

**Response to Consultation on the
Management & Disclosure
of Climate-related Risks
by Fund Managers**

**Submitted to
The Securities and Futures Commission**

22 December 2020

Boswell Capital Management Limited

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The Securities and Futures Commission
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via

- 1) online submission: <https://apps.sfc.hk/edistributionWeb/gateway/EN/Consultation/>
- 2) 2020_Climate_Consultation@sfc.hk

Re: Response to Consultation on the Management & Disclosure of Climate-related Risks by Fund Managers (Oct 2020)

Thank you for the opportunity to participate in this Consultation.

I realize the initiative has at least two objectives: a) combating greenwashing and b) encouraging a "green-finance" industry in Hong Kong. There is no disputing the importance of reducing carbon-emissions, and that many investments described as green & sustainable (to attract business) are conventional in reality and wouldn't stand up to scrutiny. It is commendable that the SFC is alert to greenwashing, and intends to put its weight towards the planet's good. I am in favour of reminding fund managers to think deeply about unforeseen knock-on effects and risks of climate change.

With respect, and realizing that plans are advanced, I regard the proposed modifications to the Fund Manager Code of Conduct and additional related rules for managers Responsible for Overall Operations of a Fund (ROOF) as going down a wrong road and:

1. Unlikely to prevent greenwashing, or develop a career-worthy "green finance" industry locally;
2. Incorporating general TCFD principles meant to be voluntary but converting them into mandatory obligations;
3. Creating business-hobbling headaches for 88.88 % of the asset management firms in Hong Kong while allowing the biggest few of the 200 largest (which manage 80 % of the assets) to justify their approach as they more or less would and already do anyway;
4. Creating a double-standard by essentially exempting Discretionary Accounts from the proposed rule changes;
5. Forgetting that the biggest global organizations (pension funds) advocating these sorts of disclosures and rules appear in some cases to be exempted from the very ones that smaller firms will have to follow. (See page 2 section 8 of the AIFMD in Appendix 2 of this letter) and;
6. Resting on a vague basis for the HK\$4 billion AUM Large Manager enhanced threshold. (See item 43 (a) on page 16-17 of the Consultation referring to "...***institutions with balance sheets of EUR500 million...***"). Unless something has been left out of the explanation, one cannot conclude and this does not necessarily mean AUM of EUR500 million (the rough equivalent of HK\$4 billion.) In all likelihood, it would be read as referring to institutions with equity of EUR500 million on their balance sheets. Institutions with equity on their balance sheets of EUR500 million would customarily also have drastically higher assets on those same balance sheets and that amount would be in the range of EUR5-10 Billion and greater, like banks and insurance companies. I am reasonably certain this vastly exceeds what most fund managers have under management and suggests the threshold ought to be for entirely different entities.

Please bear in mind who the members of the Task Force on Climate-related Financial Disclosures (TCFD) are since the Consultation refers to it frequently, that this group is incredibly small (only 31 people), and what their biases invariably are. One member comes from BNP Paribas (over 200,000 employees) while another comes from JPMorgan (roughly 189,000 employees at last check.) Two are from pension funds (Canada Pension Plan & ABP Netherlands.) One comes from Unilever, one of the largest consumer products & packaging companies, one from Tata Steel (with a carbon footprint that could probably use some looking at) and one from BHP Broken Hill Proprietary, a vast resource-extraction operation. These are massive organizations under public pressure to clean up after themselves, at least carbon-wise; they know they should be and so they are, or they are saying they are. They may have the wherewithal to set up committees for measuring & monitoring their climate-altering emissions. However, most fund managers are not privy to detailed carbon data, it isn't comprehensively available anywhere, and as a result, a likely outcome will be managers making wild guesses

on carbon-driven climate risks based on whatever imperfect data they can lay their hands on, and therefore reaching absurdly wrong conclusions. Moreover, the clients of fund managers (as opposed to a handful of Task Force members referred to as “**data users**”) will be, as a whole, unable to interpret such conclusions and information, even if it were given to them on a silver platter. Is this a productive use of a fund manager’s time and will it do their client’s any good?

I imagine many fund managers will grapple over how on Earth to comply with changes proposed by this Consultation. Coincidentally, something of a revealing example of how-at-least- someone-else-is-doing-it seems to have appeared in a full page notice on page B5 of the SCMP’s 17 December 2020 edition. In that notice, Manulife BNP Paribas (seemingly well connected with the Task Force) describes, among other things, the implementation of ESG into their funds....including a remark that:

“a key component of company engagement is voting at annual meetings.”

I do not mean to single out BNP Paribas out; they may push hard for the right things, and with over 200,000 people on staff, they certainly could. But is the above statement really an advancement or anything new? In all likelihood, such a step, being taken by a firm which appears to know the forthcoming rules of the game, is something which sounds new (though many small firms have been doing it for years) and is probably what other managers will adopt as part of a template to meet climate-related risk management guidelines. Will “voting” by putting a tick on a proxy statement with two or three proposals on it change much, or will it continue to be the afterthought it has been for most large institutions for so many years? Will such voting amount to anything, or will it just approve management’s recommendations, which, from the literature, seems to have been the default approach of many large asset owners. Only time will tell. I recognize that the Consultation and proposed changes call for much more than just “engaging” like above. Nevertheless, the basic direction that at least one big firm seems to be heading in (by its notice in the newspaper) resembles business as usual.

If I may (respectfully) suggest an alternative vision, it would have 3 parts as follows:

- 1) Fund managers could sign an **Annual Declaration** attesting that they have read the Recommendations of the Task Force on Climate-related Financial Disclosures (see suggested text on next page) and considered its ramifications, and;
- 2) Fund managers could come up with and explain their own way of addressing climate change-risks that they consider sensible and for the planet’s good. With 1,800 asset managers in town, some brilliant ideas would probably emerge, and;
- 3) The SFC could annually select what it regards as the twenty or thirty best examples and convene an **Annual Climate-Change Investment Conference**, uniting the selected firms with Regulators and interested investors, for further discussion and possible broader roll-out.

This would:

- be far easier;
- bring out the best ideas and best character of people;
- ensure fund managers give consideration to climate-related risks, as recommended;
- allow those who care about carbon-emission to do things to reduce or sequester it;
- avoid prescribing how to handle inherently unpredictable and sometimes unmeasurable issues (who predicted the 2008 crisis or COVID-19 ?);
- avoid what I think will be silently regarded as “chasing our tails” to comply with subjective new rules;
- avoid the nagging worry that “the Regulator might not agree that my system is good enough”;
- showcase Hong Kong as a place for where people interested in green-finance can do what matters which to me is: a) identifying projects that are financially worthy and b) connecting capital with them so they get off the ground so that c) the ultimate investors receive (or at least have a reasonable chance of receiving) a positive absolute return on their money, and;
- continue the practical, efficient & energetic Hong Kong spirit - particularly during this pandemic era.

(Please see page 3 and onward for sample Declaration & replies to the questions 1-9 in the Consultation.)

**(Draft / Suggested) Annual Declaration by Fund Managers
in respect of
Management & Disclosure of Climate-related Risks**

(possibly integrated with the new Wings 2.0 system)

For the reporting period 1 Jan 2021 - 31 Dec 2021;

1. I/ we have read the [Final Report | Recommendations of the Task Force on Climate-Related Financial Disclosures](#).
2. I / we have taken the recommendations of the TCFD into consideration in our investment process, with deep thought given to the potential knock on effects of climate-change on businesses as well as society at large.
3. The description in the box below summarizes what our organization has done over the reporting period with respect to addressing climate change and associated risks (if applicable) in a meaningful way.

4. The above is accurate and true, through to the present.

Date: _____

Name of firm : _____

Name of authorized representative: _____

Submit

Q. 1: As to whether a focus on climate change is suitable initially or whether a broader spectrum of sustainable finance should be considered. (Explanation)

If a change is made at all, limiting the focus to just climate-change rather than more ESG factors - too numerous to list - is better. Expanding the scope further would overwhelm any measuring & monitoring process contemplated by proposed rule modifications.

Q. 2: As to whether initially, the proposed requirements should apply to management of CIS but not discretionary accounts.

No. This creates a double-standard, tantamount to hobbling fund managers while allowing managers of discretionary accounts to have far more free rein, or at least, far less of a compliance burden.

When a client opens a discretionary account, he or she expects the manager they have hired to do their best and focus on selecting sensible investments, all things considered. Similarly, when a client invests in a fund, they have a reasonable expectation that the manager will do the same...and not be (in the background) chasing their tails on matters of little or no interest to the client.

Q. 3: As to whether referencing the TCFD recommendations in developing the proposed requirements is appropriate for minimizing compliance and creating a consistent framework as well as other standards that might be more suitable.

I would not be concerned about sticking to a framework that someone else has come up with unless it is suitable. The aim should be to develop the right framework for a specific place and setting. What big companies say they would like to see isn't necessarily anything remotely like what the clients of most fund managers would like to see, at least none that I know of. Burdening fund managers with rules mainly drawn up by the spirit of the TCFD (tailored-made for very large organizations like its members come from for the most part) does not seem helpful.

Q. 4: As to the proposed basis for the threshold for Large Managers and the reporting method.

For reasons explained on page 1 and Appendix 2, I do not think the basis used to determine the HK\$4 billion threshold is adequately clear or justifiable.

Q. 5: As to comments on the on amendments to the FMCC, baseline requirements & enhanced standards.

I am not in favour of the amending the Code of Conduct for the reasons explained at the beginning of this letter.

Q. 6: As to providing a clear picture on whether a fund manager has integrated climate-related considerations into its strategies, determination of irrelevance if that's the case, and keeping suitable records for the disclosure rational.

Yes, if the matter is not relevant, it should be fine for the fund's manager to make a simple disclosure statement to that effect, and keep such disclosure or reasoning on file.

Q. 7: As to climate-related disclosures at the entity rather than than fund level insofar as reporting burdens.

Any information disclosure of a scientific nature should be specifically limited to the fund manager level (not the fund level) because of the extreme compliance costs of making changes to a regulated fund's documents, which come out of the shareholders pockets.

Q. 8: As to limiting requirements for quantitative climate-related data to Large Managers and disclosing WACI at the fund versus entity level.

I would strongly suggest not imposing the disclosure of climate data and specifically WACI (weighted average carbon intensity) on fund managers of any size. Imagine the complexity of providing a figure that makes any sense. Fund managers change the size of their positions constantly as investors come and go so a high WACI figure might mean that the fund invests in carbon intensive industries, or, just as easily, that a fund which invests in low carbon businesses went from large to small in size and therefore was technically "involved with" more carbon over any given period. This entire measurement process makes no sense for funds which are all dynamic by nature. It is (instead) suited for stand-alone enterprises which can measure their own carbon output.

Q. 9: As to time-frame suitability of a 9-12 month transition period for the new rules.

No. If changes are made as proposed, the above time-frame is barely enough. If the alternative vision I have proposed were adopted instead, the time frame would be good.

Thank you again for inviting participation in this consultation.

If the SFC wants to scale up a green-financial industry in the city, with work for people that makes sense and that they can feel proud of, I would advocate the simpler approach outlined on page 3 of this letter. I think it will help build a better future.

Yours faithfully,

Appendix 1

Screenshot of Notice from South China Morning Post
relating to BNP Paribas

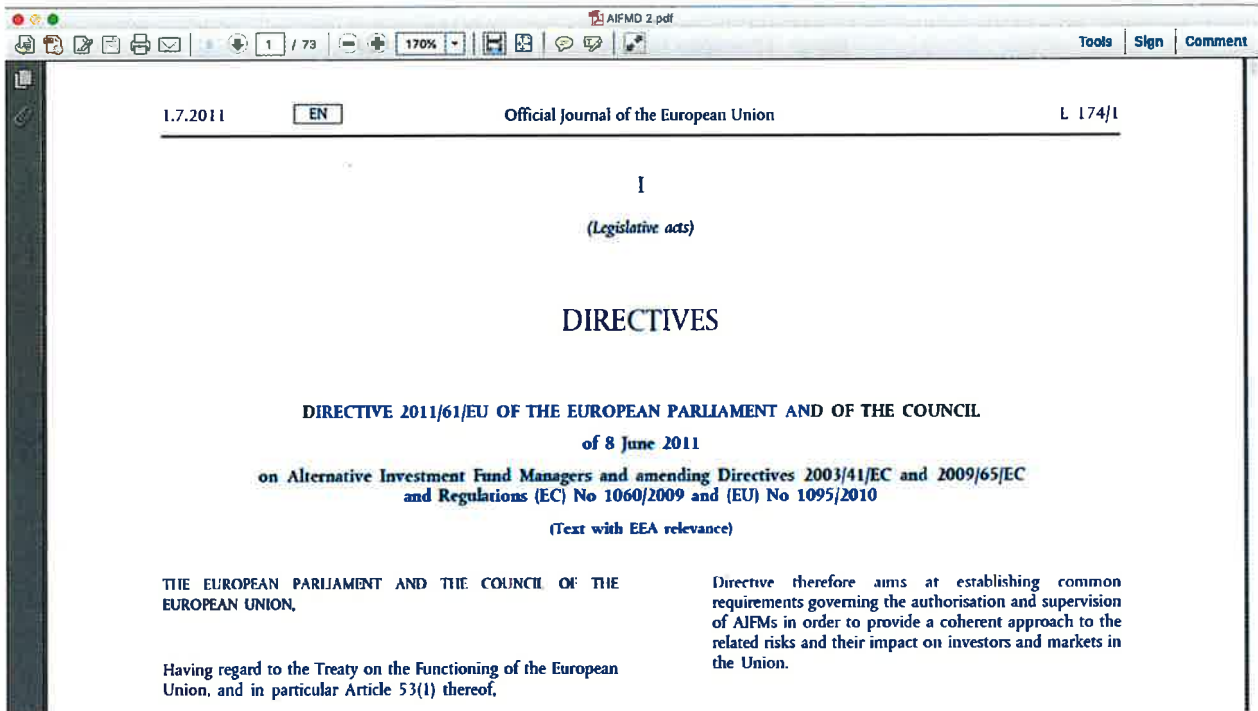
“Various Changes to Underlying Funds”

Date: Thursday December 17, 2020, page B5

*of BNP PARIBAS ASSET MANAGEMENT's commitment to act as an efficient and diligent steward
ity and environmental stewardship. A key component of company engagement is voting at annual
kets in which it invests and in the rules that guide and govern company behavior as per its Public
ollowing address: <https://www.bnpparibas-am.com/en/our-approach-to-responsibility/as-a-responsible->*

Appendix 2

Screenshots of AIFMD Directive & section (8) on page two that appears to exempt pension funds



(8) The entities not considered to be AIFMs pursuant to this Directive fall outside its scope. As a consequence, this Directive should not apply to holding companies as defined herein. However, managers of private equity funds or AIFMs managing AIFs whose shares are admitted to trading on a regulated market should not be excluded from its scope. Further, this Directive should not apply to the management of pension funds; employee participation or savings schemes; supranational institutions; national central banks; national, regional and local governments and bodies or institutions which manage funds supporting social security and pension systems; securitisation special purpose entities; or insurance contracts and joint ventures.

(11) Several provisions of this Directive require AIFMs to ensure compliance with requirements for which, in some fund structures, AIFMs are not responsible. An example of such fund structures is where the responsibility for appointing the depositary rests with the AIF or another entity acting on behalf of the AIF. In such cases, the AIFM has no ultimate control over whether a depositary is in fact appointed unless the AIF is internally

⁽¹⁾ OJ L 145, 30.4.2004, p. 1.

⁽²⁾ OJ L 177, 30.6.2006, p. 1.

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