' the economic benefits the entity is able to realise in pursuing the opportunity.**
38. We also think entities should be required to consider whether it is possible to disclose the information at a sufficiently aggregated level that would resolve the concerns about commercial sensitivity, while still meeting the objectives of the disclosure requirements. In such circumstances, an entity would consider how to describe the essence of a matter without identifying specific information that might cause a significant loss of competitive advantage.
39. The staff illustrates this concept further in Example 3 of Appendix B.
40. **Therefore, we recommend the ISSB to also require entities, when assessing such situations to consider whether it is possible to disclose the information about the opportunity at a sufficiently aggregated level that would resolve the entity's concerns about commercial sensitivity, while still meeting the objectives of the disclosure requirements.**

Requirements associated with the exemption

Specific reason for non-disclosure

41. An entity must have specific reasoning for non-disclosure. A general risk of a potential weakening of competitiveness due to disclosure is not, on its own, a sufficient reason for avoiding disclosure. To qualify for the exemption the information must provide the entity with an economic benefit that translates to a competitive advantage because the information not publicly available.
42. **We recommend the Standard is clear that entities must identify a specific reason for non-disclosure of information, and that to qualify for the exemption the information must provide an entity with an economic benefit that translates to a competitive advantage because the information is not publicly available.**

Additional disclosure

43. If an entity applies the exemption in paragraph 92 of IAS 37, the entity is required to disclose 'the fact that, and reason why, the information has not been disclosed'. We think it would be helpful to include similar language as a requirement associated with the exemption.
44. It is not expected that this disclosure would be of such detail as to disclose information that would be likely to result in unreasonable prejudice.
45. **We recommend the ISSB require an entity to disclose the fact that information has been omitted and the general reason why the information has been omitted. We also recommend that it be clear that this is required for each item of information that is omitted (eg 'by item of information omitted').**

46. The staff illustrates this concept further in Example 1 in Appendix B.

Reassess whether the information qualifies for exemption at each reporting date

47. We think that some of the circumstances that respondents identify as causing information to be considered commercially sensitive could exist for only a limited period of time—that is, disclosing information after that period would no longer be expected to result in the benefits the entity is able to realise in pursuing the opportunity entity not being able to realise the benefits of pursuing the opportunity.
48. For example, an entity may plan to launch a new sustainable product that involves the entity's confidential results of innovation, and the entity therefore determines that information about the opportunity should not be disclosed. However, after the new product is launched, that information becomes publicly available and therefore would no longer harm the entity's ability to realise the benefits of pursuing the opportunity if disclosed.
49. Some jurisdictions impose continuous disclosure obligations that require an entity to assess the commercial sensitivity of information on a continuous basis. For example, [Chapter 3](#) of the Australian Stock Exchange listing rules stipulates that an entity may be exempted from disclosing some information if the disclosures contain particular commercially sensitive information. If the information ceases to be commercially sensitive subsequently, the entity is required to immediately disclose that information.
50. We think the ISSB should include similar requirements for entities applying an exemption; for entities to reassess at each reporting date whether the circumstances which caused an entity to apply the exemption still exist. If the entity is no longer eligible for the exemption, it would be required to disclose that information at that reporting date.
51. Therefore, **we recommend the ISSB require entities to reassess whether the information qualifies for the exemption from disclosure at each reporting date.**

Asymmetry of disclosure requirements for risks and opportunities

52. The staff thinks this exemption should only apply to information about opportunities, and not be applicable to information about risks. Consequently, entities would be required to disclose information about risks regardless of commercial sensitivity.
53. The staff acknowledges that this may create an asymmetry between the disclosure of information about risks and the disclosure of information about opportunities. We think this asymmetry is appropriate for several reasons, including:
- (a) It could be argued that the implications to investors for non-disclosure of risks as compared to non-disclosure of opportunities are not always symmetrical. If entities do not disclose risks to their business, investor protections are compromised, and investors are exposed to downside risk. If information about opportunities is not provided, investors may miss out on potential upside, however, the downside of not disclosing an opportunity may be different than the downside of not disclosing a risk.
 - (b) This asymmetry exists in many jurisdictions for financial reporting. Many financial regulators require entities to provide disclosure of business risks, yet do not require disclosure of business opportunities. For example, Section 229.105 of the US SEC Regulation S-K requires disclosure of the material factors that make an investment in the registrant or offering speculative or risky (the 'Risk Factors' section), however there is no similar requirement for entities to disclose information as it relates to opportunities.

- (c) Market pressure may continue to incentivise disclosure of opportunities. Many entities voluntarily report on sustainability-related opportunities, despite no requirement to report this information. As entities continue to disclose information, the market pressure to provide this information will only increase. As noted by a few respondents in their comment letters, companies are not shy/adverse to sharing the opportunities available to them, so generally, encouragement is not needed to disclose opportunities. In contrast, it is typically necessary to require disclosure of risks particularly to ensure information is provided in a comparable and neutral way.
54. The staff considered the argument that disclosure requirements should be the same for risks and opportunities because sometimes a risk is the inverse of an opportunity, and it could be challenging to disclose information about a risk but not disclose the related information about an opportunity. However, the staff think this is an oversimplification of the matter. We think that, in general, a distinct risk can be disclosed without explicit reference to a related opportunity. The staff illustrates this concept further in Example 3 in Appendix B of this paper. To the extent any information is identified by an entity to be a risk, and the entity thinks the information is inseparable from information about a commercially sensitive opportunity, an entity must disclose all of the information, as the exemption is not permitted for information about risks.
55. Moreover, for the reasons outlined in paragraphs 29(a)–(d) of this paper, we think that the asymmetry is particularly acceptable for the disclosure of commercially sensitive opportunities.

Questions for the ISSB

56. The staff present the following questions for the ISSB.

Questions for the ISSB

1. Does the ISSB have any comments or questions on the matters raised in this paper?
2. Does the ISSB agree to introduce an exemption in [draft] S1 that would permit entities, in limited circumstances where information is not already publicly available, to exclude information about a sustainability-related opportunity when the information is commercially sensitive?
3. Does the ISSB agree with our recommendation to:
 - (a) base this exemption on addressing a particular situation—that is, permitting entities to not disclose a particular item of information in situations when disclosing that item of information related to an opportunity 'can be expected to prejudice seriously' the economic benefits the entity is able to realise in pursuing the opportunity; and
 - (b) require entities, when assessing such situations, to consider whether it is possible to disclose the information about the opportunity at a sufficiently aggregated level that would resolve the entity's concerns about commercial sensitivity, while still meeting the objectives of the disclosure requirements?
4. Does the ISSB agree with our recommendation to include the following requirements associated with the exemption:
 - (a) entities must identify a specific reason for non-disclosure of information, and that to qualify for the exemption, the information must provide an entity with an economic benefit that translates to a competitive advantage because the information is not publicly available;
 - (b) by item of information omitted, require an entity to disclose the fact that information has been omitted and the general reason why the information has been omitted; and
 - (c) require entities to reassess whether the information qualifies for the exemption from disclosure at each reporting date?
5. Does the ISSB agree to specify that this would not:
 - (a) be applicable to information which is already publicly available;
 - (b) permit broad non-disclosure, with commercial sensitivity being used as a justification; and
 - (c) permit non-disclosure of information about risks?

Appendix A: Climate-related regulatory precedents

The US Securities and Exchange Commission

A.1 Page 63 of the [SEC Climate Proposal](#) states:

A registrant, at its option, may disclose information about any climate-related opportunities it may be pursuing when responding to the proposed disclosure requirements concerning governance, strategy, and risk management in connection with climate-related risks. We are proposing to treat this disclosure as optional to allay any anti-competitive concerns that might arise from a requirement to disclose a particular business opportunity. By defining “climate-related opportunities,” the proposed rules would promote consistency when such opportunities are disclosed, even if such disclosure is not required.

[Draft] ESRS 1 General requirements

A.2 Section 7.7 *Information on intellectual property, know-how or results of innovation*, and specifically paragraphs 105 – 107, of [\[Draft\] ESRS 1 General requirements](#) states:

105. When disclosing on its strategy, plans and actions, where a specific piece of information corresponding to intellectual property, know-how or the results of innovation is relevant to meet the objective of a Disclosure Requirement, the undertaking may nevertheless omit that specific piece of information if it meets all of the following criteria:

- (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) it has commercial value because it is secret; and
- (c) it has been subject to reasonable steps by the undertaking to keep it secret.

106. In case a specific piece of information corresponding to intellectual property, know-how or the results of innovation is omitted because it meets these criteria, the undertaking shall comply with the disclosure requirement in question by disclosing all required information with the exception of that specific piece of information.

107. The undertaking shall make every reasonable effort to ensure that beyond the omission of the specific information, the overall relevance of the disclosure is not impaired.

Task Force on Climate-related Financial Disclosures:

Guidance on scenario analysis for non-financial companies

A.3 Section 3.4 of [Task Force on Climate-related Financial Disclosures Guidance on Scenario Analysis for Non-Financial Companies](#) states:

In considering whether particular aspects of a company’s intended disclosure around strategy and scenarios constitutes confidential

business information, a company should ask and challenge itself with the following:

- Does the information bring any economic benefit to my business that translates into competitive advantage because it is kept confidential?
- Would making such information public cause the company to incur an economic loss? If not protected, could competitors use this information without having to bear the costs or risks? Would the company lose its competitiveness built on this information?

A company should not default to business confidentiality as a reason for avoiding disclosure. In determining where to draw the line, companies, as a matter of principle, should err on the side of disclosure.

Unlike information that a company may use to differentiate itself in the marketplace, climate-related risks affect the economy and companies systemically. How a particular company anticipates managing its climate-related risks may not be a source of material competitive advantage, especially in light of the cooperative and interdependent efforts needed to address such risks (climate-related opportunities may be another matter).

Guidance on Guidance on Metrics, Targets, and Transition Plans

- A4. Section D, page 37 of [Task Force on Climate-related Financial Disclosures Guidance on Metrics, Targets, and Transition Plans](#) states:

Finally, the Task Force encourages organizations not to assume their climate-related targets contain confidential business information that would harm the organization if publicly disclosed. When evaluating whether certain climate-related targets contain confidential business information, the organization should consider the following:

- whether the information provides the organization with an economic benefit that translates into a competitive advantage because the information is unknown to its competitors and
- whether making such information public may cause a considerable economic loss for the organization.

If an organization determines that a particular climate-related target is confidential, the organization should provide relevant information in broader terms to support users' decision-making.

Appendix B: Illustrative Examples

- B1. **These illustrative examples were drafted to facilitate ISSB discussion regarding the staff recommendation, and will not be included in IFRS Sustainability Disclosure Standards.**
- B2. Example 1 describes a situation whereby the information related to an opportunity **may be** deemed commercially sensitive:

Example 1

A technology company that manufactures mobile communication devices with limited resources decides to pursue the opportunity to develop a completely solar powered mobile device (eg, pursue a sustainability-related opportunity). The entity thinks it will realise economic benefits if the opportunity is realised, because the entity would be the only company with the intellectual property to manufacture solar powered mobile devices. However, due to its limited resources, it takes the entity some time to manufacture the mobile device.

The entity undergoes significant efforts to keep this activity a secret and does not disclose this opportunity publicly. If the information was disclosed publicly, the entity thinks that would put the entity's ability to realise the economic benefit of pursuing the opportunity at risk, because competitors with more resources could develop similar intellectual property, and ultimately bring a similar product to market first and remove or reduce the entity's competitive advantage.

Based on the facts and circumstances, the entity determines that the information related to this opportunity is commercially sensitive and omits information related to this opportunity from disclosures. Such disclosure could prejudice seriously the benefits the entity is able to realise in pursuing the opportunity, as competitors are likely to act on this information thereby curtailing the entity's competitive advantage. In lieu of specific disclosure, the entity discloses fact that there are efforts underway to develop sustainable products, however due to proprietary reasons, the related information has not been disclosed.

- B3. Example 2A describes a situation whereby the information related to an opportunity **may not be** considered commercially sensitive.

Example 2A

An automotive company that has been in operation for decades decides to explore the opportunity to develop electric vehicles. The entity begins research and development activities necessary to understand the potential of such opportunity and undergoes significant efforts to keep this activity a secret and does not disclose this opportunity publicly.

The majority of the entity's competitors have already begun to manufacture and sell electric vehicles. The majority are also disclosing this opportunity and related activities publicly.

Based on the facts and circumstances, the entity determines that the decision to develop electric vehicles is not information that would prejudice seriously the benefits the entity is able to realise in pursuing the opportunity if disclosed. Many companies in this industry have already begun to develop electric vehicles, therefore disclosure that the entity is also exploring the opportunity would not enable

competitors to act upon information that would translate to a competitive advantage. Therefore, the entity is required to disclose this information.

- B4. Example 2B describes a situation whereby the information related to an opportunity may not be considered commercially sensitive, however, an item of information related to that opportunity may be considered commercially sensitive.

Example 2B:

The automotive company described in example 2A decides to explore the opportunity to create an electric vehicle which includes a recyclable battery for its electric fleet. The creation of the particular battery would be revolutionary for the automotive industry.

The entity begins research and development activities and undergoes significant efforts to keep this activity a secret. If disclosed publicly, the entity thinks competitors would act on the information and prejudice seriously the benefits the entity is able to realise in pursuing the opportunity.

Again, based on the facts and circumstances described above, the entity determines that the information related to the opportunity to create electric vehicles is not commercially sensitive and discloses the information.

However, the entity determined the information regarding the development of recyclable batteries the electric vehicles was commercially sensitive and therefore is not required to be disclosed. In lieu of specific disclosure, the entity discloses fact that there are efforts underway to innovate upon the traditional configuration of electric vehicles, however due to proprietary reasons, the information has not been disclosed.

- B5. Example 3 describes a situation whereby the information related to an opportunity is intertwined with a risk.

Example 3

A mining company has operations in a community in a remote area. The entity plans to withdraw from this remote mining facility because it is no longer economical. The entity plans to move elsewhere but has not publicly disclosed this. The entity does not want competitors to know information about the planned move, such as the location, as it is viewed as commercially sensitive.

The community where the mining company operates relies on the entity for employment and economic prosperity broadly. The resulting impact of the entity's withdrawal will be a collapse in social capital in the community.

Therefore, there is both the risk of destruction of social capital for the community, as well as the opportunity to explore a new mining area with immense potential.

Considering the facts and circumstances, the entity determines:

- (a) the key dependency risk, which includes the dependency of the local community on mining company must be disclosed; and
- (b) information about the opportunity to relocate can be disclosed at a sufficiently aggregated level such that users are provided with adequate disclosure (eg that there is an opportunity to move to other mining locations that would be economically advantageous for the entity) without revealing details which may be commercially sensitive (eg the entity does not disclose specific information on the location). Therefore, the entity discloses this information. *Note: the entity is required to consider whether it is possible to disclose the required information at a sufficiently aggregated level that would resolve the entity's concerns about commercial sensitivity, while still meeting the objectives of the disclosure requirements. If the entity determined that it could not aggregate the information in such a manner, but the risks were intertwined, then the entity would determine that all information is required to be disclosed.*