February 9, 2017

Investment Division, Directorate for Financial & Enterprise Affairs
Organization for Economic Co-operation & Development

Sent by email to: investment@oecd.org

Re: OECD Due Diligence Guidance for Responsible Business Conduct

We are writing in response to the request for comments on the draft OECD Due Diligence Guidance for Responsible Business Conduct.

By way of context, NEI Investments is an investment management company with approximately C$6 billion in assets under management, and is Canada's oldest and largest provider of retail mutual funds managed under responsible investment mandates. Our 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 over the long term.

As the corporate responsibility framework endorsed by the Government of Canada, we regard the OECD Guidelines as an important source for determining the priorities of our ESG investment program. We have a strong commitment to engage with companies in our holdings on ESG issues, and frequently draw attention to the OECD Guidelines in this context. From this practice it is clear to us that, beyond certain sectors such as extractive industries, few Canadian companies are familiar with the details of the OECD Guidelines and the concept of Responsible Business Conduct (RBC) due diligence. We have also participated in the consultations on Responsible Business Conduct due diligence for the financial sector, and we are currently exploring how to set up a framework of Responsible Business Conduct due diligence across our investment holdings. We believe these circumstances may give us some insight into the situation of emerging and potential practitioners of Responsible Business Conduct due diligence.

We see considerable value in issuing general due diligence guidance, as well as guidance for specific sectors. However, we note that each of the two documents released for comment (the Guidance and the Companion) exceeds 35 pages in length, and that there is significant repetition in content between the two – especially the "Practical Steps" part of the Guidance, and the matching sections of the Companion. We believe companies like ourselves and many of the investees we engage with, which are just setting out on the path to establishing Responsible Business Conduct due diligence, would find value in a much shorter introductory document.

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We would suggest adopting a similar style and presentation to the existing publication "RBC Matters" http://mneguidelines.oecd.org/MNEguidelines_RBCmatters.pdf, which provides a good plain-language overview of the OECD Guidelines context, content and associated mechanisms.

As well as acting as a start-up guide for companies that have already taken the decision to establish an OECD due diligence framework, the introductory document could also be used by corporate responsibility practitioners needing to provide board or executive briefing at companies new to the OECD Guidelines. We note that there is increasing focus in responsible investment circles on the importance of ensuring that corporate boards have adequate knowledge to supervise on ESG matters, which will create further demand for brief executive-level educational materials on key corporate responsibility issues. We also envisage that shareholders and other financial sectors stakeholders seeking to engage on Responsible Business Conduct risks or adverse impacts as part of their own due diligence approach could share "RBC Matters" and the short introductory document on due diligence with investee companies that are unfamiliar with the OECD Guidelines.

Guidance draft - comments

In light of our comments above, we would recommend extracting the two page summary in the Guidance draft (pp5-6) to form the core for a short introductory document. This could be prefaced with brief context for the concept of Responsible Business Conduct due diligence drawn from the relevant section of "RBC Matters" (pp7-9). Indeed, anyone new to the topic of the OECD Guidelines should be advised to read "RBC Matters" first, before continuing to read the introductory document on OECD due diligence.

We recognise that it may be useful to have both a formal Guidance document and a Companion that can be that updated frequently with new tips and examples, but in that case efforts should be made to ensure that, while the structure of the Companion should exactly match and refer back to the Practical Steps section in the Guidance, there should be minimal repetition of content between the two documents.

Some of the definitions in the Key Terms section of the Guidance (pp3-4) could prove confusing to those new to the OECD Guidelines context.

- Adverse (RBC) Impacts/RBC Impacts: if these mean the same thing, it would be simpler to use only one term consistently throughout the documents.
- RBC Risks/Potential Adverse RBC Impacts: again, if these mean the same thing, it would be simpler to use only term consistently throughout the documents.
- Remediation/Remedy: if these mean the same thing, it would be simpler to simply define remediation as "providing remedy".

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- Prevention and Mitigation: there seem to be three separate ideas covered by these two terms, namely "RBC risk mitigation" (reducing the likelihood of adverse impacts); "adverse impact prevention" (preventing a specific adverse impact from happening); and "adverse impact mitigation" (reducing the impact of an adverse impact that has already happened). If this interpretation is correct, it would be helpful to distinguish between these cases more clearly.

- Due Diligence, Leverage, Risk-based etc: where terms are used with a significantly different meaning in other business contexts, this should be clearly specified in the definition, and ideally in the context of the Guidance the term should always be prefixed with "RBC" to avoid confusion with usage in these other contexts.

- Stakeholders: it should be clarified if in this context this term is synonymous with people who suffer, or could suffer, an adverse impact, or if it also encompasses others (e.g. an NGO that brings a specific instance to a National Contact Point (NCP)).

Regarding the two-page summary (pp5-6), which as we have already noted could form the basis for a short introductory document, we offer the following suggestions:

- It is suggested that enterprises should maximize positive impacts as well as avoiding adverse impacts, and "for this purpose, they are expected to carry out due diligence." It has been our understanding that the key focus of Responsible Business Conduct due diligence is to <u>avoid adverse impacts</u>. Obviously positive impact is highly desirable, but we have tended to view the Sustainable Development Goals as more relevant as a framework for considering positive impact. We note that the next paragraph ("What is Due Diligence?") clearly positions due diligence in terms of avoidance and remediation of adverse impacts.

- It may be helpful to point out that demonstrated efforts to conduct Responsible Business Conduct due diligence may be a positive consideration in the event that a company finds itself involved in a specific instance complaint to a National Contact Point (NCP).

- It may be helpful to draw particular attention to aspects of Responsible Business Conduct due diligence that differ from standard corporate due diligence processes, namely:
    - Focus on harm to others, not harm to the company.
    - Unlike some other "risk-based" approaches, focus on severity of impact to others, with less focus on probability of impact.

- The Summary of Key Actions is particularly useful. At some points it would be helpful to clarify where there should be different action in relation to Responsible Business Conduct Risks and to Adverse Impacts – clearly Adverse Impacts that have actually occurred should be addressed as a greater

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priority, but that is not always clear from the text. For example, we assume that action with a supplier that has actually allowed workers to come to harm should be a priority over discussions with a supplier in high-risk country that has never had a recorded incident of adverse impact.

We hope these comments are useful. Please do not hesitate to contact me if you have questions or would like further details on any of the points above.

Sincerely,

NEI Investments

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