

October 21, 2022

OECD Headquarters  
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Dear OECD Corporate Governance Committee members,

## Re: Public Consultation on Draft Revisions to the G20/OECD Principles of Corporate Governance

The Canadian Coalition for Good Governance (CCGG) welcomes the opportunity to provide the OECD Corporate Governance Committee with feedback on the draft revisions to the G20/OECD Principles of Corporate Governance.

CCGG's members are Canadian institutional investors that together manage approximately \$6 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A list of our Members is attached to this submission.

## General Comments

CCGG strongly supports the direction and substance of the proposed revisions to the G20/OECD Principles of Corporate Governance.

In particular, we were pleased to note the inclusion of the following concepts into the revised Corporate Governance Principles:

- **Regulatory independence:** The revisions highlight the importance of regulatory authorities being autonomous, independent and free from conflict of interest (Principle 1.E.).
- **Diversity and inclusion:** The revisions include references to the importance of diversity at the board level including with respect to disclosure of board composition, recognition that that the concept of diversity is broad and goes beyond gender, and support for the idea that companies should consider tools, policies and other measures that have the goal of enhancing board and management diversity, including reinforcing the 'female talent pipeline' (Principal II.C.5, Principal V.E.4. and Principal IV.A.6.). While recognizing that diversity is a rapidly evolving

conversation in the context of global governance, CCGG has long advocated for a broad definition and a contextual approach to diversity that takes into account relevant stakeholders, notably that, to the extent practicable, a board should reflect the communities in which the corporation sells its good or services.<sup>1</sup>

- **Clarification that the fiduciary duty of board members to act in the best interests of the company, extends to taking into account the interests of stakeholders.** CCGG supports this proposed revision and notes that it is consistent with the Canadian common law and Canadian federal corporate law. In 2019, the *Canadian Business Corporations Act* (CBCA) was amended to codify the Canadian common law duty of directors, which is that the directors of a company act in the best interests of the corporation and *may consider* the interests of stakeholders including shareholders, employees, creditors, consumers, governments, and the environment. The CBCA amendments also included references to retirees and pensioners and the long-term interests of the corporation in the list of stakeholder interests that may be considered when it codified the common law fiduciary duty.<sup>2</sup> In our view, the OECD's proposed revisions to the articulation of the director's fiduciary duty closely align with the Canadian duty (Principal V.A.).
- **Inclusion of a new chapter focused on sustainability and resilience:** CCGG strongly supports the inclusion of the new Chapter VI. *Sustainability and Resilience* which highlights the importance to institutional investors of corporate governance frameworks that address sustainability and corporate resilience. CCGG has long supported the idea that directors should be made aware of the ongoing environmental and social (E&S) matters and the impacts on their company value. Closely aligned with the guidance in the new Chapter VI of the revised OECD Corporate Governance Principles, CCGG's *The Directors' E&S Guidebook*<sup>3</sup> provides practical insights and recommendations to directors about their responsibility to ensure all material risk factors, including E&S are managed. The Guidebook encourages boards to consider how these E&S factors apply to their respective companies and to develop structures to oversee the management of material E&S factors including governance practices, strategy and risk management policies, and disclosure and engagement with shareholders, all of which are addressed through the principles and sub-principles articulated in Chapter VI (Principle VI.A., VI.B. VI.C, & VI.D.).

We also agree that it is appropriate to integrate and update the OECD's existing guidance on the relationship between companies and non-shareholder stakeholders and include it in this new chapter. In particular we support the increased focus on integrating relevant stakeholder

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<sup>1</sup> See CCGG's 2013 [Building High Performance Boards](#), Principle 4, at Pg. 8; and CCGG's 2018 [Gender Diversity Policy](#).

<sup>2</sup> See CCGG's March 2021 [Submission to Corporations Canada Re: Consultation on regulatory proposals – Bill C-97](#) at Pg. 7-8.; Government of Canada, Budget 2019, A Secure and Dignified Retirement for Canadian Seniors, March 19, 2019 [online: [Budget 2019](#) Part 4: [Protecting Canadians' Pensions and A Secure and Dignified Retirement for Canadians \(budget.gc.ca\)](#)]

<sup>3</sup> See CCGG's [The Directors' E&S Guidebook](#)

interests into governance frameworks while preserving the distinction between stakeholders and shareholders.<sup>4</sup>

We support the OECD's attempt to highlight that the board's role is to balance stakeholder interests and shareholder interests but that it is likely not possible for boards to always balance every interest equally or in a way that satisfies every stakeholder or shareholder: difficult trade-offs will always have to be made. The OECD's guidance that corporate activities should be guided by policies that internalize environmental and social externalities and set predictable boundaries within which the directors exercise their fiduciary duties, is a good illustration of how effective corporate governance policies can support directors in the difficult task of weighing and balancing stakeholder interests when determining how to fulfill their fiduciary duty to the company in a manner that is compatible with the interests of institutional investors as stewards focused on long-term company value.

- **Support for consistent, comparable internationally accepted core standards for sustainability disclosures:** CCGG strongly supports the OECD principle that efficient capital markets require investors to have globally consistent and comparable disclosure by companies. CCGG agrees with the OECD's call for regions and domestic jurisdictions to facilitate consistency and comparability between sustainability disclosure frameworks and to support the development and implementation of internationally accepted standards (Principal VI.B.1).

CCGG has been a public supporter of the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD), and advocates in favour of national and international alignment of climate change-related corporate disclosure regulations consistent with the four pillars of the TCFD framework.<sup>5</sup> CCGG has also been supportive of the establishment of the International Sustainability Standards Board and its work toward establishing both climate change-related and sustainability disclosure standards.

- **Integration of systemic risk into sustainability guidance with a specific focus on integration of climate change risk:** In addition to the inclusion of the new Chapter IV focused on mechanisms to integrate sustainability and resilience into corporate governance frameworks, CCGG strongly supports the integration of these concepts into the existing chapters which address disclosure and transparency (Chapter IV) and the responsibilities of the board (Chapter V). Of note, we agree with the inclusion of references to systemic risks faced by

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<sup>4</sup> For example in the guidance at the beginning of Chapter VI the OECD states: "if directors in all companies are required to equally balance shareholders' financial interests with the interests of all stakeholders and, in addition, to fulfill a number of specific public interest missions, the corporate sector could become less efficient in allocating resources", at pg. 45.

<sup>5</sup> See [CCGG Jan. 2022 Submission to CSA Re: CSA Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate](#); [CCGG June 2022 Submission to US SEC Re: Enhancement and Standardization of Climate-related Disclosures](#); CCGG July 2022 Submission to [IFRS ISSB Re S1 General Sustainability Requirements and IFRS ISSB Re S2-Climate-related Disclosures](#).

companies, in particular those related to climate change, into paragraphs focused on company risk management policies and disclosure to investors.<sup>6</sup>

## Specific Comments

In addition to the above general comments, we have the following observations of a more technical nature:

### Chapter I. Ensuring the basis for an effective corporate governance framework

**Principle 1.A. The corporate governance framework should be developed with a view to its impact on corporate access to finance, overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and well-functioning markets.**

The OECD is proposing to add the following sentence to its new guidance to provide context for the proposed amendment to this principle: “Policy makers and regulators need to consider how the corporate governance framework may encourage opportunities to access public equity markets and impact corporate access to market-based financing.”

In CCGG’s view encouraging policy makers and regulators to focus on developing corporate governance frameworks with a view to impacts on capital formation “opportunities,” in isolation from balancing such considerations against investor protection objectives, could lead to “race to the bottom” policy and regulatory decision-making that does not adequately take into account investor interests, thus undermining the goal of promoting transparent and well-functioning markets. We would recommend adding the words: “while balancing investor protection mandates and objectives” to the end of the proposed sentence.

In our view this proposed amendment is consistent with the public policy benefits of corporate governance frameworks outlined in the draft Principles’ preamble paragraphs: the first policy objective identified is to help companies “access financing from capital markets” and the second is investor protection.<sup>7</sup>

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<sup>6</sup> For example: Principle IV.A.8. Foreseeable risks factors is amended to include references to value chains, digital security risks, and sustainability risks, notably climate-related; Principle V.D.2. Reviewing and assessing risk management policies and procedures is amended to include new paragraphs focused on material sustainability matters “with a view to increasing resilience, boards should also ensure that they have adequate processes in place within their risk management frameworks to handle non-operational, but company-relevant risks, such as health crisis, supply chain disruptions and geopolitical tensions”.

<sup>7</sup> See OECD draft revisions, Pg. 6 at para 3 and para 5; of note the third public policy benefit is that “well-designed corporate governance policies may also support the sustainability and resilience of corporations and in turn, may contribute to the sustainability and resilience of the broader economy”.

## Chapter II. The rights and equitable treatment of shareholders and key ownership functions

**Principle II.C.3: General shareholder meetings in virtual or hybrid format should be allowed as a means to facilitate and reduce the costs to shareholders of participation and engagement. Such meetings should be conducted in a way to ensure equal access to information and opportunities for participation of all shareholders, regardless of whether physical or virtual.<sup>8</sup>**

In CCGG's view, hybrid meetings are preferable to virtual only shareholder meetings (VSMs). Unlike virtual only shareholder meetings, in person meetings facilitate communications between shareholders and the company's board and management and provide the ability for shareholders to vote and to pose questions from the floor to management in real time, without prior gatekeeping or vetting by management. For these reasons, CCGG is of the view that VSMs should supplement rather than replace in-person meetings, hence our preference for hybrid meetings. CCGG agrees with the OECD's support for leveraging virtual meeting technologies as a mechanism for increasing investor participation and engagement in shareholder meetings. However, CCGG encourages the OECD to recommend that the best practice for investor engagement and participation is through hybrid shareholder meetings as opposed to VSMs.

We agree that the goal of digital and virtual processes, whether in support of virtual, or in our preference, hybrid shareholder meetings, should be to achieve an experience for shareholders that is as much aligned with the experience of an in person meeting as possible. This position aligns with the OECD's stated principle that "such meetings be conducted in a way to ensure equal access to information and opportunities for participation of all shareholders, regardless of whether physical or virtual."

We further agree that facilitation of virtual and hybrid meetings includes important considerations such as accessible and secure technology that is easy for shareholders to navigate and use, and the capacity for real time shareholder participation. Synchronous shareholder participation in a virtual or hybrid meeting must facilitate communication among shareholders. The need for shareholders to be able to communicate with the board, management and each other is essential.

**Principle II.E.: All shareholders of the same series of a class should be treated equally. Capital structures and arrangements that enable certain shareholders to obtain a degree of influence or control disproportionate to their equity ownership should be disclosed.<sup>9</sup>**

CCGG notes that there is no commentary or guidance following the statement of this principle in the draft Principles. Capital structures, such as dual class or multi-vote shares, which permit certain

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<sup>8</sup> OECD draft revisions at Pg. 17.

<sup>9</sup> We find the articulation of the Principle as stated somewhat confusing. The first sentence confirms that all shareholders of the same series of a class should have the same rights, but this is true by virtue of being of the same series. The second sentence of the principle speaks more broadly to the existence of different capital structures and arrangements that create issues of disproportionate influence or control relative to the level of

shareholders to assert a degree of influence or control over a company that is disproportionate to its equity ownership are problematic. While we agree that disclosure is one essential tool for protecting subordinate value/single or no vote shareholders there are other policy tools available to jurisdictions that serve to protect the principles of shareholder democracy and the interests of investors over time. CCGG has a Dual Class Shares Policy<sup>10</sup> that highlights such policy tools, notably requirements for sunset provisions (either time or event based). Given the increasing number of jurisdictions that are embracing dual class structures in order to attract company listings, we encourage the OECD to highlight investor protection considerations and options more prominently in the final Principles, through additional commentary following the statement of this principle.

### Chapter III. Institutional investors, stock markets, and other intermediaries

#### Principle III.A.: Increased focus on institutional investor stewardship and investor engagement including recognition of the importance of stewardship codes

CCGG supports OECD's inclusion of language highlighting the importance of institutional investor stewardship policies and codes as important components of investor engagement and voting policies. CCGG believes that stewardship for institutional investors means fulfilling their responsibilities as fiduciaries in meeting their obligations to their beneficiaries or clients and that stewardship is intended to enhance the long-term sustainable creation of value, so companies and their investors can prosper, and in the process, benefit the market and society as a whole.

In the Canadian context, CCGG has published its Stewardship Principles<sup>11</sup> with the goal of helping institutional investors, including asset owners and asset managers, in Canadian public equities be active and effective stewards of their investments. CCGG's seven stewardship principles express what we believe are appropriate stewardship responsibilities. They are intended to help institutions investing in Canadian public equities be active and effective stewards of their investments and are directed to both asset owners and asset managers.

Given these objectives, in the context of the link between stewardship and engagement, we agree with the inclusion by the OECD of the language supporting the idea that engagement by institutional investors can include "continued dialogue with portfolio companies either on company specific matters or systemic factors affecting their entire portfolio" [at page 23]. Consistent with the inclusion of references to climate change that are woven throughout the draft revised Principles, we would recommend that a reference to climate change be incorporated by way of example such that the commentary would then read: "continued dialogue with portfolio companies either on company specific matters or systemic factors, such as climate change, affecting their entire portfolio."

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a shareholder's equity or economic ownership. Our response recommends the OECD consider additional policy guidance beyond disclosure for such situations.

<sup>10</sup> See CCGG, [Dual Class Share Policy](#), September 2013 for investor protection focused policy recommendations.

<sup>11</sup> See CCGG's [Stewardship Principles](#).

## CONCLUSION

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Catherine McCall, at [cmccall@ccgg.ca](mailto:cmccall@ccgg.ca) or our Director of Policy Development, Sarah Neville at [sneville@ccgg.ca](mailto:sneville@ccgg.ca).

Yours truly,

*'Bruce Cooper'*

Bruce Cooper  
Chair, Canadian Coalition for Good Governance

## CCGG MEMBERS 2022

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- Capital Group Canada
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OP Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- Provident10
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- TD Asset Management
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- York University Pension Fund



