



October 12, 2012

Equator Principles Association Secretariat
By email to: ep3@equator-principles.com

Re: **Equator Principles III Update**

We are writing in response to the Equator Principles Association (EP Association) request for comment on the draft Equator Principles III (EPIII) update.¹ NEI Investments commends the EP Association for its continuing efforts to enhance the Equator Principles, and for seeking stakeholder input in this process.

With approximately C\$5 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders and provide higher risk-adjusted returns to shareholders. We invest in a number of the Equator Principles Financial Institutions (EPFIs), and also invest in companies that can be clients for project finance-related products. In this context, we would like to offer the following brief comments on the EPIII draft.

Firstly, although we believe there is scope for further improvement, we see the EPIII draft as a step forward. In particular, we welcome the additional reporting and transparency requirements. Although some publicly-traded financial companies disclose lending policies including environmental and social considerations, accessing comparable information about how these policies are applied in practice remains a challenge for ESG analysts seeking to understand the extent to which lenders are exposed to risk from the projects that they finance. Initiatives to enhance disclosure are therefore helpful, even if, as in this case, the scope is limited to project finance-related products. We also welcome the added focus on climate risk assessment within the EPIII draft.

It is highly appropriate that the EPIII draft should integrate language acknowledging the UN Guiding Principles on Business and Human Rights, and in particular, the importance of human rights due diligence. We also appreciate the explicit acknowledgment that the financial community shares the corporate "responsibility to respect" human rights. We note, however, that the UN Guiding Principles are not referenced in Principle 3 as applicable environmental and social standards. We question the idea that social and environmental due diligence incorporates, and can be a proxy for, human rights due diligence. The dynamic nature of human rights risks and impacts demands an approach to due diligence that goes beyond traditional social and environmental performance monitoring. We raised this concern during the consultations on the latest iteration of the International Finance Corporation (IFC) Performance Standards.²

¹ Equator Principles Association (2012). Draft of Updated Equator Principles (EPIII). http://www.equator-principles.com/resources/EPIII_PACKAGE.pdf

² NEI Investments (2011). International Finance Corporation Policy and Performance Standards on Social and Environmental Sustainability, and Access to Information Policy – Review and Update Process https://www.neiinvestments.com/neifiles/PDFs/5.5%20Public%20Policy%20and%20Standards/IFC_Performance_Standards.pdf

NEI INVESTMENTS

T: 604.633.0615 F: 604.633.0619

NEIinvestments.com Toll Free: 1.866.888.0615

500 - 1111 West Georgia Street Vancouver, British Columbia V6E 4T6



Our primary concern regarding the EPIII draft is the continuing assumption that host country laws, regulations and permits relating to environmental and social matters in High-Income OECD countries will meet or exceed the requirements of the IFC Performance Standards and Guidelines upon which Equator Principles assessments should be based. Although this assumption may be true in general, it is not always the case. We note the Equator Principles Strategic Review also highlighted this issue.³ We suggest that compliance with host country laws, regulations and permits should only be considered an appropriate substitute to the extent that this local framework actually meets or exceeds the IFC requirements.

For example, Canada - a country with a significant Aboriginal population - does not have a clearly defined, nationally applicable framework on free, prior and informed consent (FPIC) of indigenous peoples that parallels the specific requirements in IFC Performance Standard 7. We draw your attention to a recent report by the Boreal Leadership Council (BLC), *Free, Prior and Informed Consent in Canada*,⁴ which explores challenges and opportunities for companies to implement the FPIC concept in the present Canadian context. We also note that the responsible investment community in Canada has expressed concern that recent government initiatives to revise Canadian environmental legislation may result in a weakening of the regulatory framework that could allow projects with unacceptable levels of environmental and social risk to be approved.⁵

In conclusion, we would like to reiterate that we see considerable value in the EP III draft, and commend the EP Association for seeking stakeholder comments. Should you have questions with regard to this submission, please do not hesitate to contact Michelle de Cordova (Director, Public Policy & Standards, NEI Investments) at mdecordova@NEIinvestments.com or +1-604-742-8319.

Sincerely,
NEI Investments

A handwritten signature in black ink, appearing to read "Robert Walker", with a long horizontal flourish extending to the right.

Robert Walker
Vice President, ESG Services & Ethical Funds

CC: Board of Directors, NEI Investment

³ ERM (2011). Equator Principles Strategic Review Final Report – Executive Summary. http://www.equator-principles.com/resources/exec-summary_appendix_strategic_review_report.pdf

⁴ Boreal Leadership Council (2012). Free, Prior and Informed Consent in Canada. <http://www.borealcanada.ca/documents/FPICReport-English-web.pdf>

⁵ Social Investment Organization (2012). Bill C-38: Proposed Changes to Federal Environmental Regulation. <http://www.socialinvestment.ca/documents/LettertoPrimeMinisterStephenHarper-EnvironmentalRegulation.pdf>