October 21, 2022

Mr. Serdar Çelic
Acting Head, Corporate Governance and Corporate Finance Division
Organisation for Economic Co-operation and Development
2, rue André Pascal
75775 Paris Cedex 16
France

Via email: CorporateGovernance&CorporateFinance@oecd.org

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

Dear Mr. Çelic:

I write on behalf of the Council of Institutional Investors (CII), a nonprofit, nonpartisan association of United States (U.S.) public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately $4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than 15 million participants – true "Main Street" investors through their pension funds. Our associate members include non-U.S. asset owners with about $4 trillion in assets, and a range of asset managers with more than $40 trillion in assets under management.[1]

CII values the opportunity to share our views on the Organisation for Economic Co-operation and Development's (OECD or Organisation) September 19, 2022, Public Consultation on *Draft Revisions to the G20/OECD Principles of Corporate Governance* (Public Consultation or Principles).[2] Our comments, in response to the Public Consultation, build on the statements and policies voted on and approved by our members. CII appreciates the efforts of OECD to be an international leader in helping policy makers "…evaluate and improve the legal, regulatory, and institutional framework for corporate governance,"[3] and we look forward to engagement on, and advancement of, this mutual interest.

[1] For more information about the Council of Institutional Investors ("CII"), including its board and members, please visit CII's website at https://www.cii.org/.
[2] *See* Public Consultation, Draft Revisions to the G20/OECD Principles of Corporate Governance, Organisation for Economic Co-operation and Development (Sept. 19, 2022), https://www.oecd.org/corporate/review-oecd-g20-principles-corporate-governance.htm.
[3] *See* G20/OECD Principles of Corporate Governance, Organisation for Economic Co-operation and Development (accessed Oct. 18, 2022), https://www.oecd.org/corporate/principles-corporate-governance/.

Summary of Responses

I.C. The division of responsibilities among different authorities and self-regulatory bodies should be clearly articulated and designed to serve the public interest.

CII appreciates OECD's recognition of the importance of "…a coherent institutional and regulatory framework" for companies to effectively pursue their key corporate governance objectives, as well as the challenges and risks that a fragmented regulatory framework without clear division of roles may pose to the pursuit of these objectives.[4] CII has consistently voiced its support for regulations that are consistent with U.S. corporate governance principles and our member-approved policies.

In June, CII's General Counsel wrote to the House Committee on Banking, Housing & Urban Affairs, requesting consideration of the Multi-Class Act,[5] draft legislation which would "…give the [SEC] clear statutory authority to set minimum listing standards that apply to all exchanges and associations."[6] In addition to delineating authority over corporate governance listing standards between the SEC and stock exchanges, these standards would allow companies to go public with multi-class stock and maintain these structures so long as each investor votes on a one share, one vote basis.[7]

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

CII has consistently encouraged companies to ensure equity across meeting formats as it pertains to shareowner rights and engagement opportunities. Our member-approved policy on shareowner meetings was last revised in March 2022 to underscore that many investors have a strong preference for in-person meetings. CII shares this preference for in-person meetings but affords companies the flexibility to choose alternate modalities that best reflect their shareowner base and current circumstances.[8] Shareowners' expense and convenience should be primary

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[4] § I.C., Public Consultation on Draft Revisions to the G20/OECD Principles of Corporate Governance, ("…there is a risk that the variety of legal influences may cause unintentional overlaps and even conflicts, which may frustrate the ability to pursue key corporate governance objectives. It is important that policy makers are aware of this risk and take measures to ensure a coherent institutional and regulatory framework.")

[5] To amend the Securities Exchange Act of 1934 to improve the governance of multi-class stock companies, and for other purposes, H.R.___, 117th Cong. (discussion draft Mar. 26, 2022), available at https://financialservices.house.gov/uploadedfiles/033022_bills-117pih-hr___toamendthesecuri.pdf (hereinafter Multi-Class Act).

[6] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Sherrod Brown, Chairman and The Honorable Pat Toomey, Ranking Member, Committee on Banking, Housing & Urban Affairs, United States House of Representatives (Jun. 2, 2022), https://www.cii.org/files/issues_and_advocacy/correspondence/2022/June%202%202022%20JOBS%20Act%204_0%20letter%20(final).pdf.

[7] *Ibid.*, p. 3.

[8] *See* "CII Elects Board Members for 2022-2023; Members Also Approve Revised Policies on Poison Pills and Shareholder Meetings," Council of Institutional Investors (Mar. 8, 2022), https://www.cii.org/files/about_us/press_releases/2022/03-08-22_newboard_and_policies.pdf.

considerations in determining the time, format, and location of shareowner meetings. Where companies choose to incorporate virtual formats into their shareowner meetings, CII encourages them to use technology as a tool to increase, not limit, attendee participation.[9]

II.C.5. Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known, including through votes at shareholder meetings, on the remuneration of board members and/or key executives, as applicable. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.

CII believes strongly that shareowners should participate in key corporate governance decisions, including the nomination and election of board members.[10] We agree with the OECD's provision that calls for "…full and timely disclosure of the experience and background of candidates for the board and the nomination process,"[11] as this will allow shareowners to duly evaluate the background, independence, and qualifications of each candidate. We also commend the inclusion of language regarding the disclosure of independence criteria as it pertains to nomination of independent board members.[12]

Director independence is vital to the proper functioning of a board.[13] Per our policy, boards should be composed of not less than two-thirds independent directors and chaired by an independent director. All members of special committees, including audit, nominating, and compensation, should be independent and appointed by the board.[14]

We also believe that any director who fails to receive the majority of votes cast in an uncontested election should end their board service as soon as practicable.[15] Since 2013, our Board Accountability List has tracked the continued service of "zombie" directors who remain on boards after failing to meet the majority vote threshold.[16] We encourage the OECD to include language in support of majority voting standards for uncontested elections, as such policies prevent the entrenchment of directors who fail to receive majority support from shareowners.

II.D. Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.

CII agrees with the Public Consultation's provision that shareowners acting independently should be able to consult with each other on issues concerning their basic shareowner rights, to include participation in informal, non-binding investor coalitions. These coalitions play an

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[9] § 4.1 Meeting Format and Timing
[10] *See* § 2 The Board of Directors
[11] § II.C.5., *Public Consultation*
[12] Ibid.
[13] § 7 Independent Director Definition
[14] §2.3 Independent Board; §2.4 Independent Board
[15] § 2.2 Director Elections
[16] *See* Majority Voting for Directors, Council of Institutional Investors, https://www.cii.org/majority_voting_directors.

important role in facilitating engagement with other CII members and investors on contested director elections and other similar activity. We also agree with the argument that these coalitions "…safeguard the interest of minority shareholders while increasing their voice in company matters."[17]

In an April 2022 response to the SEC's proposed amendments to Rule 13d-6(c), CII's General Counsel affirmed the importance of communication between investors, such as CII members, regarding corporate governance issues at portfolio companies. CII welcomed the adoption of the proposed rule while raising concerns about ambiguities in the text regarding shareowner obligations that could result in a chilling effect on investor coallitions.

While CII agrees that joint actions by investors should not be taken pursuant to binding agreements or obligations, the proposal is not explicit about what constitutes an obligation. CII recommends that the SEC rectify this ambiguity in order to protect investors' communications from regulatory exposure while mitigating anticompetitive behavior.[18]

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

CII has consistently expressed concern about the threat that dual class share structures with unequal voting rights pose to the voting rights of owners of common stock. CII policy discourages unequal share structures and advises companies that adopt them to implement a sunset period of not greater than seven years.[19] Consistent with CII's advocacy on this issue, we began an initiative, International Coalition for Equal Votes (ICEV), this year with Railpen, the United Kingdom's railroad pension fund, to address the rapid emergence of unequal share structures in several non-U.S. markets.

IV.A.6. Information about board members, including their qualifications, the selection process, their composition, other company directorships and whether they are regarded as independent by the board.

CII believes that diverse boards can enhance a company's financial performance and agrees with OECD's inclusion of diversity disclosure provisions in its Public Consultation.[20] Our member-

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[17] § II.D., *Public Consultation*, ("In jurisdictions where publicly traded companies have controlling shareholders, these actions safeguard the interest of minority shareholders while increasing their voice in company matters.) p. 19.
[18] Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission (Apr. 8 2022), https://www.cii.org/files/issues_and_advocacy/correspondence/2022/April%208%202022%20Modernization%20of%20Beneficial%20Ownership%20Reporting%20(finalF).pdf.
[19] Investor Expectations for Newly Listed Companies, Council of Institutional Investors, https://www.cii.org/ipo_policy ("Upon going public, a company should have a "one share, one vote" structure . . . [and] CII expects newly public companies without such provisions to commit to their adoption over a reasonably limited period through sunset mechanisms.").
[20] IV.A.6., *Public Consultation*, "Information about board members, including their qualifications, the selection process, their composition, other company directorships and whether they are regarded as independent by the board.", p. 30-31.

supported policies also state that nominating committees should recognize the importance of board diversity, including along such characteristics as background, experience, age, race, gender, ethnicity, and culture, when determining the composition of the board.[21]

CII has advocated in support of disclosure of information about board composition and diversity. In February, CII and seven other groups filed a joint amicus brief in support of the SEC after it approved Nasdaq rules that would require companies listed on the exchange to disclose information about the diversity of its board.[22] In the amicus brief, filers noted that although many investors believe board diversity is a material benefit to companies, this information is difficult to obtain and process, and the data provided is often inaccurate.[23]

V.D.2. Reviewing and assessing risk management policies and procedures.

CII agrees with the OECD's recognition that oversight of enterprise risk management is a key function of the board. Oversight of the company's risk management is an area of major importance for boards and is closely related to corporate strategy. It involves oversight of the accountabilities and responsibilities for managing risks, specifying the types and degree of risk that a company is willing to accept in pursuit of its goals, and how it will manage the risks it creates through its operations and relationships. The board's oversight thus provides crucial guidance to management in handling risks to meet the company's desired risk profile.

CII believes that a core function of the board is to exercise its fiduciary responsibility in overseeing the management of strategy and risks. As the nature of material risks that a company may be exposed to evolves, we also believe that the board should assess other material non-financial risks that the company may be exposed to. As stated in our member-approved policies:

> The board should (1) monitor a company's risk management philosophy and risk appetite; (2) understand and ensure risk management practices for the company; (3) regularly review risks in relation to the risk appetite; and (4) evaluate how management responds to the most significant risks.[24]

V.E. The board should be able to exercise objective independent judgement on corporate affairs.

CII generally agrees with OECD's inclusion of an updated definition of board independence in its Public Consultation, such that a board is considered independent if absent of any material relationships between a director and the company, its affiliates, auditors, and substantial shareholders.[25] Per CII policy, directors on a company's board should be independent of any

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[21] § 2.8b Board Diversity

[22] *See* "Brief of Investors and Investment Advisers as Amici Curiae in Support of Respondent Securities and Exchange Commission," Council of Institutional Investors et al. (Feb. 25, 2022), https://www.cii.org/files/issues_and_advocacy/legal_issues/2022-02-24%20NASDAQ%20Amicus%20Brief%20dkt%2000516217385%20Amici%20Curiae1259813%20(002).pdf.

[23] *Ibid*, p. 7.

[24] § 2.7 Board's Role in Strategy and Risk Oversight

[25] § V.E. "The board should be able to exercise objective independent judgement on corporate affairs.", *Public Consultation*, p. 41.

material conflicts of interest, to include direct financial ties to the company, its management, auditors, and substantial shareholders, beyond the scope of an individual's role as director.[26]

We especially agree that directors on a company's board should make an affirmative statement of independence from these material conflicts. In accordance with our member-approved policy on board independence, companies should disclose any significant relationships that the company may have to "… companies, non-profits, foundations and other organizations where company directors serve as employees, officers or directors." [27]

We encourage the OECD to include guidelines on the number of boards that a director may serve on. CII policy states that directors should serve on no more than four other for-profit boards, as over-boarding may limit the attention a director can give to their responsibilities and negatively impact the quality of their board service.[28]

V.E.2. Boards should consider setting up specialised committees to support the full board in performing its functions, in particular the committee – or equivalent body – for overseeing disclosure, internal controls and audit-related matters. Other committees, such as remuneration, nomination or risk management, may provide support to the board depending upon the company's size, structure, complexity and risk profile. Their mandate, composition and working procedures should be well defined and disclosed by the board which retains full responsibility for the decisions taken.

CII agrees with OECD's recognition that even though the board remains wholly responsible for audit and risk activities, the increasing recognition of material risks beyond financial risks means that companies may benefit from separating the functions of audit and risk committees.[29] Recent academic research suggests that audit committees are overloaded and perhaps less effective, in part, because they are taking on greater responsibilities for other risks;[30] we share OECD's view that separating these roles can help mitigate audit committee overload and allow more time for risk management issues. In our view, it is important to note that the delegation of these roles is not a substitute for effective, ongoing communication between the board and management about material risks and risk management.[31]

V.E.4. Boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences, including with respect to gender and other forms of diversity.

We appreciate the OECD's addition of language that recognizes the importance of gender and other forms of diversity when evaluating the background and competencies of the board. As

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[26] § 2.3 Independent Board
[27] *Ibid.*
[28] § 2.11 Board Size and Service
[29] OECD Public Consultation p. 43
[30] *See* "Audit Committee Oversight and Financial Reporting Reliability: Are Audit Committees Overloaded?", Musaib Ashraf, Preeti Choudhary, and Jacob Jaggi, September 2022, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3433389.
[31] *See* § 2.7 Board's Role in Strategy and Risk Oversight

noted in our response to section IV.A.6, we believe that diverse boards can enhance a company's financial performance.[32]

We agree that boards should periodically review the performance and qualifications of their directors, and in today's diverse and global marketplace, we believe that nomination of directors with diverse age, experience, ethnicity, culture, and other characteristics will equip the board with key competencies and experiences to advance the company's goals.[33] We agree with the OECD in encouraging companies to strengthen talent pipelines for diverse talent and asking policymakers to take steps to enhance board and management diversity.[34]

VI.A. Sustainability disclosure should be consistent, comparable and reliable, and include retrospective and forward-looking material information that a reasonable investor would consider important in making an investment or voting decision.

OECD states that sustainability disclosure should conform to international standards and include material information that would be considered important to a reasonable investor. It also notes that disclosure should be consistent and comparable across companies:

> To ensure the efficiency of capital markets, investors must be able to compare different companies' past performance and future prospects and then decide how to allocate their capital and engage with companies. With the emergence and greater awareness of environmental and social risks, investors have been demanding better disclosure from companies on governance, strategy, risk management (e.g. overall results of risk assessments for different climate change scenarios) and non-financial metrics (for example related to greenhouse gas emissions and biodiversity) that are relevant for investors when assessing a company's business perspectives and risks.[35]

CII appreciates OECD's recognition that investors seek reliable information about sustainability performance and agrees that companies should disclose sustainability performance using independently verified, standardized, and comparable metrics. We also believe that companies should over time conduct external assurance to enhance the integrity of their sustainability performance disclosures.

Consistent with our *Statement on Corporate Disclosure of Sustainability Performance*, we believe that requiring reasonable assurance following sufficient implementation of processes and controls over the proposed disclosures could result in a higher level of reliability and accuracy of information that is responsive to investors' needs.[36]

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[32] § 2.8b Board Diversity
[33] § 2.8a Board Refreshment and Succession Planning; § 2.8b Board Diversity; § 2.8c Evaluation of Directors
[34] § V.E.4 "Boards should regularly carry out evaluations…", *Public Consultation*, p. 43.
[35] *See* § VI.A. "Sustainability disclosure should be consistent…", *Public Consultation*
[36] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Vanessa A. Countryman, Secretary, Securities and Exchange Commission (May 19, 2022), https://www.cii.org//Files/Correspondence/May%2019%202022%20CII%20Comment%20Letter%20on%20Climate%20Disclosure%20for%20SEC%20(final).pdf, p. 8.

However, as we noted in our July letter to The IFRS Foundation, we do not believe that any one set of international sustainability disclosure standards will become a comprehensive baseline for the U.S. market.[37] Although the creation of a uniform global disclosure standard would benefit investors, the myriad of political, legal, and practical differences between countries makes it unlikely that ISSB standards will become globally accepted and implemented.[38]

VI.B. Corporate governance frameworks should allow for the dialogue between directors, key executives, shareholders and stakeholders to exchange views on sustainability matters as relevant for the company's business strategy and its assessment of what matters ought to be considered material.

CII agrees with the OECD's recommendation of ongoing dialogue between directors, executives, stakeholders, and shareowners, and believes that discussion about material risks and opportunities, including material sustainability risks, is an important component of the board's fiduciary responsibility to oversee organizational management of strategy and risk. As we note in response to section V.E.2, delegation of oversight sustainability risks to special committees does not absolve the board of its ultimate responsibility to manage company risk and engage in ongoing dialogue with management about these risks.[39]

VI.C. Boards should ensure that governance practices, strategy and risk management policies adequately consider material sustainability risks and opportunities, including climate-related physical and transition risks.

We commend the OECD for its recommendation that boards approach sustainability risk through a holistic lens, especially pertaining to the effects that material sustainability risks may have on other areas of a company's operations.[40] These considerations can inform a company's organizational risk strategy or executive compensation plans, and such due diligence is in accordance with our policy on board responsibility for the management of material company risk.[41]

In addition, CII generally supports company disclosure when disclosure would present an increase in transparency and reliability on information material to investment and voting decisions.[42] With the increasing importance of sustainability disclosure for investors, we believe that companies should disclose their board oversight of material sustainability risks.

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[37] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Mr. Emmanuel Faber, Chair, International Sustainability Standards Board, The IFRS Foundation (Jul. 28, 2022), https://www.cii.org/files/issues_and_advocacy/correspondence/2022/July%2028%202022%20ISSB%20S1%20and%20S2%20CII%20Letter%20(final).pdf.
[38] *See, e.g.,* Commissioner Hester M. Peirce, Statement on the IFRS Foundation's Proposed Constitutional Amendments Relating to Sustainability Standards (July 1, 2021), https://www.sec.gov/news/public-statement/peirce-ifrs-2021-07-01 ("The motivating objective of the [IFRS] Foundation's effort—a set of globally accepted and consistently applied sustainability standards—is well-intentioned but unrealistic and may undermine the important concerns at the heart of this effort.").
[39] § 2.7 Board's Role in Strategy and Risk Oversight
[40] *See* § VI.C. "Boards should ensure that governance practices…", *Public Consultation,* p. 47.
[41] § 2.7 Board's Role in Strategy and Risk Oversight
[42] Statement on Company Disclosure (adopted Mar. 10, 2020)

In May, CII's General Counsel submitted comments in response to the SEC's proposed rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, generally supporting the rule's requirement that companies disclose board oversight of material climate-related risks, as well as the impact that these risks may have on the company:

> CII generally supports the Proposed Rule's requirement that a registrant describe the board's oversight of climate-related risks. We believe the proposed disclosure is consistent with CII's policy on the **Board's Role in Strategy and Risk Oversight**. We also believe the proposed disclosure could provide shareholders the information they need to assess whether the board is carrying out its oversight responsibilities effectively.
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> CII also generally supports the Proposed Rule's requirement that a registrant describe the actual and potential impacts of its material climate-related risks on its strategy, business model and outlook. We agree with the SEC that such information can be important for making an investment or voting decision about the registrant.[43]

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CII Policies

Our comments on the Public Consultation are derived from our membership-approved policies and statements. Those policies that are particularly relevant to the Public Consultation include the following:

> **1.6 Business Practices, Stakeholder Relationships and Long-term Value:** CII believes companies should adhere to responsible, ethical business practices and good corporate citizenship. Promotion, adoption and effective implementation of guidelines for the responsible conduct of business and business relationships are consistent with the fiduciary responsibility of protecting long-term investment interests.
>
> Customers, workers, suppliers, creditors, communities and regulators make critical contributions to companies' ability to generate long-term value for shareowners, and maintaining constructive relationships with these stakeholders is essential.
>
> Companies should establish clear guidelines and policies, and provide substantive, comparable and reliable information that enhances investors' understanding of how they manage material stakeholder relationships.[44]

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[43] *See* Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Vanessa A. Countryman, Secretary, Securities and Exchange Commission (May 19, 2022), https://www.cii.org//Files/Correspondence/May%2019%202022%20CII%20Comment%20Letter%20on%20Climate%20Disclosure%20for%20SEC%20(final).pdf, p. 7.

[44] § 1.6 Business Practices, Stakeholder Relationships and Long-term Value (updated Sept. 21, 2022), Corporate Governance Policies, Council of Institutional Investors, https://www.cii.org/files/09_21_22_corp_gov_policies.pdf.

2.4 Independent Chair/Lead Director: The board should be chaired by an independent director. The CEO and chair roles should only be combined in very limited circumstances; in these situations, the board should provide a written statement in the proxy materials discussing why the combined role is in the best interests of shareowners, and it should name a lead independent director who should have approval over information flow to the board, meeting agendas and meeting schedules to ensure a structure that provides an appropriate balance between the powers of the CEO and those of the independent directors.

Other roles of the lead independent director should include chairing meetings of non-management directors and of independent directors, presiding over board meetings in the absence of the chair, serving as the principle liaison between the independent directors and the chair and leading the board/director evaluation process. Given these additional responsibilities, the lead independent director should expect to devote a greater amount of time to board service than the other directors.[45]

2.7 Board's Role in Strategy and Risk Oversight

The board has a fiduciary responsibility to oversee company performance and the management of strategy and risks. The CEO is responsible for the development of strategy, in cooperation and consultation with the board, including recognizing and planning for opportunities and risks that impact the company. A core function of the board is to oversee the performance of the CEO to ensure that an optimal strategy is pursued and appropriate risk mitigation policies are adopted and executed. The board should (1) monitor a company's risk management philosophy and risk appetite; (2) understand and ensure risk management practices for the company; (3) regularly review risks in relation to the risk appetite; and (4) evaluate how management responds to the most significant risks.

In assessing the company's risk profile, the board should consider company-specific dynamics as well as risks across the industry and any systemic risks. Material risks can stem from many aspects of the business, including, but not limited to, the management of: capital structure, human capital, supply chain relationships, executive compensation, cybersecurity and climate change. While boards organize and divide the risk oversight function in a variety of ways, all directors share ultimate responsibility for effective risk oversight. The board must evaluate the company's strategy, taking account of material risks, and be willing to take corrective action if the CEO's performance in this role is inadequate.

Effective board oversight of strategy and risk requires regular, meaningful communication between the board and management, among board members and committees, and between the board and any outside advisers it consults, about the company's material risks and risk management processes. The board should

[45] § 2.4 Independent Chair/Lead Director.

disclose to shareowners, at least annually, sufficient information to enable them to assess whether the board is carrying out its oversight responsibilities effectively.[46]

Financial Gatekeepers

The Council of Institutional Investors believes financial gatekeepers should be transparent in their methodology and avoid, or tightly manage, conflicts of interest. Robust oversight and genuine accountability to investors are also imperative. Regulators should remain vigilant and work to close gaps in oversight. Continued reforms are needed to ensure that the pillars of transparency, independence, oversight and accountability are solidly in place.

Auditors . . . and other financial "gatekeepers" play a vital role in ensuring the integrity and stability of the capital markets. They provide investors with timely, critical information they need, but often cannot verify, to make informed investment decisions. With vast access to management and material non-public information, financial gatekeepers have an inordinate impact on public confidence in the markets. They also exert great influence over the ability of corporations to raise capital and the investment options of many institutional investors.

In recent years, the global financial crisis and financial scandals on Wall Street and at operating companies from Enron to Tyco have cast a harsh light on flawed structures and practices of gatekeepers. In many cases, poor disclosure, conflicts of interest, minimal oversight and lack of accountability helped mislead many market participants into making investment decisions that ultimately yielded huge losses. The crisis of confidence in the markets that followed spurred regulators and lawmakers to scrutinize and rein in gatekeepers.

The Sarbanes-Oxley Act of 2002 and the "global settlement" with Wall Street firms in 2003 bolstered the transparency, independence, oversight and accountability of accounting firms and equity analysts, respectively. For example, accounting firms now are barred from providing many consulting services to companies whose books they audit. . . .

. . . CII welcomes further examination of financial gatekeepers by regulators, lawmakers, academics and others, to determine what changes, including new rules and stronger oversight, are needed.[47]

Statement on Company Disclosure

In evaluating proposals to expand company disclosure, CII considers the following factors:

- Materiality to investment and voting decisions

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[46] § 2.7 Board's Role in Strategy and Risk Oversight
[47] Financial Gatekeepers (adopted Apr. 13, 2010), https://www.cii.org/policies_other_issues#fin_gatekeepers.

- Depth, consistency and reliability of empirical evidence supporting the connection between the disclosure and long-term shareowner value
- Anticipated benefit to investors, net of the cost of collection and reporting
- Prospect of substantially improving transparency, comparability, reliability and accuracy[48]

Statement on Corporate Disclosure of Sustainability Performance

Investors increasingly seek decision-useful, comparable and reliable information about sustainability performance in corporate disclosures in order to better understand how nonfinancial metrics can impact business and profitability. CII believes that independent, private sector standard setters should have the central role in helping companies fill that need. Market participants, non-governmental organizations and governments can aid the success of these standard setters by supporting their independence and long-term viability, attributes of which include: stable and secure funding; deep technical expertise at both the staff and board levels; accountability to investors; open and rigorous due process for the development of new standards; and adequate protection from external interference.

CII encourages companies to disclose standardized metrics established by independent, private sector standard setters along with reporting mandated by applicable securities regulations to better ensure investors have the information they need to make informed investment and proxy voting decisions. CII believes those standards that focus on materiality, and take into account appropriate sector and industry considerations, are more likely to meet investors' needs for useful and comparable information about sustainability performance. CII also believes that over time, companies should obtain external assurance of the sustainability performance information they provide.[49]

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Thank you for consideration of CII's views. If we can answer any questions or provide additional information, please do not hesitate to contact me.

Sincerely,

Emmanuel Tamrat
Research Analyst
Council of Institutional Investors
emmanuel@cii.org

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[48] Statement on Company Disclosure (adopted Mar. 10, 2020), https://www.cii.org/policies_other_issues#Company_disclosure.
[49] Statement on Corporate Disclosure of Sustainability Performance (adopted Sept. 22, 2020), https://www.cii.org/policies_other_issues#sustainability_disclosure.