CCGG Canadian Coalition for Good Governance

THE VOICE OF THE INVESTOR

BUILDING HIGH PERFORMANCE BOARDS

CONTENTS

MISSION & VISION

MISSION

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 works towards 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.

VISION

To enhance and protect long term capital by being the preeminent voice of institutional investors promoting the highest standards of corporate governance and investor stewardship in Canada.

"We…now have a measure of resolve to act together, not to run the corporations, but to make sure they have honest, smart, knowledgeable and experienced directors to assure that companies are well managed for shareholders, and the public, employees, etc."

-Stephen Jarislowsky, CCGG co-founder, October 31, 2002

ABOUT THE CANADIAN COALITION FOR GOOD GOVERNANCE

The Canadian Coalition for Good Governance (CCGG) was formed in 2002 and incorporated as a not-for-profit corporation in 2003. CCGG's members are Canadian institutional investors that together manage approximately $5.5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors.

Acknowledgements:
The Canadian Coalition for Good Governance would like to acknowledge and thank the members of our Environmental and Social Committee, our Public Policy Committee and our Board of Directors for their review, consultation and invaluable advice in the development of this document. In addition, we would like to thank the members of the Canadian and global corporate governance community, including from the disciplines of legal, audit, academic, Indigenous advisory and policy advocacy who reviewed and provided comment and feedback on this document.

EXECUTIVE SUMMARY

At CCGG, we believe in the enduring value of good corporate governance. It is the operating system that allows boards to function at the highest level in an increasingly dynamic and unpredictable environment. We also believe that the good governance of a corporation is essential to creating long-term sustainable value and reducing investment risk.

This document is the fourth iteration of CCGG's Building High Performance Boards and it updates our previous version published in 2013. Best practices in Canadian corporate governance evolve as expectations, markets and the regulatory landscape change and as our understanding of these factors increases through experience. We have updated this document to reflect this evolution with support and input from our Environmental and Social Committee and our Public Policy Committee, both comprised of representatives drawn from across our Membership.

The key changes that we have made from the last version are:

- Integration of oversight of material sustainability or environmental and social matters.
- Incorporation of new guidance with respect to the oversight of corporate culture, materiality assessments and the consideration of broader stakeholder interests aligned with strategy and risk.
- Incorporation and recognition of the importance of reconciliation and the role of Indigenous Peoples in Canada as rights holders.
- Incorporation of oversight of diversity and inclusion.
- Reorganization of the structure around high level guiding principles with a focus on corporate resilience and updated guidance throughout.

We expect Canadian public companies to exceed the minimum standards required by Canadian Securities Administrators' regulations and corporate law by adopting our governance policies and procedures in their organizations. We believe that most of these guidelines apply to companies of all sizes, although we recognize that not all guidelines are appropriate for all companies and all situations. We also encourage companies to exceed these guidelines if appropriate in their particular circumstances. Private and not-for-profit organizations may also find the guidance useful.

CCGG recognizes that there are some legitimate differences in the governance principles applicable to equity controlled corporations. The general principles in this document will continue to apply to equity controlled corporations, except as modified by CCGG's Governance Differences of Equity Controlled Corporations Policy[1]. Additional guidance for companies that are controlled through dual class share structures can be found in CCGG's Dual Class Shares Policy[2].

CCGG's Members continue to support the principles-based approach and aim to provide clear, unequivocal guidance to boards without being excessively prescriptive. This sets uniform expectations for all boards while also recognizing that there is not and should not be a "one size fits all" approach to corporate governance. The principles-based approach allows room for each board to implement processes and practices suitable for their specific context and encourages meaningful issuer-specific disclosures and engagement with investors when such contexts arise. While we acknowledge the importance of globally recognized corporate governance best practices[3], in our view the Canadian institutional investor perspective is also needed and valued, and acknowledges the distinct economy, geography, market structure, and legal and regulatory frameworks that shape Canada's capital markets.

[1] CCGG, Governance Differences of Equity Controlled Corporations Policy, 2011 [https://ccgg.ca/download/4018/]
[2] CCGG, Dual Class Shares Policy, 2013 [https://ccgg.ca/download/4008/]
[3] E.g. see for example, ICGN Global Governance Principles 2021, G20/OECD Principles of Corporate Governance 2023, and the UK Corporate Governance Code 2024. In addition, for Canadian director perspectives see: *Charting the Future of Canadian Governance: A Principled Approach to Navigating Rising Expectations for Boards of Directors, Report of the Committee on the Future of Corporate Governance in Canada, a joint initiative of TMX Group Limited and The Institute of Corporate Directors*, 2022 Institute of Corporate Directors and TMX Group [22-3325-Committee-Report-Dec2022_EN.pdf]; and Dey, P. and Kaplan, S., *360° Governance: Where are the Directors in a World of Crisis?*, 2021 Michael Lee-Chin Family Institute for Corporate Citizenship, Rotman School of Management University of Toronto 360° Governance: Where are the Directors in a World in Crisis?

FOREWORD

INTRODUCTION

CCGG published its first principles-based governance guidelines for Canadian public companies in 2003 with the goal of working "with directors to build high performance boards, dedicated to progressive corporate governance and to the enhancement of long-term investor returns"[4]. Over time those guidelines evolved into "Building High Performance Boards" (BHPB), which is widely used by corporate directors, Canadian and international director education programs and CCGG's institutional investor Members.

CCGG firmly believes that the fundamental principles and guidance in BHPB remain as robust and relevant today as when they were last updated in 2013. Since then, significant changes have occurred. The legislation and regulations applicable to Canadian capital markets have been amended. Institutional investor expectations of public issuer boards have intensified alongside a rapidly evolving broader governance landscape that places enhanced expectations on both directors and investors to be aware of the material governance, social and environmental implications of their decisions and investments.

THE CANADIAN LEGISLATIVE AND REGULATORY ENVIRONMENT

The *Canada Business Corporations Act* ("CBCA") has been amended several times since 2013 to integrate improvements to corporate governance for federally incorporated public companies, including codifying the common law fiduciary duty of directors to act in the best interests of the corporation, adopting majority voting and say on pay and requiring annual disclosures to shareholders for board and executive officer diversity and employee, retiree and pensioner well-being[5].

Provincial legislation has been amended to facilitate virtual-only shareholder meetings resulting in raised concerns for shareholder democracy. Provincial securities regulators have been active in areas ranging from how investors receive mandated documents, to the kinds of disclosures that issuers must make, including with respect to board and senior management diversity, and climate risks.

THE INTEGRATION OF SUSTAINABILITY

The climate crisis, biodiversity and nature loss, the COVID-19 pandemic, increasing social and economic inequality, and calls for increased diversity and inclusion are just some of the many environmental and social ("E&S" or "sustainability") matters that Canadian boards and the corporations they oversee are expected to tackle.

In addition, rising geopolitical tensions among major economies have exacerbated supply chain disruptions, including concerns about supply chain integrity, and contributed to inflation and an affordability crisis that intensifies global economic and financial fragmentation. Heightened stakeholder engagement, including consumer expectations and scrutiny over an organization's activities, the influence and reach of social media, the increasing sophistication and prevalence of cyber-security breaches and the disruptive power of generative artificial intelligence ("AI") are also expected to be on the corporate radar and subject to board oversight. New sustainability and climate focused disclosure standards and requirements are emerging or expected[6].

[4] Media Release, *Canadian Coalition for Good Governance sets out guidelines for corporate Canada*, September 16, 2003.

[5] *Bill C-25, An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-Profit Corporations Act and the Competition Act, SC 2018, C. 8 Bill C-97,* S. 13 (Bill C-25) [https://www.parl.ca/DocumentViewer/en/42-1/bill/C-25/royal-assent] and *An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures*, SC 2019, C. 29, S. 141 and S. 142 (Bill C-97); although not all of these amendments are in force as of the date of publication [https://www.parl.ca/documentviewer/en/42-1/bill/C-97/royal-assent]

[6] International Financial Reporting Standards (IFRS) International Sustainability Standards Board (ISSB), IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information, 2023 (ISSB S1) [https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/ifrs-s1-general-requirements.html/content/dam/ifrs/publications/html-standards-issb/english/2023/issued/issbs1/]; and International Financial Reporting Standards (IFRS) International Sustainability Standards Board (ISSB), IFRS S2 Climate-related Disclosures, 2023 (ISSB S2) [https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/ifrs-s2-climate-related-disclosures.html/content/dam/ifrs/publications/html-standards-issb/english/2023/issued/issbs2/]; Canadian Sustainability Standards Board (CSSB), Corporate Sustainability Standards (CSDS), CSDS 1, General Requirements for Disclosure of Sustainability-related Financial Information, 2024; and CSDS 2, Climate-related Disclosures, published on December 18, 2024 [https://www.frascanada.ca/en/cssb/news-listings/csds1_csds2_launch]; Fighting Against Forced Labour and Child Labour in Supply Chains Act, 2023, C.9 (Modern Slavery Act) [https://laws.justice.gc.ca/eng/acts/F-10.6/page-1.html] re supply chains; and Supra Note 5, Bill C-97 re CBCA disclosures in respect of employee, retiree, and pensioner well-being (not yet in force).

THE IMPORTANCE OF ADDRESSING INDIGENOUS RECONCILIATION

Importantly, for Canadian companies and investors, enhanced focus and recognition of the need to meaningfully engage in reconciliation with First Nations, Inuit and Métis communities should now be on the agenda in boardrooms. Informed by the findings of the final report of the Truth and Reconciliation Commission ("TRC"), notably Call to Action 92, which is directed to corporate Canada[7], there is increased awareness that Indigenous Peoples are *rights* holders under the Canadian constitution. The implementation of the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") into federal and provincial law (in British Columbia) is a legislative response to a broader recognition of Indigenous rights and the need for reconciliation between Indigenous Peoples, others in Canadian society, and the economy[8].

Investors are beginning to consider how to integrate Indigenous reconciliation into their investment and stewardship practices[9]. Consequently, corporations and their boards, especially those who are engaged in activities that intersect with the lands and interests of Indigenous communities, are facing heightened expectations to acknowledge and address Indigenous rights and reconciliation in their governance and operations[10].

CONCLUSION

Taken together, CCGG continues to believe that good corporate governance is the foundational touchstone that directors and boards must rely on in order to be able to discharge their duties to the corporation, which includes addressing sustainability factors. Governance is not a static "one size fits all" check list. It is a set of core principles that enable directors to iteratively establish, benchmark and test the resilience of their companies to meet the challenges of the moment in an increasingly complex economic, environmental and social landscape.

[7] Truth and Reconciliation Commission of Canada, Calls to Action, (2015) [https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf], see Call to Action 92; also see Truth and Reconciliation Commission of Canada; *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982,* C. 11 S. 25 and Part II, S. 35 and S.35.1 [https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html]

[8] *United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, C. 14; Declaration on the Rights of Indigenous Peoples Act,* SBC 2019, C.44; The TRC defined reconciliation as follows: "Reconciliation is about establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country. In order for that to happen, there has to be awareness of the past, an acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour". Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada,* 2015, at pgs. 6-7. [https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf]

[9] See the Reconciliation and Responsible Investment Initiative. Some investors, recognizing there is an Indigenous element within each component of ESG, advocate that ESG should become "ESGI", to ensure that the views of Indigenous rights holders are fully reflected. See for example, [https://fnfmb.com/sites/default/files/2022-05/fmb_2022-2023_corporate_plan_web_final.pdf, https://fnfmb.com/sites/default/files/2022-08/2022-07-29_-_fmb_comments_on_exposure_draft_ed-2022-s2_climate-related_disclosures.pdf]. Alternatively, other organizations make the case that that ESG standards and frameworks should be "inclusive" of I: [https://fnmpc.ca/wp-content/uploads/FNMPC_ESG_Primer_2021_Final.pdf]. Under either philosophy, Indigenous rights and reconciliation are gaining increasing attention and action from investors including through the use of shareholder proposals, see Melissa Shin, How to invest for reconciliation: There are ample opportunities for investors to act in support of Indigenous communities, Investment Executive, July 8, 2021. The CSSB has also published a commitment to Indigenous Peoples that commits the Board to collaborating with Indigenous Peoples to explore how the CSDS, which are designed to meet the needs of investors as primary users, and sustainability standards generally can best address the rights of First Nation, Métis and Inuit Peoples. The CSSB has also published an summary of feedback on Indigenous matters received through its consultation on the first two investor focused CSDS which supported "advancing the participation of First Nation, Métis, and Inuit Peoples in setting sustainability standards in Canada and the feedback that highlighted the importance of ensuring that Indigenous Peoples' rights and interests are meaningfully included in these standards" CSSB, Indigenous Matters: What We Heard, November 28, 2024.

[10] The adoption of UNDRIP introduces the concept of 'free, prior and informed consent' into Canadian law. "Free, prior and informed consent is a manifestation of Indigenous peoples' right to self-determine their political, social, economic and cultural priorities. It constitutes three interrelated and cumulative rights of Indigenous peoples: the right to be consulted, the right to participate and the right to their lands, territories and resources". Pursuant to the Declaration, free, prior and informed consent cannot be achieved if one of these components is missing." From: [https://www.ohchr.org/en/calls-for-input/free-prior-and-informed-consent-report]. Also see "Free, prior and informed consent: a human rights-based approach", Study of the Expert Mechanism on the Rights of Indigenous Peoples Report (2018), accessed at [https://digitallibrary.un.org/record/1642281?ln=en&v=pdf]

BUILDING HIGH PERFORMANCE BOARDS

THE PURPOSE OF BUILDING HIGH PERFORMANCE BOARDS

The purpose of this guidance is to assist the directors and future directors of Canadian public companies and to support governance professionals working with them. It provides insight into the corporate governance best practices and stewardship expectations of CCGG's Membership, which is comprised of Canadian institutional investors.

WHY GOOD CORPORATE GOVERNANCE MATTERS FOR HIGH PERFORMING DIRECTORS

Good governance has always mattered. The expectations surrounding how boards should fulfill their responsibilities and the scope of what is encompassed by the board's mandate have significantly broadened. Business complexity has increased and new opportunities and risks, including systemic risks, have emerged and continue to emerge. New laws and regulations have come into force and are on the horizon. Boards are expected to be future-focused, resilient and adaptable to these new and emerging circumstances.

In this context, CCGG and its Members continue to believe that good corporate governance is essential; it is fundamental to a board that seeks to sustain a high level of performance and build long-term value for a company's shareholders and other stakeholders. It is not about constantly doing more and ticking boxes, it is about the board doing its best to ensure that the company has the culture, people, policies, processes, oversight, agility and resilience to absorb and respond to the pace of change experienced by individual companies and the economies, environmental systems and societies on which we all rely.

WHY HIGH PERFORMING DIRECTORS MATTER FOR GOOD CORPORATE GOVERNANCE

Shareholders of public companies elect directors to oversee the business and affairs of the companies in which they are invested. Boards, in turn, oversee risk management and strategy, capital allocation, CEO succession planning and executive compensation. Directors have a fiduciary duty to act in the best interests of the corporation. Directors must be (and be seen to be) independent of the management they hire and oversee in order to give investors confidence that the board can carry out these duties effectively.

CCGG believes that directors need to be aware of material sustainability matters which are the E&S factors that are, or may become, material to a company's long-term value[11]. Further, "(t)he board has a responsibility to ensure that all material risk factors, including E&S factors, are managed, and that there is ongoing organizational understanding and ownership of their business impact"[12].

While directors owe their fiduciary duty to the corporation as a whole, shareholders are the only constituency with a statutory oversight role in the governance of a corporation through their capacity to elect directors, call shareholder meetings, bring shareholder proposals and approve fundamental transactions. Institutional investors recognize, however, that they will only benefit financially over the long term if the interests of other relevant stakeholders (e.g. employees, customers, communities, creditors, the environment, etc.) are also understood and taken into account by the company. Strong corporate governance establishes the framework through which boards can integrate and address complex issues and discharge their duties to act in the best interests of the corporation.

[11] *The Directors' E&S Guidebook: Practical insights and recommendations for effective board oversight and company disclosure of environmental and social ("E&S") matters,* 2018 at pg. 2. Available at https://ccgg.ca/policies/ [https://ccgg.ca/download/4006/] (the Directors' E&S Guidebook)
[12] "The Directors' E&S Guidebook, ibid at pg. 5.

GUIDING PRINCIPLE 1: INTEGRITY

1.1 Ensure that the goal of every director is to make integrity the hallmark of the corporation

To discharge their fiduciary duty to act in the best interests of the corporation, directors have responsibility for setting a company's overall vision and long term direction. Identifying and nominating directors of integrity and the board satisfying itself that its executive officers have integrity are core attributes of a well-governed board.

To have integrity is to be principled, ethical, honest and responsible. A public company's reputation for integrity is fundamental to creating and maintaining value for shareholders and other stakeholders.

The importance of integrity should be at the forefront in the boardroom and in every board committee discussion. All directors should bring a healthy skepticism and questioning mindset to the table when overseeing management and assessing their recommendations. The board must also make every effort to ensure that the CEO and other senior officers are individuals of integrity who are creating or building on a culture of integrity throughout the organization and setting the appropriate "tone from the top".

EXPECTED BEST PRACTICES

FOR INDIVIDUAL DIRECTORS

- Individual directors should carefully examine and be prepared to respectfully challenge and question management about the corporation's strategies, policies, initiatives and activities, including sustainability matters in order to satisfy themselves that ethical implications have been adequately considered by management. This is relevant in the consideration of material systemic risks and related strategic opportunities such as those arising from the implications of climate change and the transition to a low carbon economy.
- In order to empower directors to identify ethical issues and to deepen their understanding of them, directors should participate in relevant educational activities, such as on actual and perceived conflicts of interest, as well as those issues that are specific to the industry or sector in which the corporation operates.
- Directors should demonstrate a proven understanding of their fiduciary duty to act in the best interests of the corporation, which may include consideration of all relevant stakeholder interests and the implications of their role as fiduciaries.

FOR THE BOARD AS A WHOLE

- Emphasize the importance of integrity during in-camera sessions. Consider whether the board, the CEO and other senior officers are demonstrating the right "tone from the top" to ensure a culture of integrity throughout the organization.
- Include questions about integrity in board, committee and director performance reviews.
- Include integrity issues in continuing education programs for directors.
- Make sure the CEO and other senior officers have programs in place that build a culture of integrity. These should be led by the CEO and normally will include:
  - a statement of the corporation's mission, values or equivalent guiding principles for decision-making, emphasizing integrity as a fundamental value.
  - sessions with employees that include discussions of integrity, corporate culture, and reputation.
  - codes of conduct, surveys of compliance and a written whistle blowing policy with a clear and confidential disclosure procedure, all in plain language so that they can be easily understood by all employees.
  - assigning to an officer the responsibility for integrity at the corporation. The officer should work with the board and the CEO to make sure integrity issues are taken seriously and dealt with effectively.
  - zero tolerance for breaches of integrity, taking into account employees who voluntarily report their transgression(s) and show remorse.
  - a process for reporting all significant breaches of the code of conduct, conflicts of interest or other significant integrity issues to the board.
- Ensure that the integrity of candidates is a key consideration in the process of board and management recruitment, including when carried out through independent third-party background checks.

GUIDING PRINCIPLE 2: RESILIENCE

Resilience is the ability to adjust easily to misfortune or change[13]. There is perhaps no better word to describe current expectations with respect to what a board of directors is to embody and instill in the company it oversees. Companies are under increasing stress to respond to a seemingly never-ending series of crises (global pandemics, inflation, climate change, social inequality, cybersecurity attacks, geopolitical events, supply chain disruptions, etc.).

Simultaneously, companies are expected to embrace and nimbly pursue opportunities and growth, driven in significant part by an evolving regulatory and policy landscape, the global transition to a low-carbon economy and rapid advances in generative AI. The expectations of investors and other stakeholders that boards should be informed, engaged and holding management to account with respect to navigating these dynamic forces have never been higher. The ability of a company to be resilient is tied to the success of the interdependent elements of culture, strategy and approach to risk management, all of which are both subject to board oversight and engage the various interests of all of the corporation's key stakeholders, including, significantly, its shareholders.

2.1 Oversee Culture

INVESTOR INSIGHT

CCGG's ***The Directors' E&S Guidebook*** defines corporate culture as the "…set of de facto norms that shape employees' behaviours and perceptions of what matters to the organization, what it is trying to achieve, and how things are done. These norms are driven by leadership and represent an organization's corporate culture."

Because of the inherent connection between an effective corporate culture in the achievement of strategy and the mitigation of risk, including with respect to the integration of sustainability matters, boards of directors are now assumed to play a significant role in establishing, overseeing, and monitoring corporate culture[14]. In CCGG's view, the board of directors must set an appropriate "tone from the top" and ensure high standards of corporate governance practices are both embodied in practice and embedded within the policies and programs throughout all facets of the organization. There is growing evidence that "tone from the middle" is equally important in ensuring that desired cultural norms and behaviours reach all levels within the organization[15].

Integration of corporate culture into the board's governance framework incorporates but goes well beyond the oversight of conduct and the encouragement of ethical behaviours. Board oversight of culture is an important tool that boards of directors can use to ensure an organization has a "healthy corporate culture", one that is inclusive and positive, and firmly anchored in the corporation's strategy and risk appetite. Importantly, a corporation's culture can be a key driver toward the successful implementation of a strategy but can also work against achieving strategic goals if not properly understood[16].

Directors must be able to both articulate the desired corporate culture and demonstrate desired behaviours through their own conduct, behaviours, decisions and practices in accordance with the company's broader values.

[13] See, Merriam Webster definition.

[14] See supra, note 11, in which CCGG's The E&S Directors' Guidebook identifies that "there is a growing appreciation of the link between E&S factors and long-term company value, which is complicated by the wide (and variable) range of factors that, in some cases, are not yet easily measurable or fully understood. For a company to successfully integrate E&S management as a core imperative for long-term sustainability, its employees need to understand the importance and impact well enough to be willing, if necessary, to transform old habits, embrace new behaviours, and adapt to new circumstances" (pg. 9); and see further examples of descriptions of corporate culture: "to effectively drive a culture, leaders need to define which critical behaviours support the company's vision and goals - and which do not. Importantly, culture does not manifest in a homogeneous manner. Individuals experience it through the lens of their own (or their team's) contributions and accountabilities. As such, behaviours will be very different between organizations, and even within a company. What matters in a productive culture is that every action and behaviour relate back to the unified vision" (pg. 10).

[15] Denise Lee Yohn, Organizational Culture: Company Culture is Everyone's Responsibility, Feb. 8, 2021, Harvard Business Review.

[16] For examples see: John R. Graham, Jillian Grennan, Campbell R. Harvey & Shivaram Rajgopal, Corporate culture is a new era: Views from the C-suite, Journal of Applied Corporate Finance, 2023;35;7-21 (wilieyonlinelibrary.com/journal/jcaf)

Monitoring and evaluating corporate culture is a deliberate and continual process that requires proper due diligence and effective prioritization to establish a culture of accountability, transparency, ethical conduct and integrity, coupled with the behaviours needed to drive the company's strategy forward. Culture is unique to each company and evolves with the company as it grows over time; the culture required to launch a founder-led technology start-up may be very different from that required to keep a large established company moving forward.

EXPECTED BEST PRACTICES

FOR INDIVIDUAL DIRECTORS

- Individual directors should understand and be able to openly communicate and articulate the company's desired corporate culture including expectations of ethical conduct and desired behaviours.
- Directors must model in their interactions with each other and with management, the behaviours and actions that they wish to see demonstrated within the company. This sets the appropriate "tone from the top"[17] and is important for building the desired culture within the organization.
- The Chair should lead with promoting a culture of openness and communication amongst the directors, to allow individual directors to voice opinions and concerns on culture.

[17] See supra, note 11, CCGG's The E&S Directors' E&S Guidebook at page 9 with respect to the importance of tone from the top in elevating oversight of material E&S matters.

EXPECTED BEST PRACTICES *(CONT)*

FOR THE BOARD AS A WHOLE

- The board should integrate considerations of the desired corporate culture within the processes implemented to carry out the board's key responsibilities (e.g. committee charters, assessments of strategy, risk appetite, CEO succession planning, executive compensation, etc.) and continually assess and monitor the actual corporate culture to understand where there are disconnects or misalignments with the desired culture (and behaviours).
- The board should strive to ensure that a corporate culture has been properly identified and understood amongst board members, board committees, management, and broader stakeholders, including shareholders, employees, customers, suppliers and the wider community.
- The board should benchmark corporate culture against management policies that are embedded into compensation, strategy, and oversight of risk discussions in order to assess whether behaviours and incentives are aligned with achieving the desired culture (and vice versa).
- Establish clear lines of communication between board members, committees and management on culture expectations and practices.
- Create measurements and monitoring practices that accurately assess and benchmark the organization's culture and ensure the board has access to reliable data to make assessments and recommendations. Data sources could include:
  - management updates on human capital including employee satisfaction and engagement through reporting on such topics as the results of employee engagement surveys, instances of non-compliance with codes of conduct, and attrition and retention rates;
  - issues or complaints raised through whistleblower hotlines and assessments of the effectiveness and use of such hotlines (e.g. does the phone number or email address work? If there are no complaints, why not?);
  - periodic opportunities for the board to engage with employees at all levels of the organization, unfiltered by management, either formally through presentations at board meetings or informally through events such as site visits; and
  - receiving reports on social media surveys and reviews.
- The board should identify risks associated with a breakdown or shift in corporate culture, and have a plan of action for when misconduct or breaches occur.

INVESTOR INSIGHT

Boards should demonstrate curiosity as to the whole picture revealed by employee engagement surveys. For example, if results indicate 90% of employees think the culture is open and inclusive, boards should be curious about the 10% who don't think that way; this might be where a problem lies.

2.2 Oversee Strategy

Directors are responsible for oversight of the corporation's strategy, including capital allocation, and ultimately approving the overall vision, objectives and long-term strategy of the corporation. Management, on the other hand, is responsible for developing and implementing an appropriate detailed strategy that is designed to realize the corporation's vision and achieve its objectives while managing the associated risks (see Guideline 2.3 for a discussion of risk).

The board reviews, discusses, constructively but respectfully challenges, and ultimately approves management's strategic plan for the business and oversees management's implementation of the plan. The board also monitors the corporation's performance against the strategic plan. The board should have a heightened interest in its oversight role of strategy because of its importance and impact on shareholder value.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- At a formative stage of strategic plan development, review with management the format and planned content of the comprehensive strategic plan. The content of the strategic plan would include competitive analysis, requirements for capital allocation aligned with long-term objectives, identification of relevant stakeholders and their interests, consideration of sustainability matters relevant to the strategy, consideration of the interests of Indigenous communities, including as rights holders, where appropriate, as well as financial, human, natural and supply chain resource requirements.
- Allocate sufficient time to review the strategic plan. Such review would involve discussion with and without management present, challenging underlying assumptions and insisting upon modifications to the strategic plan as required.
- Approve the final strategic plan.
- Oversee the implementation of the strategic plan, including the linkage to the annual business plan.
- Monitor the corporation's performance against the strategic plan using appropriate metrics and milestones.
- Conduct periodic reviews of strategy during the strategic plan period.
- At least annually, management should provide an update or a revised strategic plan.
- Conduct periodic stress testing of the strategy in response to a crisis situation:
  - Oversee management's development and testing of a crisis response plan.
  - Establish expectations for board engagement and communications protocols during a crisis (e.g. more frequent meetings; chains of communication between CEO and Chair, and between board committee chairs and relevant C-suite leads).
  - Oversee management's updating of the strategy as needed to integrate crisis response feedback.

2.3 Oversee risk management

The expectations surrounding how boards should fulfill their responsibilities and the scope of what is caught within the board's mandate have significantly intensified. Business complexity has increased, new opportunities and risks, including material systemic risks, have emerged and continue to emerge. Legislative, regulatory and disclosure requirements responsive to existing and emerging sustainability and systemic risks such as climate change, are evolving quickly as are investor stewardship expectations with respect to comprehensive risk oversight. This includes system-level stewardship[18], and directors should understand and be aware of the increasing importance investors are placing on system-level risks and the related evolving implications for institutional investor expectations[19].

INVESTOR INSIGHT

System-level risks are global scale challenges, such as climate change, biodiversity loss and social and economic inequality. Such risks are common to all investors, cannot be mitigated through diversification and have the potential to disrupt global economies. These risks necessitate a broader perspective on stewardship responsibilities beyond individual assets or portfolios.

This concept of "system-level stewardship" aims to improve portfolios' long-term risk/return profile while mitigating risks to the underlying environmental, social and economic systems on which investors, corporations, and individuals all depend.

Institutional investors, via their stewardship role, have the potential ability to engage with individual companies to adopt practices that mitigate system-level risks, thereby safeguarding the common economic, social, and environmental systems upon which their business activities depend. Institutional investors also have an important stewardship role to play through policy engagement with regulators and legislators, where appropriate.

Risk management is a core function of the board

Directors are responsible for risk oversight, including overseeing management's systems and processes for identifying, evaluating, prioritizing, mitigating and monitoring risks. Directors are also responsible for approving the corporation's risk parameters including risk tolerance and appetite. Such parameters are designed to enhance the long-term sustainability of the corporation, and reduce the likelihood of future underperformance, preventing the destruction of asset and shareholder value. Directors should consider taking a heightened interest in assessing risks associated with strategy and leadership since management should not be expected to objectively assess its own performance, capabilities and strategy from a risk perspective.

The global financial crisis, the impact of climate change, the COVID-19 pandemic, increasing social inequality, disruptive technology in the form of cybersecurity threats and the rapid evolution of generative AI along with the intensification of geopolitical conflict have revealed that expectations of directors in all corporations are mounting. Evidence of past crises indicate that where directors do not have a full understanding of all of the material risks facing their corporations there may be failures in effective risk oversight.

[18] This concept is related to the existence of large "universal owners" such as pension funds, and passively managed index funds, who effectively own a slice of the entire market and therefore are unable to diversify away from "systematic risk". See, Jon Lukomnik & Pames P. Hawley, "Moving Beyond Modern Portfolio Theory: Investing that Matters", Routledge (2021); Also see Jeffrey N. Gordon, "Systematic Stewardship", The Journal of Corporation Law (2021):" … the channel by which systematic risk reduction improves risk-adjusted portfolio returns is to avoid harm across the entire economy that would damage the interests of employees and consumers as well as shareholders."[https://jcl.law.uiowa.edu/sites/jcl.law.uiowa.edu/files/2022-09/Gordon_Online%20%281%29.pdf]. This has also been termed "beta stewardship". See "Beta Stewardship for Shareholders" at TheShareholderCommons.com.

[19] According to The Investment Integration Project, systemic stewardship "…expands on a traditional view of stewardship as the safe-guarding and nurturing of assets. It adds to this concept investors' intentional commitments to preserve and enhance the fundamental social and environmental systems that underpin the wealth-creating potential of these assets. It acknowledges investors' obligations to manage the financial worth of their portfolios but also calls on them to mitigate risks to underlying systems as well." [https://tiiproject.com/wp-content/uploads/2022/01/TIIP-Stewardship-Final.pdf]. Also see "21st Century Investing: Redirecting Financial Strategies to Drive Systems Change" by William Burckart and Steve Lydenberg, 2021. Also see: Freshfields Bruckhaus Deringer, PRI, United Nations Environment Programme Finance Initiative, Generation Foundation (2023). A Legal Framework for Impact: Canada. It is increasingly acknowledged that understanding the impacts of system-level risks on investments and making investment decisions that encourage healthy and sustainable markets is consistent with an investor's fiduciary duty in Canada (and in other jurisdictions). Although some critique the usefulness and effectiveness of systemic stewardship for institutional investors, see Walkate, H., Stewart, f., (2024). In the Line of Duty? Institutional Investors' Responsibilities Regarding Systemic Risks. Columbia Center on Sustainable Investment. [https://ccsi.columbia.edu/content/institional-investors-responsibilities-systemic-risks-fiduciary-duty]

Every organization is exposed to multiple risks. While strategic risk in terms of both strategy formulation and implementation effectiveness can pose a major threat, there are numerous other types of risks such as external, operational, financial, organizational, legal (including litigation, regulatory and policy changes), environmental (including physical and transition risks), social, governance, reputational, systemic, etc., which can significantly impact a corporation's value in the short and long term. The board should understand how these various risks are interrelated and the resultant compounding effect. The effective oversight of all material types of risk is a core function of the board and a process in which every director should be actively involved. As part of its oversight role, the board should establish appropriate financial and non-financial incentives for management to operate within the board approved risk parameters.

For directors, risk oversight should go beyond quantitative risk assessments in order to focus on challenging the facts and assumptions management has used in identifying and evaluating risk. For example, many quantitative risk systems assume that markets for securities are liquid, credit is available at reasonable market rates, governments and counterparties will fulfill their credit obligations, social, environmental and political systems will function predictably, and investors will act rationally. Experience has shown that assumptions such as these are not always valid when considering the forward-looking aspects of material risk management, so boards should keep in mind and plan for unusual and unexpected occurrences and the potential impacts of material systemic risks.

Methods of overseeing risk

In carrying out their role of risk oversight, some boards choose to assign responsibility to selected committees to assess the risks relative to their mandate. Some boards allocate risk oversight to the Audit Committee, while some have established a separate risk committee. Many boards prefer to have risk oversight assessed by the entire board. Care must be taken to ensure that adequate processes and procedures are in place to sufficiently consider all relevant types of risk, including environmental, social and governance risks. Every board should decide which approach would work best in the circumstances of the corporation. Each director should clearly understand the processes and procedures in place to identify and evaluate risk. Each director also should be mindful that whatever approach or process is used, the oversight of risk ultimately remains the responsibility of the entire board.

The board's approach to risk oversight, including the process it uses to challenge management's assumptions regarding risk, should be disclosed in detail to shareholders in the proxy circular.

The importance of materiality assessments

Boards can feel overwhelmed by what appears to be an ever-growing wave of emerging non-financial risks over which they are expected to exercise oversight. Not every risk will be material to every corporation; this is true of sustainability-related risks. Therefore, it is essential for boards, or a delegated committee, to oversee management's materiality assessment process and to ensure that the corporation is disclosing its materiality assessment process as a component of its material risk disclosures.

The purpose of conducting a materiality assessment is to support the board in allocating its time and focus efficiently to the highest priority risk areas material to the business. The purpose of disclosing the assessments is to enable investors to understand that the board has turned its mind to the materiality of the risk, has exercised its judgment and is responding to the most material risks. Failure to disclose can lead investors to conclude that risks have either not been identified or assessed as material.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- Conduct and disclose a risk assessment to identify material risks, including sustainability risks (e.g. Sustainability Accounting Standards Board as integrated into the International Sustainability Standards Board[20]).
  - Consider engaging with investors as part of the risk assessment process to understand which risks investors are considering and identifying as material in their portfolios for the company, business and/or sector, including consideration of how the company's business model and growth strategy could be seen to either exacerbate or ameliorate systemic risks and what that means for the resilience of the strategy.
  - Recognizing that there are different approaches to conducting a materiality assessment, disclose and be transparent as to the methodology.
- Clearly assign board responsibility for risk oversight of material risks as set out in board and committee mandates.
- CCGG believes that directors should be aware of material sustainability matters and their impacts on long-term value including with respect to strategy and business model. Further, "(t)he board has a responsibility to ensure that all material risk factors, including E&S, are managed, and that there is ongoing organizational understanding and ownership of their business impact"[21].
- Ensure breadth of capability on the board to understand and oversee all critical risks and, if appropriate, utilize independent advisors to advise the board with respect to critical risks.
- Ensure directors are engaged in discussions of risk and bring constructive criticism.
- Ensure independent verification of facts and assumptions relied on by management in its identification, evaluation, mitigation and monitoring of risks.
- Adopt an appropriate framework for the board's identification and oversight of material risk.
- Allocate sufficient time and resources in the board's agenda to consider risk.
- Clearly set out risk parameters, including tolerance and appetite for risk.
- Understand interrelationship of risks, including sustainability risks, and any pre-existing conditions or vulnerabilities that could have a compounding impact on the corporation.
- Adopt robust risk management systems and processes, including active involvement by the CEO with clear assignment of accountability to specific members of management.
- Adopt appropriate and effective management compensation arrangements aligned with risk parameters.
- Ensure full and complete disclosure of how the board identifies, assesses and oversees risk, including whether capital allocation is aligned and evolving appropriately alongside the associated risks implied by the strategy.

[20] See, IFRS Foundation, SASB Standards connect business and investors on the financial effects of sustainability [https://sasb.ifrs.org/about/#:~:text=As%20of%20August%202022%2C%20the,to%20use%20the%20SASB%20Standards.]
[21] Supra note 11, "The E&S Directors' Guidebook".

2.4 Consider stakeholders' interests

Pursuant to Canadian common law and the CBCA, directors have a fiduciary duty to act in the best interest of the corporation and in so doing may consider the interests of stakeholders. There is no exhaustive list of stakeholders to be considered and companies will have different stakeholders with different and potentially differing interests at play. There are core stakeholders, however, that are common to most Canadian public companies.

Under the common law, stakeholder interests that may be considered include shareholders, creditors, employees, consumers, the environment and governments[22].

The CBCA adds retirees and pensioners and the long-term interests of the corporation to this list[23].

Other laws are also instructive in determining whose interests a company should consider. Legislation such as the *Modern Slavery Act* requires reporting and consideration of how a company ensures that its supply chain does not exploit vulnerable individuals employed within it[24]. Supply chain integrity is also increasingly being considered by governments in the context of geopolitical risk and national security reviews[25].

Shareholders, as providers of the corporation's equity capital, occupy a unique position and have an important governance function in the stakeholder landscape. As the only constituency with the statutory power to elect directors, call meetings, bring proposals to the company and approve significant corporate actions, they have a special role to play in holding directors to account with respect to their oversight of both stakeholder interests and conflicts. Institutional investors, as stewards and fiduciaries in their own right, are vested in the long-term success of the company on behalf of the interests of the beneficiaries and clients whose assets they manage. As such, they have a significant interest in understanding how directors oversee and engage with the company's key stakeholders who also typically have a vested long-term interest in the success of the company.

Maintaining communication with shareholders and other relevant stakeholders allows directors to take a holistic perspective on the effectiveness of management's execution of the company's strategy, identification of new growth opportunities, and the ability to proactively manage emerging and potential risks. Considering and balancing stakeholder interests deepens the board's understanding of the impact of the company's business operations within the broader community and the environment and is important to the creation of long-term value for shareholders. While the consideration and balancing of relevant stakeholder interests by the board goes beyond sustainability matters, identifying and understanding such interests is essential to the integration of sustainability matters into the company's governance framework and structure at the highest level of responsibility: the discharge of the director's fiduciary duty.

[22] BCE Inc. v. 1976 Debentureholders, [2008] 3 S.C.R. 560, 2008 SCC 69 [https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/6238/index.do]
[23] Supra note 5, see Bill C-97
[24] Supra note 6, see *Modern Slavery Act*
[25] For example, see the broad national security review power of the Canadian government under the Investment Canada Act.

EXPECTED BEST PRACTICES

FOR INDIVIDUAL DIRECTORS

- In the context of discharging their fiduciary duty to act in the best interests of the corporation, each director should understand and consider relevant stakeholder interests, including potential alignments and conflicts between stakeholder interests, when considering strategy, risk management and capital allocation decisions.
- Where appropriate, the Chair, lead independent director or relevant committee chairs, should constructively engage with relevant stakeholders in addition to shareholders to both support and assess the effectiveness of management's stakeholder engagement strategy.

FOR THE BOARD AND ITS COMMITTEES[26]

- Identify ownership within the board and its committees for oversight of management's stakeholder engagement strategy and approach. Primary responsibility for the development and execution of the strategy should be with management but in order to consider stakeholder interests in the context of the corporation's best interests, the board should integrate oversight into its governance structure.
- Have a clear understanding of what the board's role is within the stakeholder engagement strategy, especially with respect to when direct engagement between directors and stakeholders, if any, would be appropriate.
  - The board may wish to engage directly with key relevant stakeholders to facilitate assessing management's effectiveness with respect to stakeholder engagement (for expectations regarding shareholder engagement see guideline 6.2 Engage with shareholders).
  - The board may wish to test and assess management reports through engagement with external or independent sources of stakeholder feedback (reviews of social media, whistleblower hotlines, where relevant, advisory committees, etc.).
- Annually consider and review whether the stakeholder environment has changed.
  - Are all previously relevant stakeholders still relevant?
  - Have new relevant stakeholders emerged?
  - Have interests and priorities changed for either the company or the stakeholders given corporate, local, national or international events?
- In the interests of transparency, enhancing communications and managing expectations, develop and disclose a written policy on board stakeholder engagement.
  - Consider articulating in the policy how the board will approach conflicting interests between the corporation and stakeholders and between stakeholder interests.
  - Consider articulating how decisions and outcomes are communicated to stakeholders through disclosures or otherwise.
- Ensure that strategy and enterprise risk management frameworks integrate and account for stakeholder interests/potential issues.

[26] Also see Australian Institute of Company Directors: *Elevating stakeholder voices to the board: a guide to effective governance*, April 2021; Andrew J. MacDougall & Josh Pekarsky, Director Briefing – *Stakeholder Engagement*, CPA Canada, 2018.

2.5 Understand and address Indigenous reconciliation

Indigenous Peoples and communities, as rights holders under the Constitution and federal and provincial legislation implementing the UNDRIP, are key constituencies for businesses and the Canadian economy[27].

It is important that individual directors and boards as a whole understand their company's responsibilities under the applicable legal frameworks. It is also important for directors and boards to learn about and recognize the historical and continuing factors that underpin the principles included in the TRC's Call to Action 92 which is focused on business and reconciliation. Call to Action 92 highlights the contributions that can be made by Canadian corporations to the advancement of truth and reconciliation with First Nations, Métis and Inuit Peoples in Canada[28].

For boards of Canadian companies that have international operations that engage the interests of Indigenous Peoples outside of Canada, an understanding of the principles of UNDRIP, which may (or may not) also be applicable in the countries in which they are doing business, is equally important.

EXPECTED BEST PRACTICES

FOR INDIVIDUAL DIRECTORS

- Individual directors should demonstrate curiosity and a commitment to continuous learning as understandings of Indigenous rights continue to evolve.

FOR THE BOARD AS A WHOLE

- Boards are encouraged to consider the interests of Indigenous communities, including their status as right holders, and the components of TRC Call to Action 92, in the context of their oversight of the corporation's strategy.
- Boards should consider Indigenous representation in the context of the general guidance under Guiding Principle 3, Knowledge and Experience.
- Boards are encouraged to include director education aligned with the TRC's Call to Action 92, which should be a particular focus for boards whose companies are engaged in activities that intersect with the lands and interests of Indigenous communities[29].

CALL TO ACTION 92 BUSINESS AND RECONCILIATION

We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Truth and Reconciliation Commission of Canada, Truth and Reconciliation Commission of Canada: Calls to Action, 2015

[27] Supra, note 8.
[28] Some companies have demonstrated progressive improvement in Indigenous relations through the Partnership Accreditation in Indigenous Relations (PAIR) program. The PAIR program has been developed by the Canadian Council for Indigenous Business and certifies corporate performance at different levels which provide an indication to Indigenous communities that the companies are good business partners, good places to work and committed to prosperity in Indigenous communities. [https://www.ccab.com/programs/progressive-aboriginal-relations-par/#];
[29] Supra, note 8.

GUIDING PRINCIPLE 3: KNOWLEDGE AND EXPERIENCE

3.1 Ensure that directors are highly competent and bring the requisite knowledge and experience to the board

The resilience of a company is strongly impacted by the character and effectiveness of its directors.

CCGG believes the single most important corporate governance requirement is to have directors of quality. Quality directors have integrity. They are also curious. They must be willing to ask the questions of management that will provide them with a complete understanding of the risks and rewards of any proposed plan of action and how it will affect the long term sustainable value of the corporation[30].

A number of directors should have direct experience in the industry or industries in which the corporation operates to make sure the board requests the right information from management, asks knowledgeable and insightful questions and has the background it needs to take appropriate positions in response to management and its recommendations. While some directors will know the industry more deeply than others, all directors should, at a minimum, have a reasonable level of familiarity with the corporation and its business or commit to doing so within a short time of joining the board.

CCGG also recognizes that non-independent directors who bring valuable firm-specific business expertise or subject matter expertise may add significant value to a board. There is also a growing recognition of the need to consider how to incorporate on to the board expertise in rapidly emerging and evolving areas such as cybersecurity, generative AI and sustainability and whether directors who are from a younger demographic and do not represent the typical skill set of a non-executive director or a CEO are desirable.

We believe director continuous education supports boards with ever-increasing knowledge and expertise and enhances the effectiveness of directors, boards and board committees. At a minimum, a director education program should include an initial orientation along with ongoing educational programs and guidelines, such as formal education courses, in-house sessions and conferences.

[30] The term "quality" as used above is subjective and cannot be defined by legislators or regulators. On an individual level, we define a director of quality as someone with integrity, expert knowledge, business, industry or other relevant experience and with the time and motivation to understand and carry out his or her fiduciary duties to act in the long-term best interests of the corporation and, when so doing, giving due consideration to the interests of the corporation's investors and all of its stakeholders.

EXPECTED BEST PRACTICES

FOR INDIVIDUAL DIRECTORS

- A significant number of directors on a board should have career experience and expertise relevant to the corporation's industry, financial responsibilities and risk profile. Other directors will bring specific expertise material to other components of the company and its strategy, like human resources, knowledge of material environmental or social matters, accounting, law, technology or other relevant professional or geographic knowledge.
- Each director's career experience and qualifications, including how they are relevant to the desired skills and competencies required by the board, should be described in the proxy circular. In addition to the members of the Audit Committee, some directors should have financial accreditation (particularly for boards of financial institutions). All directors should be financially literate as that term is defined in National Instrument 52-110 Audit Committees, that is, able to understand the breadth and level of complexity of accounting issues that are reasonably expected to be raised by the corporation's financial statements.
- In addition to a high degree of curiosity and a questioning mindset, including an ability to question themselves, all directors should demonstrate excellent listening and communication skills so they can actively and constructively participate in board discussions and debate.
- All directors should make a commitment to devote the time, effort and energy necessary to serve effectively as a director of the company. We believe that:
  - Directors who hold a full-time executive position, typically the CEO, should hold at most one outside public company directorship in addition to their own company board (recognizing that there can be value in a senior executive gaining board experience in another or related industry).
  - Directors who are not employed full time should generally hold no more than four additional outside public company directorships.
  - Time commitments related to not-for-profit organizations, private companies and government agencies also should be taken into account when directors' availability is considered.
  - Directors should not take on any new executive positions or directorships (including in public companies, private companies, government agencies or not-for-profits) without consulting with the Chair of the board with respect to the implications for the directors' over-boarding status and ability to realistically meet their time commitments to the board, especially in the event of a crisis.

EXPECTED BEST PRACTICES *(CONT)*

FOR THE BOARD AS A WHOLE

- Create a board of an appropriate size – large enough to include the requisite skills and expertise and to allocate the various board and committee duties among the directors, but small enough to allow open, cohesive and responsible discussion and debate and to ensure individual accountability and responsibility for board decisions.
  - Develop clear guidelines on what the company's expectations are with respect to the required time commitment and how it considers and balances a director's other commitments when determining if a director may be over-boarded when assessing a director's capacity to serve. Drawing from the experience of the COVID-19 pandemic, such guidelines should account for the ability of a director to meet increased demands on time and attention in order to serve in times of crisis given all commitments.
- Maintain, annually review, and disclose in the proxy circular including with relevant narrative, a 'matrix' of director skills, competencies and board requirements which:
  - explains the corporation's skills requirements in light of the corporation's strategy;
  - describes the skills and competencies needed to meet current and future business needs, including as related to material sustainability risks and opportunities;
  - identifies the specific skill and competency strengths of current directors including how they align with the corporation's identified skills and competencies and an assessment of the depth of knowledge (expert vs general); and
  - identifies any skills or competency gaps on the board that should be filled over time through succession planning, board education and board refreshment.
- Create an orientation and continuing education program for directors to establish and update their skills and knowledge of the corporation, its businesses and key executives, and to address ongoing and emerging issues in the functional areas of the board (like corporate governance, audit, compensation practices, risk management and material sustainability matters, including systemic issues such as climate change), and ensure program details are disclosed in the proxy circular.
- Disclose in the proxy circular a summary of relevant education programs and events in which directors have participated in the past year including how such educational programs relate to corporate strategy and/or risk management.
- Ensure that in addition to briefings from management, the board has access to external expertise on material topics and emerging issues, where appropriate, especially in areas where expertise or experience is lacking on the board.

INVESTOR INSIGHT

It can be difficult for investors to assess skills and competency matrices that are too subjective or simply identify every director as an expert in all required skills.

Boards should expect that investors will objectively review the skills and competency matrix disclosures against other disclosures such as director biographies, risk disclosures and forward-looking strategic objectives to assess whether the skills and competency levels are adequate and appropriate to meet the risks and opportunities identified.

3.2 Ensure that the board as a whole is diverse and inclusive

A high performance board is comprised of directors with a wide variety of experiences, views and backgrounds which, to the extent practicable, reflect the gender, ethnic, cultural and other personal characteristics, such as age, geographic location, socio-economic status and education, of the communities in which the corporation operates and sells its goods or services.

There are societal, investor and regulatory expectations that boards of directors will seek out diversity of thought by incorporating different perspectives, characteristics and experiences[31].

CCGG's position continues to be that while the quality of individual directors is paramount, we also expect boards as a whole to be diverse and inclusive.

CCGG recognizes, however, that boards require flexibility when working toward establishing board diversity. We acknowledge that it can be challenging to identify and recruit directors with the appropriate mix of experience, skills, perspectives and background to the board at the right time. CCGG supports meaningful diversity targets internally determined by the company. Such an approach embraces the cultural shift required within an organization to recognize and benefit from the long-term strategic opportunities (and risk mitigation) to be achieved through meaningfully incorporating diverse views and backgrounds that are material to the business into board dynamics.

Consistent with the requirement that directors set the "tone from the top" within their organization, the board should adopt and model behaviours that promote inclusion. Inclusion has been described as follows: "a dynamic state of operating in which diversity is leveraged to create a fair, healthy, and high performing organization or community… it also enables individuals and groups to feel safe, respected, engaged, motivated, and valued, for who they are and for their contribution toward organizational and societal goals"[32].

[31] For example, most publicly listed companies are required to make policy and representational disclosures, on a comply or explain basis, with respect to the number of women on boards and in executive positions and securities regulators have expressed an intention to further mandate disclosures for diversity beyond gender. See CSA Notice and Request for Comment – Proposed Amendments to Form 58-101 Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines [https://www.osc.ca/en/securities-law/instruments-rules-policies/5/58-101/proposed-amendments-form-58-101f1-corporate-governance-disclosure-national-instrument-58-101]. Federally incorporated public companies are required by the CBCA to make policy and representational disclosures in respect of the number of women and other enumerated groups on their boards and in executive officer roles, aligned with categories defined under the federal *Employment Equity Act*.

[32] The Conference Board of Canada, Diversity vs. Inclusion: What's the Difference –, September 15, 2019

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- The board should adopt practices and model behaviours that promote inclusion such as establishing board dynamics that facilitate and value contributions from all board members especially those who are newly appointed[33].
- Ensure that the board takes a holistic and integrated approach to integrating diverse perspectives:
  - disclosing and explaining how the company defines, understands and values diversity in the context of the company's business, employees, communities, customers, service providers and other stakeholders;
  - developing and disclosing a written director nomination policy that describes the process(es) for the identification and recruitment of diverse candidates;
  - setting and disclosing internally determined, reasonable and measurable targets to build a more diverse board including a path toward implementation[34];
  - annually reporting on progress toward company-determined targets, including with respect to challenges encountered;
  - overseeing the process for developing the pipeline of senior management talent, including considerations of diversity, in order to support succession planning;
  - overseeing the process for data collection and disclosure and ensuring that it is rooted in principles of protection of privacy, consent and voluntary self-identification; and
  - for non-CBCA companies, voluntarily reporting annually on the representations of diversity at the Board level including, at a minimum, those aligned with the disclosures mandated for federally incorporated companies[35].

INVESTOR INSIGHT

Investors are increasingly skeptical of boards that justify a lack of diversity with reference to solely merit based appointments processes.

Investors assume that boards appoint directors based on merit and qualifications. Inherent in this assumption is that a diversity of perspectives among otherwise qualified individuals enhances the board's oversight capabilities. In our view, companies that fail to take transparent and thoughtful steps in this area will find themselves increasingly challenged by investors, regulators and the public.

[33] Examples of the kinds of practices that may promote inclusion are: reviewing how the orientation process supports integration of new board members by encouraging their participation, considering mentorships between new and seasoned board members, structuring opportunities through committee work and/or board reporting to ensure all voices are heard such as through assigning board members to lead discussion with management on committee items or encouraging newer board members to speak first.

[34] CCGG has advocated for boards to consider as benchmarks a gender balance between men and women in a target range of 40-60% so as not to prefer one gender over another, and other diversity considerations as identified by the company in line with its strategy and operations in a target range of 30% CCGG September 19, 2023, Submission to CSA Re: CSA Notice and Request for Comment – Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines, CCGG September 23, 2022, Submission to Federal Department of Finance Re: Corporate Governance Consultation, CCGG September 7, 2020, Submission Re: Consultation – Modernizing Ontario's Capital Markets. Additional reference sources: Federal Government's 50-30 initiative [https://ised-isde.canada.ca/site/ised/en/50-30-challenge-your-diversity-advantage]; CBCA Disclosure Guidelines [https://ised-isde.canada.ca/site/corporations-canada/en/diversity-disclosure-guidelines]; Recommendations of the Ontario Capital Markets Modernization Taskforce [Modernizing Ontario's capital markets: Capital Markets Modernization Taskforce final report | ontario.ca].

[35] Andrew MacDougall, John Valley, Joanne Cameron and Jessie Armour, "2024 Diversity Disclosure Practices: Diversity and leadership at Canadian public companies", 2024 Osler, Hoskin & Harcourt LLP at 53 which tracks consistent year over year increases in voluntary CBCA aligned disclosures by public issuers.

3.3 Develop and implement a robust and holistic approach to board refreshment

A strong board, including one that reflects the benefits of diversity and inclusion, requires a pragmatic, transparent and effective approach to board refreshment.

We expect boards to ensure that they are renewed at an appropriate rate. Boards should balance the need for experienced directors who have a deep knowledge of the corporation with the need to ensure that the board maintains a fresh perspective. To facilitate this goal, all boards should put in place a director succession plan and ensure that they utilize a formal recruitment process to identify and recruit potential new directors. Boards may develop and manage that process internally or may choose to engage an independent third party; whatever method is used, boards should ensure that involvement of the CEO in the director recruitment process is appropriately limited.

A board seeking to add new directors may wish to increase the size of the board temporarily in order to allow for some overlap between directors who are new to the board and the experienced directors who are leaving.

A board may want to consider whether it is appropriate, in the context of its particular corporation, to impose a term limit on the amount of time an individual can serve as a director or a retirement age, but a better method to ensure appropriate board renewal is a robust annual assessment process for every director where the board acts on the results of the assessment (see Guideline 3.4 below).

EXPECTED BEST PRACTICES

FOR INDIVIDUAL DIRECTORS

- Understand the board succession plan, skill and competency needs and expectations for tenure with a view to transitioning off the board at the appropriate time.
- Mentor and support the on-boarding, inclusion and development of newer directors to ensure institutional knowledge is transferred and the corporation benefits from fresh perspectives.

FOR THE BOARD AS A WHOLE

- Have a plan in place for the orderly succession of directors to maintain an appropriate balance of tenures.
- Consider board tenure in the context of a skills and competency matrix, succession planning and diversity goals. Pending regulatory changes, there is no "one size fits all" approach to board tenure and boards may consider a variety of mechanisms to drive board refreshment, such as mandatory retirement ages and term limits, and should always conduct an annual review process.
- Consider the impact of long tenure on director independence and be prepared to provide additional disclosure or engage with shareholders as to why independence is not impaired when directors have been on the board for nine or more years[36].
- Expect that where board tenures are long and turn-over is low, investors will apply heightened scrutiny to determinations with respect to director independence and, in particular, the composition of committees which should be comprised of majority or all independent directors (such as the Audit Committee and the Nominating/ Governance Committee).
- Utilize a formal process for identifying and recruiting new directors and describe that process in detail in the proxy circular. Ensure that the role of the CEO in that process is appropriately limited.
- Build and maintain an "ever-green" list of suitable candidates, aligned with the board's identified skills and competency matrix and director nomination policy, to fill planned or unplanned vacancies in accordance with company strategy.
- Develop an "offboarding" plan and communicate it to candidates and new board members as part of the recruitment and orientation process. This should include any retirement ages, term limits or other conditions under which the director would be expected to resign from the board such as poor meeting attendance, over-boarding or issues arising as a result of the annual assessment process or the emergence of issues or conduct that create reputational risk for a company, including if such issues arise through participation on another board[37].

[36] See Financial Reporting Counsel, UK Corp Governance Code, January 2024, The Financial Reporting Council Limited 2024 at Provision 10. [https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2024_a2hmQmY.pdf]. The UK Code creates a rebuttable assumption of impaired independence for terms of 9 or more years; Also see recommendation 36.2 of from the Expert Advisory Group, The Ontario Capital Markets Modernization Taskforce: Final Report January 2021, Government of Ontario [https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021] which recommended term limits of 12 years with exceptions for Chairs and family controlled companies; CCGG Members proxy voting policies flag a range of between 9-12 years as potentially impugning independence.

[37] Michael W. Peregrine, When that Problematic Board Member Just Won't Leave, Nov. 29, 2020 Harvard Law School Forum on Corporate Governance [online: https://corpgov.law.harvard.edu/2020/11/29/when-that-problematic-board-member-just-wont-leave/]

3.4 Evaluate board, committee and individual director performance

A board needs processes in place to oversee and evaluate the performance of individual directors, board committees and the performance of the board as a whole with a view to remedying perceived deficiencies emerging from the evaluation.

Annual performance reviews help the board assess directors' personal strengths and weaknesses, make decisions about the need for further education, and decide when it might be appropriate for a director to step down. Directors should be assessed on the basis of their ability to continue to make an effective contribution, the identified current and future skills and competencies required by the corporation, and overall board tenure and succession planning objectives, including diversity and inclusion.

A robust assessment process whereby results of the assessment are acted upon by a strong Chair or independent lead director in conjunction with the Chair, is in many respects preferable to establishing term limits or a retirement age as a method for removing under-performing directors.

In order to assess the quality of current directors and board committees and processes, many boards confidentially survey directors once a year, including meetings between individual directors and the Chair, and have the Board Chair, lead director or nominating/governance committee or its Chair review the results. Other boards prefer to hire an independent third party to perform board evaluations.

EXPECTED BEST PRACTICES

FOR INDIVIDUAL DIRECTORS

- Ensure the performance review process assesses a director's skill set, expertise and other contributions against the company's strategic plan, current and forward-looking skills and competencies required, including with respect to material sustainability matters, and other needs of the board.
- Publish the record of individual director attendance at board and committee meetings every year in the proxy circular and include directors who attended committee meetings on an ex-officio or non-voting basis. Directors are expected to attend every board and applicable committee meeting, absent exceptional circumstances.
- Determine and document the kinds of events that will prompt an expectation that a director would resign from the board (for example, not meeting attendance requirements, poor performance reviews, reaching a certain age, having served on the board for a specified number of years, over-boarding or misconduct, etc.).
- Evaluate the performance of individual directors every year using a confidential peer-review survey. The Board Chair or independent lead director, Chair of the nominating/governance committee or independent third party should conduct the survey and provide feedback to each director. The survey should include open-ended questions to allow directors to suggest improvements.
- Establish an annual review process conducted by the Chair, which should include one on one meetings between individual directors and the Chair, and disclose the process to shareholders.

FOR THE BOARD AND ITS COMMITTEES

- Evaluate the overall effectiveness of the board and its committees every year using a confidential survey or one-on-one meetings between the independent Chair or lead director (for committees it should be the committee Chair) and each director.
- Regularly review the board and respective committee mandates.
- Annually evaluate the performance of the board and committee Chairs and members against their respective mandates.
- Review board and committee leadership roles as a component of overall board refreshment and succession planning.
- Disclose the board performance review process in the proxy circular in enough detail to demonstrate to shareholders that there is a robust system in place capable of identifying board or committee-level performance issues and effectively responding to them. Where appropriate, disclose in the proxy circular conclusions drawn and improvement opportunities identified from the process.
- Ensure that the nominating/governance committee closely monitors emerging best practices in board and committee structure and processes as well as in how to evaluate board and committee performance.

GUIDING PRINCIPLE 4: INDEPENDENCE AND ACCOUNTABILITY

4.1 Ensure directors are independent of management and each other

In order to ensure directors' interests are aligned with shareholders, **at least two-thirds** of every board should be independent of management[38].

Beyond the technical criteria for independence embedded in securities regulation, boards also should assess the "independent mindedness" of prospective and current directors. Characteristics of independent mindedness in a director include a questioning mindset, relentless curiosity and professional skepticism[39]. Every member of a well-governed board should be able and willing to respectfully challenge management and, if necessary, other members of the board.

As much as possible, directors also should be independent from each other because too many interlocks (i.e. when two directors of Company A sit on the board of Company B, or when there are interlocks between directors on a board's committees, at company subsidiaries and between senior executives (beyond the CEO) and directors) suggests a degree of inter-related interests that might be detrimental to director independence. Committee interlocks are particularly problematic.

CCGG recognizes that non-independent directors who bring valuable firm-specific business or subject matter expertise may add significant value to a board. In addition to ensuring that two-thirds of the directors are independent, boards also should ensure that there are a sufficient number of directors (independent or non-independent) with relevant and applicable business and subject matter expertise.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- Ensure at least two-thirds of directors are "independent".
- Integrate the concept of "independent mindedness" into nomination policies, annual director assessments and board evaluations.
- Have a formal board policy that is publicly disclosed that limits the number of board and committee director interlocks on the board.
- Report clearly all board and committee interlocks to shareholders.

[38] "Independence" means a director is independent of management, does not have a material relationship with the corporation and, except for director fees and share ownership, does not financially benefit from his or her relationship with the corporation. A material relationship is any relationship that could interfere with a director's ability to exercise independent judgement or inhibit his or her ability to make difficult decisions about management and the business. Examples of people with material relationships with the corporation include: employees of a corporation; paid advisors or consultants to the corporation such as lawyers, accountants and bankers; employees of a significant customer or supplier; anyone with a personal services contract with the corporation; anyone affiliated with a foundation, university or other non-profit organization that receives significant grants or endowments from the corporation; relatives of the CEO or other executives of the corporation; and those who are part of an interlocking directorate (where the CEO or other executives serve on the board of the corporation that employs the director).

[39] These themes were repeatedly referenced during the Canadian Public Accountability Board's 2023 Symposium on fraud as being necessary for directors, Canadian Public Accountability Board Symposium: The evolving fraud landscape November 2024 CPAB [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://cpab-ccrc.ca/docs/default-source/event-highlights/2023-symposium-evolving-fraud-landscape-publication-en.pdf]

4.2 Separate the roles of Board Chair and Chief Executive Officer

The board Chair and CEO have different responsibilities and a different focus. The Chair is responsible for leading the board and ensuring that it is acting in the long-term best interests of the corporation. The CEO is responsible for leading management, developing and implementing the corporation's business strategy over the short and longer term, and reporting to the board.

The Chair is accountable to investors and the CEO is accountable to the board. Combining the two positions creates inherent conflicts of interest and obscures accountability. A Chair cannot effectively oversee senior management when they are CEO and a member of the management team. Accordingly, the two positions should be separated. Similarly, and for the same reasons, separating the positions but appointing an Executive Chair is also problematic.

As a transition, non-controlled companies may consider appointing an independent lead director for a limited period of time[40].

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- The independent members of the board should appoint an independent board Chair to function in a non-executive capacity with a defined mandate and role.
  - The independent board Chair should be prepared to invest considerable time and effort in the role and should have sufficient availability to do so.
- The independent Chair (or independent lead director) should set board agendas with the CEO and other directors, be responsible for the quality of the information sent to directors and lead in-camera meetings of independent directors.

[40] Expectations for the tenure of the lead independent director in a controlled company are different. Boards of controlled companies should refer to CCGG's Policy "Governance Differences of Equity Controlled Corporations", October 2011.

4.3 Assess the Chief Executive Officer and plan for succession

One of the core responsibilities of the board is hiring, retaining, and if necessary, terminating the CEO, reviewing their performance every year, and establishing an executive succession plan to ensure a diverse and robust pipeline of leadership talent is being developed. Succession planning should anticipate both orderly succession and unexpected scenarios.

To emphasize that the CEO is accountable to the board, the board must have a position description for the CEO that establishes annual and longer-term expectations and related compensation incentives. At the start of every fiscal year the board and CEO should establish performance targets for the CEO to be used in assessing the CEO's performance relative to those targets. The board should establish a formal annual review process where directors and the CEO can candidly exchange views on the CEO's performance.

A clear understanding between the board and the CEO of the board's expectations for performance and leadership is generally a hallmark of a high performing organization. Often the work on these matters is done through the chair or one of the board committees, typically the human resources/compensation committee or the governance committee, and brought to the full board for detailed discussion and approval.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- Develop position descriptions for the CEO and other senior management that are updated as appropriate based on the long-term strategy of the company.
- Develop an annual review process for the CEO, including establishing CEO performance targets and objectives at the start of each fiscal year.
- Ensure the CEO has a talent development plan in place for senior executives that incorporates the company's diversity policy objectives.
- Review succession plans, which anticipate both long-term and short term emergency succession plans, for the CEO and other senior executives at least annually.
- Review progress being made against succession plans to identify 'talent gaps' and take steps to fill those gaps through executive development or recruitment.
- Ensure the board develops an independent perspective on succession and the pipeline of talent.
- Review with the CEO the performance of his or her direct reports.
- Ensure the board has the opportunity to interact, both formally and informally, with high-potential senior executives (for example, through their participation in board meetings, attendance at board dinners or off-site meetings).
- Communicate with shareholders about CEO succession policies and processes, especially if succession plans do not go as planned or sudden changes are required.
- Generally, the CEO should not remain on the board when they retire or resign from the company, but in certain situations (e.g. visionary CEO founder, deep institutional knowledge or important industry/stakeholder relationships) it may be appropriate for the CEO to remain for a period of time.
  - The future role of the CEO on the board should be considered by the board as part of CEO and board succession planning.
  - The former CEO should not be appointed as Executive Chair or Chair.
  - Any future non-board consulting or advisory role should also be considered as part of succession planning.

4.4 Develop and oversee executive compensation plans

Senior executives should be compensated fairly and reasonably, with a large component of compensation being performance-based. Executives also should have meaningful shareholdings in the company to more closely align their interests with shareholders and the long-term sustainable value of the company. When setting an executive compensation plan, directors should also be thinking holistically about the implications of the approach for the company's other key stakeholders.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- When developing and overseeing executive compensation plans, boards should follow the detailed guidance contained in CCGG's most recent Executive Compensation Principles.
- Engage directly with shareholders if Say on Pay votes withheld or against exceed 20% to understand the rationale for the opposition and consider shareholder input when developing the executive compensation approach and performance targets for the upcoming year.
- Disclose that engagement occurred and the changes made as a result.

INVESTOR INSIGHT

Adopt the CCGG model board policy on Say on Pay and add an advisory shareholder Say on Pay resolution in CCGG's recommended form to each annual general meeting agenda.

Review the findings of CCGG's research paper Management-Shareholder Alignment: Effective Equity Ownership Policies.

Review the best practices in CCGG's Executive Compensation Principles.

4.5 Establish reasonable compensation and share ownership guidelines for directors

Directors should be paid fees for their services at a level that is reasonable and will attract qualified and experienced candidates. Director compensation should not, however, be so high or structured in such a way that it interferes with a director's ability to be independent, forthright in his or her views or willing to challenge management or the status quo. Moreover, directors should recognize that when they determine their own compensation, they are in an inherent conflict of interest.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- Director compensation policies should be designed with a view to aligning the long-term interests of the corporation and its shareholders.
- Directors should acquire and hold an equity stake in the corporation which should increase over time and should be grounded in full value equity awards and not unvested performance-based equity or stock options. In addition, when directors buy common shares with their own money it sends a powerful message to investors that directors have an economic incentive to exercise appropriate oversight and also demonstrates their confidence in the company.

INVESTOR INSIGHT

When setting their compensation, directors should follow the detailed guidelines set out in CCGG's Principles for Director Compensation.

GUIDING PRINCIPLE 5: CLEAR ROLES AND RESPONSIBILITIES

5.1 Adopt well-defined board processes and procedures that support board independence

Board independence must be supported by the establishment of robust and well-defined board processes and procedures that will assist directors in meeting their oversight responsibilities, including material environmental and social matters.

Board processes and procedures should ensure that directors are provided with sufficient information, time and independent advice to be able to make meaningful decisions in an independent manner.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- Meetings materials provided to boards by management must be sufficiently detailed, comprehensive and succinct to support meaningful decisions by directors.
- Meeting materials must be provided to the board far in advance of board meetings to allow directors to make considered decisions.
- Board meeting schedules must allocate sufficient time for forward-looking and strategic issues, including major decisions to be considered, discussed and reviewed, with decisions reached over the course of more than one meeting if appropriate.
- The independent Chair (or independent lead director) should have approval over meeting agendas and the flow of information to the board.
- All board and committee meetings should include *in camera* sessions with independent directors only.
- Procedures should be in place to ensure proper access to, and funding of, independent advisors (e.g. legal, tax, human resources, compensation, etc.) to the board or its committees when the board or its committees deems it appropriate.

5.2 Establish mandates for board committees and ensure committee independence

One of the key governance tools that boards have to address and stay abreast of emerging issues such as climate change, Indigenous reconciliation, AI and cybersecurity is the allocation of these matters, where material and appropriate, to a particular committee. Boards are best placed to determine which committee(s) should have oversight of which issues. Committee charters should be adopted by the board and reviewed regularly. Such charters should include requirements concerning the composition of the committees, responsibilities of the committees, including with respect to sustainability matters, and procedures for committee meetings.

Board committees often do a large part of the work of a board and then present their recommendations to the entire board for approval. As a result, conflicts of interest between management and investors are most likely to appear at the committee level first, for example, the structure of executive compensation, CEO succession or capital allocation. Moreover, the work done by committees typically involves detailed oversight and assessment of management. For example, the audit committee reviews the financial statements, fraud risk, risk management programs and internal controls developed by management, while the compensation committee reviews the performance and compensation of the CEO and other senior executives. As a result, the independence of directors on these committees is critical. Depending on the committee, either all or the majority of the members should be independent. In addition, consideration should be given to whether there should be a degree of overlap of independent committee appointments where there would be value in the work and perspectives of one committee (e.g. the compensation committee) informing the work and perspectives of another (e.g. the audit committee's consideration of risk). Finally, appropriate procedures should be in place for the establishment of ad hoc independent special committees when appropriate.

The boards of some issuers have appointed Executive Committees to which substantial authority may be delegated. CCGG generally recommends against the use of Executive Committees in instances where they have the power to decide matters which are normally reserved for all directors. It may also create two classes of directors. In cases where an Executive Committee does exist, clear disclosure should be made of its scope of authority and any meetings it has held in the past year. It should act on behalf of the board in exceptional circumstances only. Executive Committees also should be required to report to the board promptly after any action is taken on the board's behalf.

EXPECTED BEST PRACTICES

FOR ALL COMMITTEES

- Review committee charters regularly and amend or confirm the mandate and procedures based on information received in respect of the committee's accomplishments in meeting its mandate and work plan for the year as identified through the board and committee evaluation processes.
- Ensure that all committee meetings include *in camera* sessions with independent directors only.
- Ensure every committee includes directors of diverse backgrounds and at least one director with significant expertise relevant to the committee's role.
- Ensure that the board's culture of integrity establishes a questioning mindset with respect to the manner in which the committee members discharge their mandate.
- Every committee should keep formal records and written minutes to document decisions and processes.

EXPECTED BEST PRACTICES *(CONT)*

FOR THE AUDIT COMMITTEE

- Committee members must all be independent and financially literate (as required under National Instrument 52-110 Audit Committees).
- The committee (as required under NI 52-110 Audit Committees) must have authority to engage independent counsel and other advisors as it deems necessary to carry out its duties; to set and pay compensation for any advisors employed by the committee and to communicate directly with the internal and external auditors.
- The committee should regularly meet *in camera* with the external auditor and with the individual(s) in senior management who have responsibility for internal controls without other senior management present.
- The committee should periodically review and assess the external auditor considering, in addition to audit tenure, such factors as an evaluation of the professional skepticism of the auditor and the "auditor's performance, experience, specific company knowledge and industry expertise, audit methodologies used, technologies applied in the audit process, the quality of communication and observations[…]"[41].
    - the committee should disclose detailed information about the assessment of the external auditors in the proxy document, and consider shareholder engagement, particularly if the company has experienced a decrease in support from shareholders for the auditor's appointment[42].
- The committee should be aware of the possibility of fraud, and be prepared to have uncomfortable conversations with management, internal audit and external auditors, including:
    - questioning external auditors on the audit methods and techniques employed in audit planning to detect fraud, such as asking the auditors if the transaction or payment reviews or the testing of specific internal controls are different from previous years; questioning internal audit and/or management about incidents that may be considered financially immaterial or one off issues of non-compliance but could be indicative of an underlying problem; questioning management as to whether human capital oversight is alive to underlying cultural or employee behavioral dynamics that could incent or enable fraud.
    - ensuring that whistleblower hotlines are in scope of the audit; and
    - ensuring that auditor fraud inquiries are conducted in person with the committee where possible and not virtually to enable the auditor to interpret body language and any discomfort in responses and to provide sufficient time for open discussion[43].

FOR THE NOMINATING/GOVERNANCE COMMITTEE

- Committee members should all be independent, and the CEO should not participate in their selection.

FOR THE COMPENSATION COMMITTEE

- Committee members should all be independent with an objective and knowledgeable view of compensation, formed independently of management, and the CEO should not participate in their selection.
- Ensure that no more than one in three members of the committee is currently the CEO of another corporation.
- Do not include management in committee meetings when their compensation is being deliberated.

[41] Canadian Centre for Audit Quality, Comments on audit quality and firm tenure, Feb 1, 2024 at pg. 5
[42] Ibid.
[43] See IAASB Moves to Strengthen Auditors' Efforts Related to Fraud | IAASB and the Canadian Public Accountability Board, Response to IAASB's Draft revisions to the auditors responsibilities relating to fraud, June 4, 2024.

EXPECTED BEST PRACTICES *(CONT)*

COMMITTEE ALLOCATION OF SUSTAINABILITY MATTERS

- With respect to oversight of material sustainability risks and opportunities, boards are best placed to determine whether such issues will be delegated to one or more committees or retained by the board as a whole.
- Given the breadth and dynamism of potentially material sustainability matters that a company may be faced with, the primary responsibility of the board is to understand which issues are material to risk or strategy or both and to integrate and clearly allocate oversight responsibility accordingly within the board's governance framework.
  - this could be achieved through integration into one or more existing committees (such as audit, risk and/or health and safety); through the creation of a stand-alone committee (such as a sustainability, environmental or technology committee) or through the board retaining direct oversight.
  - in some cases, a special committee may be indicated.

ALLOCATION TO SPECIAL COMMITTEES

- Special committees are ad hoc committees created to address a specific situation. They may be mandated by regulation in the case of conflict of interest transactions to protect the interests of minority security holders in special transactions[44] or indicated by circumstances such as dealing with unexpected events like a cybersecurity attack, litigation or investigations into allegations of misconduct.
- The special committee should have a clear written mandate outlining its powers and authorities as delegated by the board.
- Composition of the committee should be determined by the underlying issue but should generally be comprised of independent directors with relevant expertise, who are able to commit the time and effort needed to fulfill the committee's mandate.
- The special committee should have clear authority and appropriate resources to retain outside expertise and advisors, such as legal and technical, as it may require to fulfill its mandate.
- Disclosure of the formation of the committee, the composition and the mandate should be made to investors at the appropriate time in compliance with applicable continuous disclosure requirements[45].

INVESTOR INSIGHT

Consistent with CCGG's The Directors' E&S Guidebook, ensure oversight of all risks, including evolving risks such as generative AI integration/cybersecurity, and systemic risks such as climate change, are allocated appropriately to a committee or are expressly retained by the board.

[44] Canadian Securities Administrators, MI 61-101 Protection of Minority Security Holders in Special Transactions and Companion Policy 61-101CP Protection of Minority Security Holders in Special Transactions February 1, 2008 (2008) OSCB 1321 [https://www.osc.ca/sites/default/files/pdfs/irps/rule_20080201_61-101_protect-minority.pdf]

[45] See, Capital Markets and Mergers Acquisitions Group, *Directors' Duties and Special Committees in Public M&A*, Fasken Martineau DuMoulin LLP, 2024; mccarthy.ca, *Special Committees White Paper*, McCarthy Tétrault LLP, 2024.

GUIDING PRINCIPLE 6: FACILITATE SHAREHOLDER DEMOCRACY

6.1 Facilitate shareholder democracy

The right to vote is critically important for shareholders and fundamental to shareholder democracy. Every public corporation must have a voting system that supports shareholder democracy, including adopting a majority voting policy where not otherwise required by legislation or listing rules.

Related to the right to vote is the right to attend and fully participate in all shareholder meetings notwithstanding the format of the meeting (e.g. in person, virtual or hybrid).

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- The Board should give serious consideration to the voting results for shareholder proposals even if the resolutions are only advisory in nature or if the support for a proposal is less than 50% but nonetheless is indicative of strong shareholder interest in the subject matter. For Say on Pay advisory votes, the threshold is less than 80%. In either case, the board should engage in order to meaningfully understand shareholders' concerns.
- Immediately disclose the detailed voting results on SEDAR+, indicating the actual number and percentage of votes cast for, against and/or withheld for each resolution, broken down by share class, irrespective of the manner in which the vote is held.
- Promptly issue a news release describing the results of director elections.
- Hybrid meetings of shareholders, facilitating both in-person and virtual attendance, is the preferred meeting format provided that the experience for shareholders attending virtually is aligned as much as possible with the experience of an in-person meeting.
- Where used to support virtual participation, technology should be accessible and easy to navigate.
- Virtual or hybrid meetings should provide for synchronous shareholder participation including the capacity for real time communication among shareholders as well as between shareholders and the company's board and management and provide the ability for shareholders attending virtually to vote and to pose questions from the floor to management in real time, without prior gate keeping or vetting by management.
- Do not use corporate by-laws to enable automatic postponements of annual general meetings where it appears that a director may not secure a majority of votes.

INVESTOR INSIGHT

Additional CCGG policy guidance is provided in:

CCGG's Majority Voting Policy
CCGG's Virtual Shareholder Meeting Policy

6.2 Engage with shareholders

CCGG believes that shareholders and boards should have regular, constructive engagement meetings. Engagement between shareholders and boards allows each group to explain its perspectives on governance (including compensation), material sustainability matters, and disclosure practices. It also allows boards to obtain feedback on their governance practices directly from the shareholders to whom they are accountable and allows boards to explain the reasoning behind their chosen governance practices to shareholders.

In order to facilitate a frank and open discussion between shareholders and directors about the board's governance practices (including material sustainability risks and opportunities, and its assessment, compensation and oversight of management) these meetings should be held without management or advisors present. Most boards welcome this interaction and we encourage all boards to contact their shareholders to initiate a dialogue.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- Provide opportunities for shareholders to have access to independent directors in addition to the annual meeting in order to discuss issues that concern either party.
- Provide the name and contact information of an independent director for shareholders and other stakeholders to contact in the proxy circular and on the corporation's website.
- Adopt the CCGG model board policy on Engagement with Shareholders or similar policy and disclose how and whether the company regularly engages with its major shareholders.

INVESTOR INSIGHT

Additional CCGG policy guidance is provided in:

CCGG's Engagement between Boards and Shareholders
CCGG's Stewardship Principles

6.3 Report governance policies and initiatives to shareholders

Boards need to make every effort to help shareholders understand the board's governance policies, practices and culture and how the board fulfills its responsibilities to effectively oversee management, including with respect to sustainability matters. Since the proxy circular is the primary tool through which a board communicates with the majority of its shareholders, boards should ensure that the proxy circular is clear, well-organized and written in plain language and properly reflects the views of the board. A proxy circular should not merely be rubberstamped by the board after being drafted by management and reviewed by counsel – rather, the board should be deeply involved with oversight of its preparation.

In addition to the proxy circular, boards should regularly communicate with shareholders through the corporation's website. The board should encourage shareholders to attend and ask questions at the annual general meeting, and other formal meetings of shareholders, either in person or virtually through a hybrid format, and should allocate a reasonable amount of time at shareholder meetings for such discussions.

Finally, boards should oversee and sign off on sustainability-related disclosures with the same level of attention as are required by financial disclosures.

EXPECTED BEST PRACTICES

FOR THE BOARD AS A WHOLE

- Ensure that the proxy circular describes the corporation's governance practices, including with respect to material sustainability matters, in sufficient detail for shareholders to ascertain whether the corporation complies with the guidelines in this document. The annual CCGG publication Best Practices for Proxy Circular Disclosure includes examples of effective disclosure.
- Include a discussion of the corporation's governance philosophy, policies, practices and monitoring processes, and oversight of risk and strategy, including with respect to its approach to material sustainability matters, in the proxy circular and indicate whether its standards meet or exceed regulatory requirements.
- Disclose in the Chair's section of the annual report any substantive issues, changes and developments in governance policies and practices at the corporation, including related to executive compensation, that could affect shareholder interests.
- Ensure the Chairs of the board and each committee are available to answer questions at the annual general meeting and any other significant shareholder meetings.
- Ensure that the name and contact information of a director that shareholders and other stakeholders can contact is made available in the proxy circular and on the corporation's website.
- Ensure that the company reports to shareholders with respect to material sustainability matters and that the board oversees and signs off on ESG or sustainability reports. CCGG supports voluntary adoption of the disclosure standards published by the IFRS International Sustainability Standards Board for general sustainability requirements (S1) and climate-related disclosures (S2) as adopted by the Canada by the Canadian Sustainability Standards Board in Canadian Sustainability Disclosure Standards (CSDS) 1 and 2[46].

INVESTOR INSIGHT

Additional CCGG guidance is provided in:

CCGG's Annual Best Practices for Proxy Circular Disclosure

[46] Supra, note 6.