

Roundtable Consultation on Proposed Revisions to the OECD Principles of Corporate Governance: Discussion Note for Session 4 Breakout Groups

Hosted by :



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Discussion Note for Session 4 Breakout Groups

The OECD Corporate Governance Committee is currently in the process of revising the *OECD Principles of Corporate Governance* (Spanish version available at <http://www.oecd.org/daf/ca/corporategovernanceprinciples/37191543.pdf>), and is planning to release a new draft of the *Principles* (prepared under the responsibility of the OECD Secretariat but not yet approved by the Committee) for public consultation by 14 November, 2014. The Principles are recognised as the global standard for policy-makers and regulators to consider in developing policies that give market participants sound economic incentives to perform their respective roles within a framework of checks and balances where transparency, supervision and effective enforcement provide confidence in market practices and institutions.

The proposed new draft text will be circulated to Roundtable participants for their reference for discussion just before the Roundtable meeting, so that the Roundtable may directly review the proposed text and provide input that can be taken into consideration for the Corporate Governance Committee's next meeting to take place on 18-19 February, 2015.

As the new draft text will only become available a few days before the meeting, this note provides some supplementary background information and questions for participants in the break-out sessions to think about in preparing for the discussions to take place in Bogota on 18 November. An "Issues Note" developed for initial consultation with experts in March 2014 (attached as an annex) provides a good summary of the issues and questions that the Committee has been taking into consideration so far in its work to develop the new draft. The draft currently being developed maintains many of the same recommendations but has supplemented these with additional recommendations and annotations, integrated the old chapters 2 and 3 dealing with shareholder rights and equitable treatment into a single chapter, and added a new chapter 3 dealing with the roles of institutional investors and other intermediaries.

While the attached Issues Note provides general context, the consultation will be focused more specifically on the revised draft text to be circulated by e-mail to Roundtable participants on 14 November, 2014. The questions below point to some of the issues currently under consideration for revision in the new Principles draft, and can serve as a preliminary guide for the discussions.

For each session, two lead speakers have been designated to provide initial views for wider consideration of the group during the first 20-30 minutes, followed by one hour available for open discussion by all participants. The designated rapporteur for each breakout group, assisted by the moderator, will summarize the main points raised in these sessions during the plenary Session 6 on November 19th.

Breakout Session 1:

Getting shareholder rights, equitable treatment and the enforcement framework right (Chapters 1 – 3):

- Should the Principles add recommendations specific to the regulation and functioning of stock exchanges that supports effective corporate governance?
- Should the Principles elaborate further on governance elements that may be important to ensure the operational independence and accountability of regulators?
- Should the Principles give added attention to cross-border co-operation and exchange of information for the purposes of corporate governance-related enforcement?
- Should electronic participation in shareholder meetings (including e-voting) be encouraged or mandated? How can this be made to work most effectively? (Principle II.C)
- Are the OECD Principles explicit enough in terms of how to address related-party transactions? Is disclosure of material transactions enough? What should be the roles of boards, shareholders and supervisory authorities? (Principle II.G and related recommendations V.A.6, VI.A and VI.E.1)
- Are there other areas where the Principles should be strengthened in terms of equal treatment and the protection of minority shareholder rights?

Breakout Session 2:

Disclosure and stakeholder rights: how much information is sufficient, and how much is too much? (Chapters 4 and 5):

- Should companies pay more attention to non-financial and sustainability issues? On which non-financial issues should companies report? (Principle V.A)
- Should companies disclose their political donations, including in other countries? (Principle V.A.2)
- Should information on beneficial ownership of companies be collected and publicly available? (Principle V.A.3)
- How detailed should the disclosure of related-party transactions (RPTs) be? Are there any major gaps in RPT disclosures that the Principles should address? (Principle V.A.6)
- Do the Principles provide sufficient guidance regarding channels for disseminating information to provide equal, timely and cost-efficient access to relevant information by users? (Principle V.E)
- Are there other areas where the Principles should be strengthened with respect to disclosure or stakeholder rights?

Breakout Session 3:

Board responsibilities: what are the essential policy conditions and what should be left to the market (Chapter 6):

- If the separation of the position of Board Chair and CEO is considered good practice, how much flexibility should be provided for in the regulatory framework? (Principle V.A.9)
- Should policies regarding board evaluation and training and board diversity (VI.E.4) be advocated, and if so, how strongly?
- Should board members be given a stronger role in providing input on board nominations and the skills and qualifications needed for board nominees? (VI.D.5)
- Should larger companies be encouraged or required to have audit and other board committees, and internal audit functions? (Principles VI.D.7, VI.E)
- Is there sufficient awareness, and sufficient guidance, provided regarding risk management issues at board levels, for both financial and non-financial risk? (Principle VI.E.2)
- What additional guidance, if any, should the Principles provide with respect to board members' duties, particularly in the context of corporate governance of company groups, where board member loyalties to the subsidiary company they serve on may differ from the interests of the group as a whole?

ANNEX: EXPERT CONSULTATION ON THE REVIEW OF THE OECD PRINCIPLES OF CORPORATE GOVERNANCE

Paris, 17 March 2014

ISSUES NOTE

I. The public policy objective in corporate governance

1. The OECD Principles of Corporate Governance is a public policy instrument intended to assist governments in their efforts to evaluate and improve the legal, regulatory and institutional framework for corporate governance. As formulated in the mandate that was given to the OECD Corporate Governance Committee in 2010, the objective is to contribute to “*economic efficiency, sustainable growth and financial stability*”. In practice, this objective is achieved by formulating principles for policies that give market participants sound economic incentives to perform their respective roles within a framework of checks and balances where transparency, supervision and effective enforcement provides confidence in market practices and institutions.

2. While the Principles may inspire voluntary initiatives and influence practices in individual companies, the Principles do not aspire to include a shopping list of what individual market participants, such as shareholders, boards, managers and other stakeholders, from their unique perspectives, may consider good business judgment or sound commercial practices. What works in one company or for one investor may not necessarily be generally applicable as public policy or of systemic economic importance to society.

II. The new policy landscape

3. In order to be relevant and effective, the legal and regulatory framework must be shaped with respect to the economic reality in which it will be implemented. This is true also for the recommendations made in the Principles. And since they were last revised in 2004, the world has experienced a number of important events and structural developments in both the financial and corporate sectors. This obviously includes the financial crisis. But equally important for the review of the Principles are the far reaching changes in corporate ownership and investment practices. In some respects, these changes have come to challenge conventional wisdom and the relevance of current corporate governance standards. Several of these developments have been documented and analysed by the Corporate Governance Committee and the Regional Corporate Governance Roundtables and some of the background reports that have been written to support the review are annexed to this note for reference. Seven main events and developments of importance to the review of the Principles can be identified:

- **The financial crisis.** The financial crisis revealed severe shortcomings in corporate governance. When most needed, existing standards failed to provide the checks and balances that companies need in order to cultivate sound business practices. Corporate governance weaknesses in remuneration, risk management, board

practices and the exercise of shareholder rights played an important role in the development of the financial crisis and such weaknesses extended not only to the financial sector, but to companies more generally. The lessons from the financial crisis are discussed in the Committee's report "*Corporate Governance and the Financial Crisis: Conclusions and Emerging Good Practices to Enhance Implementation of the Principles*" (2010).

- **Developments in institutional ownership, investment strategies and trading techniques.** Since the Principles were revised in 2004, assets under management by institutional investors have increased considerably. We have also seen a surge in new types of institutional investors, investment vehicles and trading techniques. Taken together, these developments have affected the character and quality of ownership engagement. Many of the largest institutional investors, such as pension funds, insurance companies and mutual funds use indexing as the prime investment strategy. A special, and increasingly popular, version of indexing is the use of Exchange Traded Funds (ETFs), which increased by more than 1000 percent between 2004 and 2011. A common characteristic of these investment practices is that they motivate investors to pay little or no attention to the fundamentals of individual companies, since the composition of the index is pre-defined and adjustments in the portfolio is not by active choice but rather a result of the index weighting. The same effect results from the surge in so-called high frequency trading where the investment strategy and ultra-short holding periods do not motivate any corporate specific analysis or ownership engagement. A fourth development that has attracted a lot of interest and debate is co-location of brokers, data vendors and other participants' computer capacity within the stock exchanges' data centres. This has raised concerns about confidence in a level playing field among different categories of investors with respect to market information. These developments and their implications for the economic incentives for ownership engagement among institutional investors are further discussed in "*Institutional Investors as Owners – Who Are They and What Do They Do?*" (2013).
- **Developments in the investment chain and the use of service providers.** The real world of ownership characterised by institutional (or intermediary) investors is a very different reality than the model textbook world of company law and economics, which assumes a strict and uncompromised alignment of interest between the performance of the company and the income of the ultimate shareholder. Instead of a straight line from "from profit to pocket", which is assumed in theory, we have an extended and sometimes very complex investment chain where different actors may have different incentives. The implications for the quality of ownership engagement are discussed in the background report "*Institutional Investors as Owners – Who Are They and What Do They Do?*" (2013). Among other aspects, the report highlights the possible implications of cross-investments between different institutional investors and the extensive use of proxy advisers, which is sometimes argued to impose a box ticking culture of "one-size-fits-all". The last couple of decades have also seen an increase in outsourcing of asset management to external asset managers who may also be charged with carrying out the ownership functions. The complexity of the investment chain is also influenced by changes in stock market structures, trading practices and investment strategies. One example is the increased use of dark pools and off-exchange trading platforms that has increased concerns about the quality of the price discovery process and equal access to market information, which is so essential for efficient allocation of capital.

- **Developments in shareholder rights and participation.** Since the last review of the Principles, shareholder rights in many countries have been strengthened and there is a general trend to empower the shareholder meeting in the corporate decision-making process, particularly with respect to board nomination and remuneration policies. Technological advancements have also contributed to facilitating shareholder participation in the shareholder meetings. As documented in the report *“Who Cares? Corporate Governance in Today’s Equity Markets”* (2013), several studies illustrate a relatively high level of participation in shareholder meetings in most OECD countries, including the United Kingdom and the United States that have predominantly dispersed ownership at corporate level. Today, the discussion on shareholder participation is mainly focused on the actual quality of shareholder monitoring and engagement, with the exception of issues related to shareholder cooperation. In some countries, particularly in emerging market economies, it is also argued that ownership engagement is impeded by difficulties with respect to placing items on the agenda of the shareholders’ meeting; the rules for convening shareholders’ meetings; limited access to relevant documentation and restrictions on share ownership by institutional investors.
- **Developments in corporate characteristics and business models.** Investments in fixed assets, such as machinery and buildings, have for decades been seen as the main source of capital formation. A recent OECD study¹, however, shows that business investment in intangible assets has been increasing faster than investments in fixed assets for a number of years in many OECD countries and already accounts for more than half of the total business investment in some countries. The result is an increased dependence on human capital and intangible assets for innovation and value creation at firm level. At the same time, there has been significant number of acquisitions by some large established companies in more intangible-asset-intensive industries, partly through their venture units. Together with the decrease in the number of new listings in advanced stock markets, these developments have raised concerns about the ability of growth companies to develop and expand as independent companies. One preliminary indicator is the decrease in the share of young companies as percentage of the total number of companies in the US by 16% over the last decade. Another important development in terms of corporate characteristics and business models is the creation and surge of alternative corporate structures, mainly in the form of partnerships. This includes publicly traded partnerships (PTPs) and master limited partnerships (MSPs) that trade on securities exchanges.
- **Developments in corporate ownership.** Traditionally, the international corporate governance debate has focused on situations with dispersed ownership where the conflict is a zero sum game between dispersed owners on the one hand and incumbent management on the other hand. This “agency” approach has its merits but it also has important weaknesses. One important weakness is that most listed companies around the world are not characterized by dispersed ownership. Rather, they have a controlling or dominant owner. This is particularly true in emerging markets. But controlling owners are also common in most advanced economies, including the US and continental Europe. It has been argued that the focus on dispersed ownership is of limited help when addressing corporate governance issues

¹ OECD (2013), *Supporting Investment in Knowledge Capital, Growth and Innovation*

in companies that have a controlling owner. The presence of controlling owners is generally assumed to provide strong incentives for informed ownership engagement and to overcome the fundamental agency problem between shareholders and managers. There are also arguments that the incentives for controlling owners to assume the costs for this ownership engagement are weakened by restrictions on the possibilities of controlling owners to exercise their rights and be properly compensated for their efforts to monitor. Some of these are discussed in the background paper “*The Law and Economics of Controlling Owners in Corporate Governance*” (2013). At the same time, there are concerns that controlling owners in a weak regulatory framework may take advantage of minority shareholders through abusive related party transactions. This is discussed in the report “*Related Party Transactions and Minority Shareholder Rights*” (2012).

- **Developments in the functioning of public stock markets.** Corporate governance policies are focused on companies that are traded on the public stock market. To understand the functioning and structure of public stock markets is therefore essential for getting the corporate governance rules right. And today, stock markets look very different from what they did when the OECD Principles were first established. The developments are well documented in the background reports “*Who Cares? Corporate Governance in Today’s Equity Markets*” (2013) and “*Making Stock markets Work to Support Economic Growth*” (2013), which address issues such as market fragmentation, increased use of dark pools, changes in “tick-size”, high-frequency trading and co-location. The reports also show that during the last decade, some of the leading stock markets in the world have lost as much as half of their listed companies and that the average size of companies that find their way to the stock market has increased. At the same time, stock exchanges in emerging markets, notably in Asia, have increased the number of listed companies significantly. Between 2008 and 2012 a majority of all new listings in the world were in emerging markets. Since the free float (the portion of outstanding shares regularly available for public trading) is relatively small in these markets, one consequence of this development is an increase in the number of publicly traded companies that have a controlling owner. Another important development is the occurrence of cross-listings and secondary listings, which raises issues related to the standards and procedures for recognizing of corporate governance standards in primary listing venues and the allocation of supervisory obligations between listing stock exchanges. We have also seen a development where stock exchanges have demutualised and become listed companies on themselves; so called self-listing. At the same time, there has been a certain degree of consolidation through mergers of regulated exchanges both at national and international level, which was coupled with the emergence of new venues for trading; such as alternative trading venues and dark pools.

III. Implications for the OECD Principles of Corporate Governance

4. All of the developments that are described above have a direct or indirect impact on the quality of corporate governance and the effectiveness of existing regulations. The question that is facing the review of the Principles is how, and to what extent, the developments affect the relevance and effectiveness of the policy advice provided by the Principles with a view to support economic efficiency, sustainable growth and financial stability.

5. In the following section IV, experiences and observations by the Corporate Governance Committee, the Regional Roundtables and the Secretariat are recapitulated briefly and related to the relevant section of the Principles. *Delegates are invited to comment on the implications for the review of the Principles of these developments and raise any other issues they believe should be considered in the review or further examined.*

IV. Issues for discussion

Chapter I: Ensuring the basis for an effective corporate governance framework

6. Since the Principles were revised in 2004, the OECD Council has further clarified the mandate of the Corporate Governance Committee and its objective to contribute to economic efficiency, sustainable growth and financial stability, which is also in line with supporting the FSB mandate.

Question: *In order to reflect the mandate of the Corporate Governance Committee and increase the clarity about the objectives that have guided the formulation of the Principles, would it be useful to make a better distinction in the opening chapter between policy objectives (growth, efficiency and stability) and the means by which these objectives are achieved, notably transparency, market integrity and sound incentive structures? Such a clarification may not only be useful to readers who want to understand the nature of the Principles but also when interpreting subsequent recommendations, for example with respect to impact assessment.*

7. The preamble to the Principles notes that there is no single model of good corporate governance. This is the recognition of the widespread notion that “one size doesn’t fit all”. Corporations as well as investors differ in their needs, and conditions may also change over time. For example, the governance priorities of investors in a new growth company in one industry may be different from those in a mature large company in another industry. While legislators and regulators often try to accommodate the diversity of needs, the Principles provide little guidance on how this can be done in practice.

Question: *Considering the merits of allowing an “orderly” flexibility within a given regulatory framework would it be useful if the Principles provided some basic guidance on what principles should be followed when building an enabling legal and regulatory framework? What are the possible pitfalls and what are the safeguards that should be put in place? Would it be useful to provide examples of workable “opt-out” provisions and discuss the principles for shareholder approval and/or regulatory recognition of corporate level deviations from default regulation?*

8. There is widespread agreement on the need to balance the costs and benefits of regulation. And in the wake of the financial crisis there has been some concern about “over-regulation”. At the same time the techniques for assessing the effects and potential unintended consequences of regulation have also been advanced through research and sharing of experiences. However, this central issue of regulatory impact assessment is addressed only briefly in the current preamble to the Principles and in the annotations to principle I.B, which otherwise deals with the division of responsibilities among regulatory authorities.

Question: *Would it be useful to elevate the importance of regulatory impact assessment to a self-standing principle in Chapter I? Should such a principle be coupled to the issue of sufficient resources in the regulatory process?*

9. Related to the issue of “over-regulation” is the issue of “scaling” regulation. Listed companies can be of very different size, which means that the relevance of regulation may vary and that their ability to carry the costs of various requirements, including reporting may differ. To “scale” or “differentiate” regulatory requirements is therefore an issue that many regulators and market places struggle with.

Question: *Can the Principles provide any general advice or principles on how to approach the issue of “scaling” of regulatory requirements? If not, are there any good specific examples of “scaling” that could be included and be helpful to the reader of the Principles?*

10. The financial crisis has shown that regulators have not always been effective in taking timely measures to prevent the development of financial instability. One underlying factor has been regulatory competition, where regulations were not tightened as necessary, or existing regulations not sufficiently enforced, in an environment of competition among financial centres.

Question: *Do participants consider that Chapter I should address the issue of dual mandates, where regulators may be in charge of both regulation and promotion of the financial market in a particular jurisdiction?*

11. The last decade has seen important changes in the status, business models and operations of stock exchanges. In many markets, the “regulated” exchanges that assume listing responsibilities are now profit-maximizing, self-listed corporations that operate in competition with alternative trading venues and platforms. This has given rise to questions about the role of “regulated” or “listing” exchanges in terms of standard setting, supervision and enforcement, which is costly and in many respect have the character of a public good.

Question: *In order to increase clarity, and in line with the current principles I.C and I.D, would it be useful to formulate some basic principles that could guide the division of responsibilities between stock exchanges and public authorities with respect to standard setting, supervision and enforcement with respect to corporate governance related listing requirements?*

12. One aspect of international integration of equity markets has been the prevalence of secondary listings of an already listed company on another exchange or so called cross-listings. These companies are principally subject to the rules and authorities of the primary listing jurisdiction and granted exemptions from some of the rules of the secondary listing jurisdiction. These exemptions are mainly granted based on the recognition of listing and corporate governance regulations in the primary exchange jurisdiction by the other exchange or listing authority. The increased consolidation in the exchange industry both at national and international level may also require further clarification of the rules that are applied in the case of cross-listing.

Question: *Considering the important number of cross-listed companies worldwide and changes in the stock exchange industry, would it be useful to address the standards and procedures that apply for recognition of primary listing corporate governance standards in the*

case of secondary listings? Should such a principle or annotations include an international co-operation aspect?

Chapter II: The rights of shareholders and key ownership functions

13. Since the Principles were last reviewed, shareholders have in many countries and in several areas advanced their decision making powers. In some respects voting has also been facilitated with the help of technological means and by the use of service providers. At the same time however, new investment strategies and trading practices have decreased the economic incentives among institutions to carry the costs of voting. When required or expected to vote, institutions often seek to minimize the costs by outsourcing to service providers. There is some concern that a development where institutions and service providers minimize the costs for voting may lead to “box-ticking” and a culture of “one-size-fits-all”.

Question: *How can Chapter II address the lack of economic incentives among institutional investors to carry the costs that are associated with informed ownership engagement? When it is not in the economic interest of an institution, is there any way that public policy can influence the economic incentives of the institution to vote without interfering with the very business model of the institution? What would be the rationale for such policies? In order to avoid the risk of a cost-minimizing box-ticking culture of one-size-fits-all, should the Principles explicitly discourage policy-makers from mandating institutions to vote their shares?*

14. The Principles recognize that it is increasingly common for shares to be held by institutional investors who act in a fiduciary capacity. What is not addressed is that these institutions increasingly outsource the management of the shares they own to asset managers. While such outsourcing may be perfectly rational, it may also create uncertainty about the “location” of fiduciary duty between asset owners and asset managers. For, example, the Principles says that institutional investors acting in a fiduciary capacity should disclose their overall corporate governance and voting policies, etc. They also state that “the right to vote can be considered part of the value of the investment being undertaken on behalf of their clients”.

Question: *Since institutional investors regularly outsource the management of the shares they own to asset managers, would it be useful if the Principles clarified whether the corporate governance related fiduciary duties (like the ones mentioned above) remain with the asset owner or should equally be carried by the asset manager?*

15. In part driven by quasi mandatory voting requirements, the use of proxy advisory services has increased significantly in the last decade. From a corporate governance policy perspective, the important question is whether proxy advisors’ analytical method takes into account company specific characteristics, which is crucial for efficient price formation and allocation of capital. The Committee’s analysis of the financial crisis concluded that “shareholders have been largely passive and reactionary in exercising their rights, in many cases voting in a mechanical manner relying on proxy voting advisers and generally failing to challenge boards in sufficient number to make a difference.” There is also a concern that there is a potential conflict of interest, as proxy advisors sell recommendations to shareholders about corporate governance practices in corporations to which they sell consulting services. There are also other so called service providers in the public equity

markets, such as custodians, depositories, brokers, consultants, transfer agents, proxy solicitors and vote tabulators.

Question: *Considering the increased reliance on proxy advisory services by institutional investors to vote their shares and the use of other service providers, how can the Principles address the possible unintended consequences and conflicts of interest that outsourcing of ownership responsibilities to service providers may cause?*

16. The Peer Review on Board Practices considered that it was “increasingly good practice for remuneration policies and implementation measures to be subject to binding or non-binding shareholder votes.” More recently, several jurisdictions have adopted “say-on-pay” provisions that in some cases are binding and cover both remuneration policies and packages of individual board members and key executives.

Question: *Should Chapter II make explicit recommendations with regard to say-on-pay? If so, what should be the guiding principles in terms of coverage? For example, should the vote encompass both the structure and the level of remuneration? Should it cover both executive officers and board members? Should it include other corporate officials? In the case of performance related remuneration, should ex-post adjustments in the form of malus and claw-back provisions be encouraged?*

Chapter III: The equitable treatment of shareholders

17. The risk of abusive related party transactions is one of the main corporate governance concerns in the relationship between shareholders. While the existence of private benefits of control may to some degree be justified by the monitoring costs that controlling owners carry, the potential for abuse is real. In the Principles, the section on related party transactions mainly addresses this problem by the use of reporting and disclosure provisions and board decision making procedures. However, such disclosure and procedures will only be effective and verifiable if there is also available information about the ultimate beneficiaries of the entities that are involved in the transactions with the company.

Question: *Should the Principles with respect to related party transactions be more explicit about the need for supervisors, enforcement authorities and perhaps shareholders to gain access to information about the beneficial owners of entities that engage in transactions with the company?*

18. With respect to related party transactions, the peer reviews also raise a number of issues with respect to procedures for disclosure and approval, as well as effective mechanisms for both public (complaints to the regulator) and private enforcement.

Question: *Taking the type and significance of a transaction into account, what is the best mix of the regulatory strategies, such as mandatory disclosure, (disinterested) board approval, (disinterested) shareholders’ approval, as well as the assessment by an outside specialist? What measures should be encouraged to ensure the effective means of redress by minority shareholders (e.g. establishing specialised courts, offset legal fees for derivative actions)? Which additional measures can be recommended to prevent abusive related party transactions?*

19. As noted above and in the background documents to the review, corporations with a controlling, or dominant, owner is the rule rather than the exception among listed companies

in many countries. It is also widely accepted that the existence of controlling owners is an effective way to overcome the so called agency problem between shareholders and managers. Despite the dominance of controlled companies in today's world, the Principles provide little guidance on policies that address the corporate governance issues that announce themselves in such ownership structures. This may not only lead to ineffective regulation providing the wrong incentives. It may also make the Principles less useful as a practical tool for regulators and policymakers in jurisdictions that are characterized by companies that have a controlling or dominant shareholder.

Question: *Considering the large (and growing) number of corporations with controlling and dominant shareholders worldwide, would it be useful to develop a special section that addresses the corporate governance issues that announce themselves in such ownership structures, such as related party transactions, disclosure of beneficial ownership and company groups? What principles can be applied in order for the regulatory framework to provide incentives for engaged and value creating ownership engagement by controlling owners? What provisions must be in place to protect minority shareholders from potential abuse by controlling owners?*

20. In order to strengthen the power of shareholders that are participating in annual shareholder meetings, one recent development was the ban on uninstructed voting by brokers on key issues, such as board member elections and executive compensation. However, the annotation of the Principles considers it sufficient that custodians *inform* shareholders that they will vote their shares if there is no instruction.

Question: *Would a recommendation to restrict brokers/custodian from voting without explicit instruction, particularly on key corporate issues, be an effective way of promoting ownership engagement? Regarding the voting practices at shareholder meetings, which additional measures can be recommended to increase the quality of ownership engagement?*

Chapter IV: The role of stakeholders in corporate governance

21. Many countries have the ambition to develop better functioning and deeper corporate bond markets as a complement to bank credits. The role of bondholders in the governance of the company is primarily established by contract and sometimes by the workings of bondholder committees, which at certain times (for example in the case of financial restructuring) may include considerable governance engagement in issues of strategic importance to the company.

Question: *Could Chapter IV be complemented with guidance on corporate governance policies that may facilitate corporate access to capital by the use of corporate bonds and improve the functioning of corporate bond markets?*

22. Today, many corporations have less of fixed and more intangible assets. Some of this intangible capital is closely linked to human capital and firm specific investments by employees. In some situations, this may alter the balance between equity providers and providers of other key resources to the company, such as know-how.

Question: *Do new organisational structures and contractual forms between the company and its employees give raise to incentives that, at an economy wide level, should affect the governance structure of corporations and call for wider participation in the governance*

process? Are there any obstacles to develop performance enhancing employee participation, for example employee board representation or participation in certain key decisions?

Chapter V: Disclosure and transparency

23. Through widespread acceptance of International Financial Reporting Standards (IFRS) and convergence of IFRS with major national standards, such as US Generally Accepted Accounting Standards (US GAAP), most countries have similar disclosure requirements for listed companies. This includes standardised definition and disclosure requirements related to many corporate issues, such as related party transactions, risk factors and intangible assets. However, in part due to the *ex post* financial reporting nature of these standards, they are not in themselves sufficient for corporate governance disclosure. For example, many countries have introduced complementary requirements with respect to on-going disclosure of material related party transactions.

Question: *Does the de facto global convergence of accounting standards call for a new approach to how the Principles address disclosure? Should Chapter V and related annotation primarily provide guidance on how to complement financial reporting disclosure with corporate governance disclosure requirements?*

24. In several countries, mandatory as well as voluntary disclosure has increased in recent years. Further initiatives are also underway in various jurisdictions, including in the areas of beneficial ownership, remuneration, related party transactions, risk management, governance structures, corporate political donations, and environmental and social issues. The Committee's report on *Corporate Governance and the Financial Crisis* emphasised the need for improvement in transparency beyond disclosure. For example, companies are recommended to explain the main characteristics of their performance related remuneration programs "in concise and non-technical terms".

Question: *In which areas would additional disclosure requirements be particularly useful? Are there areas where existing disclosure requirements have not proven particularly useful in terms of improving transparency? Should the principles or the annotations provide any guidance on how disclosure can be more, succinct, informative and accessible?*

25. Efficient price discovery is critical for market confidence and equitable treatment of shareholders. It is also essential for efficient allocation of capital. As described in part II above, the last decade has seen an increased fragmentation of stock trading into numerous venues of dark pools and trading platforms. There is some concern that this development may have negative effects on the quality of price discovery process and capital allocation. The same effect results from the surge in co-located algorithmic trading that use dedicated data feeds that provide them with information before consolidated information is delivered to the public.

Question: *With a view to restore confidence in public equity markets, ensure equitable treatment of shareholders and improve capital allocation, should Chapter V include a principle on investor access to market information, including stock prices?*

Chapter VI: The responsibilities of the board

26. The peer reviews have recommended that the Principles might need to consider the duties of loyalty for directors in the context of company groups and argued for increased

board awareness and management of risk, including the quality of corporate risk management.

Question: *What additional guidance can the principles provide that would improve board responsibilities in the context of company groups and with respect to risk management? Would such changes primarily focus on the board structure or procedures, including access to corporate risk-officers?*

27. It is now widely seen as good practice for listed companies to separate the positions of CEO and Chair, and there is a clear trend in that direction even in countries where the combination of those roles is possible. Following the financial crisis, a number of regulators also prefer the separation of the positions of CEO and Chair, notably in financial institutions. In some jurisdictions the designation of a lead director is still regarded as a good practice alternative.

Question: *Should Chapter VI express a clear preference for separating the roles of CEO and Chair?*

RELEVANT BACKGROUND REPORTS

To access the documents on the OECD iLibrary (www.oecd-ilibrary.org), please use the following:

Username: febmar2014

Password: 846231

Blundell-Wignall, A. and C. Roulet (2013), "Long-term Investment, the Cost of Capital and the Dividend and Buyback Puzzle", *OECD Journal: Financial Market Trends*, Vol. 2013/1. doi: [10.1787/fmt-2013-5k41z8t0518s](https://doi.org/10.1787/fmt-2013-5k41z8t0518s)

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