

# OBSERVATOIRE DU DROIT QUÉBÉCOIS DES VALEURS MOBILIÈRES

## DOCUMENT DE TRAVAIL 2024-01

Tableau synthèse sur les pratiques de gouvernance

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Observatoire  
du droit québécois  
des valeurs mobilières



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La synthèse des travaux réalisés par l'Observatoire du droit québécois des valeurs mobilières, dans le cadre du Programme de partenariats stratégiques en éducation financière, sensibilisation et recherche soutenu par l'Autorité des marchés financiers, propose une analyse approfondie d'aspects essentiels liés à la gouvernance.

La recherche entreprise vise à explorer à la fois les défis traditionnels et les problématiques émergentes qui influent sur le paysage actuel de la gouvernance d'entreprise. L'examen détaillé des instruments canadiens à la lumière des codes de gouvernance internationaux, tels que ceux du Royaume-Uni, de l'Europe et des États-Unis, entre autres, constitue une part significative de cette analyse. Les réformes législatives, la participation des agences-conseils, ainsi que d'autres intervenants dans le domaine de la gouvernance, ont également été examinés de manière concomitante.

Outre la comparaison des pratiques canadiennes à celles d'autres juridictions, les recherches réalisées évaluent le rôle des régulateurs dans la gouvernance tout en mettant en évidence les zones d'ombre potentielles. Des concepts clés sont abordés, notamment ceux liés aux compétences et à l'indépendance des administrateurs, à la représentation féminine, au traitement de la rémunération, et aux facteurs ESG, afin d'éclairer les divers cadres réglementaires.

Le tableau élaboré par l'Observatoire offre une vision détaillée de la gouvernance, en abordant à la fois les défis établis et émergents, tout en évaluant les pratiques canadiennes à l'aune des normes internationales. Cette contribution démontre l'engagement de l'Observatoire en faveur d'une gouvernance solide et adaptable.

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# 1 CODES, DOCUMENTS DE RÉFÉRENCE ET TEXTES RÉGLEMENTAIRES

CANADA	ÉTATS-UNIS	GRANDE-BRETAGNE	AUSTRALIE
<p><b><u>CODES ET DOCUMENTS DE RÉFÉRENCE:</u></b></p> <ul style="list-style-type: none"><li>- Institute for Corporate Citizenship, 360 Governance: Where are the Directors in a World in Crisis? (<a href="#">Dey et Kaplan, 2021</a>)</li><li>- L'avenir de la gouvernance des sociétés canadiennes : une approche raisonnée pour répondre aux attentes croissantes envers le conseil d'administration, Rapport du comité sur l'avenir de la gouvernance d'entreprise au Canada (<a href="#">Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022</a>)</li><li>- Diversity wins, how inclusion matters (<a href="#">McKinsey, 2020</a>)</li><li>- Capital Markets Modernization Taskforce, final report (<a href="#">Taskforce, 2021</a>)</li><li>- Canadian Coalition for Good Governance, 2022 Best practices for proxy circular disclosure (<a href="#">CCGC, 2022</a>)</li><li>- Lambay Group, High performance in the Boardroom (<a href="#">Lambay, 2020</a>)</li><li>- Canadian Coalition for Good Governance, The directors' E&amp;S Guidebook (<a href="#">CCGC, 2018</a>)</li><li>- CDPQ, créer de la Valeur dans un contexte hors norme, rapport annuel (<a href="#">CDPQ, rapport annuel, 2022</a>)</li><li>- CDPQ, rapport d'investissement durable 2022 (<a href="#">CDPQ, rapport d'investissement durable, 2022</a>)</li><li>- CDPQ, Policy governing the exercise of voting rights of public companies (<a href="#">CDPQ, 2020</a>)</li><li>- Shareholder association for research &amp; education, Lignes directrices sur le vote par procuration (<a href="#">Share, 2022</a>)</li><li>- Institute for governance of private and public organizations, The quest for diversity of boards of directors and in senior management of public corporations (<a href="#">IGOPP, 2021</a>)</li><li>- Bureau du surintendant des institutions financières Canada, corporate governance (<a href="#">BSIF, 2018</a>)</li><li>- Davies Governance Insight (<a href="#">Davies 2022</a>)</li><li>- Osler Pratique de divulgation en matière de diversité (<a href="#">Osler 2021</a>)</li><li>- Glass Lewis, 2023 Policy Guidelines (<a href="#">GL, 2023</a>)</li></ul>	<p><b><u>CODES ET DOCUMENTS DE RÉFÉRENCE:</u></b></p> <ul style="list-style-type: none"><li>- Council of Institutional investors, the voice of corporate governance (<a href="#">CII, 2023</a>)</li><li>- National Association of Corporate Directors</li><li>- A framework for governing into the future (<a href="#">NACD, 2022</a>)</li><li>- Key Agreed Principles to Strengthen Corporate Governance (<a href="#">NACD, 2011</a>)</li><li>- Harvard Law School (1) Corporate Governance Virtual Roundtable series (<a href="#">HLS Roundtable, 2022</a>) (2) Directors' Oversight Role Today: Increased Expectations, Responsibility and Accountability-A Macro View (<a href="#">HLS Directors' Oversight, 2021</a>) (3) Commonsense principles 2.0: A blueprint for U.S. Corporate governance? (<a href="#">HLS Commonsense, 2018</a>)</li><li>- Commonsense Principles (<a href="#">Commonsense Principles, 2018</a>)</li><li>- Investor Stewardship Group, Corporate Governance Principles for US Listed Companies (<a href="#">ISG, 2017</a>)</li><li>- Business Roundtable, Principles of Corporate Governance (<a href="#">Business Roundtable 2016</a>)</li><li>- Nasdaq, corporate governance guidelines (<a href="#">Nasdaq, 2020</a>)</li><li>- State Street - Proxy Voting and Engagement Guidelines – North America (<a href="#">State Street, 2023</a>). Voir (<a href="#">State Street updated</a>)</li><li>- Russel Reynolds Associates, Global Corporate Governance Trends for 2023 (<a href="#">Russel Reynolds, 2023</a>)</li></ul> <p><b><u>TEXTES RÉGLEMENTAIRES :</u></b></p> <ul style="list-style-type: none"><li>- Nasdaq, 5600 Corporate Governance Requirements (<a href="#">Nasdaq, 5600</a>)</li><li>- NYSE Listed Company Manual, 303A et ss (<a href="#">NYSE, 303A</a>)</li><li>- Code of Federal Regulations - 17 CFR 229.407 (<a href="#">17 C.F.R. 229.407</a>)</li></ul> <p><b><u>TEXTES CRITIQUES</u></b></p> <ul style="list-style-type: none"><li>- Out of Sight, Out of Mind: The Case for Improving Director Independence Disclosure (<a href="#">The Case for Improving Director Independence Disclosure, 2017</a>)</li></ul>	<p><b><u>CODES ET DOCUMENTS DE RÉFÉRENCE:</u></b></p> <ul style="list-style-type: none"><li>- The London Stock Exchange, Corporate Governance (<a href="#">LSE, 2012</a>)</li><li>- Financial reporting council, The UK corporate governance code (<a href="#">UK Code, 2018</a>)</li><li>- <a href="#">Commentaires et compléments</a></li><li>- Financial reporting council, The Wates Corporate Governance Principles for Large Private Companies (<a href="#">Wates, 2018</a>)</li><li>- Quoted companies alliance</li><li>- The QCA Corporate Governance Code, 10 years on (<a href="#">QCA report, 2023</a>)</li><li>- Statement of compliance ITM Power PLC (<a href="#">ITM QCA, 2021</a>)</li><li>- [À défaut d'avoir accès à <a href="#">ces documents</a>]</li></ul> <p><b><u>TEXTES RÉGLEMENTAIRES :</u></b></p> <ul style="list-style-type: none"><li>- AIM Rules for Companies, (<a href="#">AIM, 2021</a>)</li></ul> <p><b><u>TEXTES CRITIQUES</u></b></p> <ul style="list-style-type: none"><li>- Diversity Washing, Andrew C. Baker, David F. Larcker, Charles G. McClure, Durgesh, Saraph and Edward M. Watts (<a href="#">Diversity Washing, Andrew C. Baker et al., 2023</a>)</li><li>- Varieties of gender wash: towards a framework for critiquing corporate social responsibility in feminist IPE (<a href="#">Gender wash, Rosie Walters, 2021</a>)</li><li>- Executive remuneration and the limits of disclosure as an instrument of corporate governance, (<a href="#">Executive remuneration and the limits of disclosure, Charles Harvey et al., 2020</a>)</li></ul>	<p><b><u>CODES ET DOCUMENTS DE RÉFÉRENCE:</u></b></p> <ul style="list-style-type: none"><li>- ASX Corporate Governance Council, Corporate Governance Principles and Recommendations (<a href="#">ASX Council, 2019</a>)</li><li>- <a href="#">Commentaires et compléments</a></li><li>- Australian Investment Council Limited, Code of private equity governance and code of conduct (<a href="#">Australian Investment Council, 2017</a>)</li><li>- Australian Council of Superannuation Investors (1) Governance Guidelines, a guide to investor expectations of listed Australian companies (<a href="#">ACSI, governance guidelines, 2021</a>) (2) ESG reporting trends (<a href="#">ACSI, ESG trends, 2022</a>) (3) Climate Change Disclosure (<a href="#">ACSI, Climate change, 2021</a>) (4) Company Engagement with First Nations People (<a href="#">ACSI, First Nations, 2021</a>) (5) Biodiversity, Unlocking natural capital value for Australian Investors (<a href="#">ACSI, Biodiversity, 2021</a>)</li><li>- Governance Institute of Australia, Governance principles for boards of public sector entities in Australia (<a href="#">Governance institute of Australia, 2023</a>)</li><li>- KMPG, The directors' Toolkit (<a href="#">Directors' Toolkit, 2022</a>)</li><li>- Australian Institute of Superannuation Trustees, Governance Code (<a href="#">AST, 2022</a>)</li></ul> <p><b><u>TEXTES RÉGLEMENTAIRES :</u></b></p> <ul style="list-style-type: none"><li>- Prudential Standards CPS 510 Governance (<a href="#">Prudential Standard, 2023</a>)</li></ul> <p><b><u>TEXTES CRITIQUES</u></b></p> <ul style="list-style-type: none"><li>- Corporate Sustainability Practices and Regulation: Existing Frameworks and Best Practice Proposals (<a href="#">Gill North, 2017</a>)</li></ul>

- ISS - Proxy Voting Guidelines for TSX-Listed Companies Benchmark Policy Recommendations ([ISS, 2023](#))
- Ontario Teachers' - Principes du vote par procuration ([Teachers, 2023](#))
- BlackRock - Proxy voting guidelines for canadians securities ([BlackRock, 2023](#))
- State Street - Proxy Voting and Engagement Guidelines – North America ([State Street, 2023](#)). Voir ([State Street updated](#))
- Vanguard - Summary of the proxy voting policy for Canadian portfolio companies ([Vanguard, 2022](#))
- BMO – Global Asset Management ([BMO, 2021](#))
- Social Washing or Credible Communication? An Analysis of Corporate Disclosures of Diversity, Equity, and Inclusion in 10-K Filings ([Nathan C. Goldman, 2022](#))

#### **TEXTES CRITIQUES :**

- Besoins en information sur les pratiques de gouvernance des entreprises et l'utilité de l'information actuellement publiée ([Abdallah, 2022](#))

ALLEMAGNE	BRÉSIL	FRANCE	AUTRES
<p><b><u>CODES ET DOCUMENTS DE RÉFÉRENCE:</u></b></p> <ul style="list-style-type: none"> <li>- German Corporate Governance Code (<a href="#">German Corporate Governance Code, 2022</a>)</li> <li>- <a href="#">Commentaires et compléments</a></li> <li>- Rationale of the amendments to the German Corporate Governance Code (<a href="#">Rationale of the amendments, 2022</a>)</li> </ul>	<p><b><u>CODES ET DOCUMENTS DE RÉFÉRENCE:</u></b></p> <ul style="list-style-type: none"> <li>- Instituto Brasileiro de Governança Corporativa, Code of Best Practices of Corporate Governance (<a href="#">IBGC 2023</a>)</li> <li>- GT Interagentes, Brazilian Corporate Governance Code Listed Companies (<a href="#">GT Interagentes, 2016</a>)</li> </ul> <p><b><u>TEXTES RÉGLEMENTAIRES :</u></b></p> <ul style="list-style-type: none"> <li>- BM &amp; FBOVESPA, Corporate Governance Level 1 Listing Regulation (<a href="#">CG Level 1</a>)</li> <li>- BM &amp; FBOVESPA, Corporate Governance Level 2 Listing Regulation (<a href="#">CG Level 2</a>)</li> </ul>	<p><b><u>CODES ET DOCUMENTS DE RÉFÉRENCE:</u></b></p> <ul style="list-style-type: none"> <li>- Autorité des marchés financiers, Rapport 2022 sur le gouvernement d'entreprise et la rémunération des dirigeants des sociétés cotées (<a href="#">AMF, 2022</a>)</li> <li>- AFEP / MDEDF, Code de gouvernement d'entreprise des sociétés cotées (<a href="#">AFEP &amp; MDEDF, 2022</a>)</li> <li>- Code de gouvernement d'entreprise (<a href="#">Middlenext, 2021</a>)</li> <li>- Autorité des marchés financiers, Recommandation 2012-02 (<a href="#">AMF, recommandation 2012-02</a>)</li> <li>- <a href="#">Commentaires et compléments</a></li> </ul> <p><b><u>TEXTES RÉGLEMENTAIRES :</u></b></p> <ul style="list-style-type: none"> <li>- Directive (Ue) 2022/2381 du Parlement Européen Et du Conseil (<a href="#">Directive 2381, 2022</a>)</li> <li>- Directive - Publication d'informations en matière de durabilité par les entreprises (<a href="#">Directive durabilité, 2021</a>)</li> </ul>	<p><b><u>CODES ET DOCUMENTS DE RÉFÉRENCE:</u></b></p> <ul style="list-style-type: none"> <li>- International : (1) BlackRock - Global Corporate Governance &amp; Engagement Principles (<a href="#">BlackRock Global, 2023</a>) (2) 2021 - ICGN - Global Governance Principles (<a href="#">ICGN, 2021</a>) (3) ACCA - Tenets of good corporate governance (<a href="#">ACCA, 2018</a>)</li> </ul>

## 2 ANGLES D'ANALYSE

### BERLES ET MEANS (B&M)

#### ÉLÉMENTS CLEFS

- Analyse et critique de la séparation dans la structure de propriété et de contrôle de l'entreprise.
- Dans un contexte où l'actionnariat est dispersé et où les actionnaires détiennent la propriété véritable de l'entreprise sans avoir le contrôle direct sur ses activités, il est primordial que les administrateurs agissent à titre de gérants à l'égard des actionnaires, opérant de manière responsable, éthique et fiduciaire.
- Ce faisant, seront associées à cette approche les pratiques de gouvernance généralement reconnues visant à assurer un traitement équitable des actionnaires par l'entremise de balises encadrant la fonction d'administrateur.

### MAJORITAIRE – MINORITAIRE (MN)

#### ÉLÉMENTS CLEFS

- Analyse et critique du rapport existant entre l'actionnaire majoritaire et minoritaire laissant place à l'opportunisme du premier, supporté par la passivité du second.
- Dans un contexte où l'actionnaire majoritaire chercherait à prioriser de manière déraisonnable ses intérêts économiques au détriment des intérêts des actionnaires minoritaires, il serait louable de mettre en place une série de mécanismes adaptés afin d'atténuer les risques d'abus et prévenir ce type de conflit d'agence.
- Ce faisant, seront associées à cette approche les pratiques de gouvernance généralement reconnues visant à assurer un traitement équitable des actionnaires minoritaires par l'entremise de mécanismes protégeant leurs droits (transparence, protection contre les abus de pouvoir, participation accrue de l'ensemble des actionnaires).

### STAKEHOLDER (SH)

#### ÉLÉMENTS CLEFS

- Analyse et critique de la considération de l'ensemble des parties prenantes dans les mécanismes de gouvernance d'entreprise.
- Remise en question de la propriété des actionnaires comme élément constitutif d'un rapport hautement différencié de ceux-ci face aux intérêts des parties prenantes.
- Ce faisant, seront associées à cette approche les pratiques de gouvernance mettant de l'avant la considération de l'ensemble des parties prenantes ainsi que l'intégration des principes ESG.

### 3 ÉLÉMENTS À CONSIDÉRER EN COMPLÉMENT DES PRINCIPES GÉNÉRAUX PRÉVUS À 58-101

#### 3.1 Indépendance des administrateurs

##### 3.1.1 Rotation des administrateurs (durée de mandat)

###### CANADA

###### Dev et Kaplan, 2021, p. 33 – Importance de la rotation – Limiter la durée des mandats / âge – 8 ans – 10 ans

- Board refreshment is important for several reasons. First, turning over the board assures greater independence, as some have argued that board members lose their independence after many years of service.
- Board refreshment can be achieved through term limits, age limits or both, as well as rigorous board evaluations.
- The Capital Markets Modernization Taskforce has recommended 10 years maximum tenure in draft guidelines. Many jurisdictions around the world specify a maximum tenure of board members of on average 8–10 years and regard directors as no longer independent after that time period.

B&M

###### Initiative conjointe de Groupe TMX Limitée et l’Institut des administrateurs de sociétés, 2022, p. 29 et 99 – Limiter la durée des mandats – 12 ans – Garder la possibilité de prolonger les mandats

- Envisager de limiter la durée maximale du mandat des membres du conseil d’administration à 12 ans, tout en maintenant la possibilité d’une prolongation dans les rares cas où cette prolongation serait dans l’intérêt de l’entreprise (re: diversité).

B&M

###### Taskforce, 2021, p. 65 – Limiter la durée des mandats – 10 ans – 15 ans

- The Taskforce recommends (re: regulatory framework): [to] Amend Amend Ontario securities legislation to set a 12-year maximum tenure limit for directors of publicly listed issuers, with an exception for: (a) 15-year maximum tenure limit for the Chair of the board; (b) non-independent directors of family-owned and controlled businesses, where such nominees represent a minority of the board; and, (c) no more than one other director who will be deemed not to be independent, and will still have a 15-year limit. Issuers must implement this recommendation within three years of this amendment taking effect. This is aimed to encourage an appropriate level of board renewal. The issue of board entrenchment and board renewal is a concern from a governance perspective as continued refreshment of the board helps to ensure that independent, fresh and diverse perspectives and skills are brought into the boardroom.

B&M

###### GL, 2023, p. 31 – Limiter la durée des mandats – 10 ans

- We will note as a potential concern instances where the average tenure of non-executive directors is 10 years or more and no new directors have joined the board in the past five years. While we will be highlighting this as a potential area of concern, we will not be making voting recommendations strictly on this basis, unless we have identified other governance or board performance concerns.

B&M

###### State Street, 2023, p. 8 – Contre la limite de la durée des mandats sauf si manifestement nécessaire

- Generally, we may vote against age and term limits unless the company is found to have poor board refreshment and director succession practices, and has a preponderance of non-executive directors with excessively long tenures serving on the board.

###### BMO, 2021, p. 7 – Limiter la durée des mandats – 12 ans – Mélange de nouveaux et de plus anciens administrateurs

- Prolonged membership on a board jeopardises independence as directors may become close with management and overly invested in prior strategic decisions. After a certain length of board service, directors may not be considered fully independent and it may be inappropriate for such directors to serve on committees, such as the audit committee, where independence is a key criterion. We recognise that there is no fixed time period that can automatically trigger a director’s loss of independence, but use a 12-year benchmark as a general guidance. If a board values such a director’s experienced perspective, this individual should be considered an affiliated director.

B&M



- Effective boards rely on directors with fresh perspectives. While balanced boards may include some long-standing directors, boards should strive to have a substantial majority of directors with less than 12 years' tenure to prevent board entrenchment. The nominating committee should review the mix of new and long-standing directors necessary to achieve a balanced board. We consider that no more than one-third of non-executive directors should have served for more than 12 years.
- We consider board entrenchment to be a significant governance risk and encourage companies to establish tenure limits for non-executive directors, and to adopt a proactive approach to non-executive succession planning and board refreshment.
- Where this is not the case and appropriate independence levels for the market are not reached, we will normally not support the re-election of over-tenured directors.

**Share, 2022, p. 12 – Contre la limite de la durée des mandats – Cette limite constitue une façon arbitraire d'évaluer l'indépendance des administrateurs – Mélange de nouveaux et de plus anciens administrateurs**

- Les limites de mandat pour les administrateurs sont destinées à protéger l'indépendance des conseils d'administration en révoquant les administrateurs dont l'indépendance pourrait être compromise par les relations qu'ils auraient développées avec la direction lors d'un long mandat. Il s'agit cependant d'une façon arbitraire d'évaluer l'indépendance des administrateurs. Les limites de mandat peuvent révoquer de bons administrateurs expérimentés simplement à cause de la durée de leur service et empêcher une vue à long terme de la performance de la société.<sup>2</sup> [Le fonds] préfère les conseils d'administration qui associent anciens et nouveaux administrateurs. En général, [le fonds] votera contre les limites de la durée des mandats pour les administrateurs.

**CDPQ, 2020, p. 4 – Limiter la durée des mandats – 12 ans**

- In evaluating the degree of independence of a member, we also consider the appointment date of the board member deemed independent by the company. We may call into question the independence of a member who has been on the board for more than twelve (12) years. It is especially important in this context for the company to fully disclose the reasons the member should continue to be considered independent. CDPQ will carefully examine the disclosure to this effect in the proxy and, if necessary, contact the company for further information before determining whether the member should be considered as independent for the purposes of this Policy. CDPQ will also take into account the length of the other board members' terms and will try to establish if there is a proper balance between maintaining the institutional memory and bringing in new points of view.

**B&M**

**GRANDE-BRETAGNE**

**UK Code, 2018, p. 9 – Limiter la durée des mandats – 9 ans – Garder la possibilité de prolonger le mandat pour un temps limité**

- The board should establish a nomination committee to lead the process for appointments, ensure plans are in place for orderly succession to both the board and senior management positions, and oversee the development of a diverse pipeline for succession. A majority of members of the committee should be independent non-executive directors. The chair of the board should not chair the committee when it is dealing with the appointment of their successor.
- The chair should not remain in post beyond nine years from the date of their first appointment to the board. To facilitate effective succession planning and the development of a diverse board, this period can be extended for a limited time, particularly in those cases where the chair was an existing non-executive director on appointment. A clear explanation should be provided.

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**FRANCE**

**AMF, 2022, p. 57 – Limiter la durée des mandats – 12 ans – Risques associés à l'ancienneté**

- « ne pas être administrateur de la société depuis plus de douze ans. La perte de la qualité d'administrateur indépendant intervient à la date des douze ans » (critère de l'article 9.5.6). L'ancienneté d'un administrateur est susceptible d'affecter son esprit critique, notamment lorsqu'il s'agit de questionner la pertinence de décisions passées auxquelles il a pu participer, ou lorsqu'il est susceptible d'avoir tissé au fil du temps des liens privilégiés avec la société, sa direction générale ou d'autres membres du conseil d'administration. Dans son guide

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d'application du code AFEP-MEDEF, le HCGE indique que « si le conseil souhaite maintenir la qualification d'indépendance d'un membre qui ne remplirait pas ce critère, il convient d'expliquer cette position, qui doit être fondée sur la situation particulière de la société et de l'administrateur concerné, et non sur une mise en cause de la pertinence de la règle ». En outre, selon la recommandation AMF DOC-2012-02, « s'agissant de l'indépendance des membres, l'AMF recommande aux sociétés que toute exclusion du critère de définition de l'indépendance relatif à l'exercice de mandats sur plus de 12 années consécutives ne soit pas justifiée par la seule expérience ou compétence de l'administrateur concerné ». Dans son rapport sur le gouvernement d'entreprise publié en 2017, l'AMF avait rappelé que « la plus grande vigilance des sociétés est [...] requise sur l'application de ce critère non sujet à interprétation, et dont le non-respect ne saurait être justifié par la simple mise en exergue de la compétence et de la « hauteur de vue », qualités au demeurant attendues de tous les administrateurs ».

## INTERNATIONAL

### ICGN, 2021, p. 16 – Limiter la durée des mandats – Durée raisonnable devant être divulguée

- Tenure: Independent non-executive directors should serve for an appropriate length of time to ensure they contribute an impartial perspective to board discussion and decision-making. Term limits, where they exist, and the identity of directors who have exceeded such limits (and thus no longer deemed independent) should be disclosed. Director tenure should be reviewed by the Nomination Committee annually and director re-election contingent on a satisfactory evaluation of his or her contribution to the board.

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### BlackRock Global, 2023, p. 7 – Réélection annuelle – Politique de rotation

- It is our view that directors should stand for re-election on a regular basis, ideally annually. In our experience, annual re-elections allow shareholders to reaffirm their support for board members or hold them accountable for their decisions in a timely manner. When board members are not re-elected annually, in our experience, it is good practice for boards to have a rotation policy to ensure that, through a board cycle, all directors have had their appointment re-confirmed, with a proportion of directors being put forward for re-election at each annual general meeting.

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## 3.1.2 Séparation du président du conseil et du directeur général

### CANADA

#### CCGC, 2022, p. 11 – Président du conseil distinct du directeur général – Dans le cas d'un actionnaire de contrôle (50%+), le président du conseil peut être un « administrateur apparenté » si la société nomme aussi un administrateur principal indépendant

- The position of Board Chair should be separate from the CEO. Additionally, the Chair should be independent of a company's management team. Emera has split the roles of CEO and Board Chair and has appointed an independent Board Chair.
- The controlling shareholder of Thomson Reuters (below) owns more than 50% of the common shares. In such cases, it is acceptable for the Chair to be a "related director" as defined in the CCGG publication [Governance Differences of Equity Controlled Corporations](#) if the board appoints an independent Lead Director. Thomson Reuters' Chair represents the controlling shareholder and, therefore, is a "related director". However, the company has appointed a Lead Independent Director.
- Vance Opperman is the board's Lead Independent Director. Among other things, responsibilities of our Lead Independent Director include chairing meetings of the independent directors; in consultation with the Chairman, Deputy Chairman and CEO, approving meeting agendas for the board; as requested, advising the CEO on the quality, quantity, appropriateness and timeliness of information sent by management to the board; and being available for consultation with the other independent directors as required.

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#### GL, 2023, p. 16 – Indépendance du président du conseil

- We view an independent chair as better able to oversee the executives of the company and set a pro-shareholder agenda without the management conflicts that a chief executive or other insiders often face. This, in turn, leads to a more proactive and effective board of directors that is looking out for the interests of shareholders above all

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else. We will recommend shareholders withhold votes from the nominating/governance committee chair when a board does not have some established form of independent leadership.

**ISS, 2023, p.21 – Préférence pour (1) la séparation du rôle de président du conseil et de directeur général au lieu de (2) procéder à la nomination d’un administrateur principal indépendant – Comparaison des deux approches**

- The separation of the positions of chair and CEO is supported as it is viewed as superior to the lead director concept. The positions of chair and CEO are two distinct jobs with different job responsibilities. The chair is the leader of the board of directors, which is responsible for selecting and replacing the CEO, setting executive pay, evaluating managerial and company performance, and representing shareholder interests. The CEO, by contrast, is responsible for maintaining the day-to-day operations of the company and being the company’s spokesperson. It therefore follows that one person cannot fulfill both roles without conflict. An independent lead director may be an acceptable alternative as long as the lead director has clearly delineated and comprehensive duties including the full authority to call board meetings and approve meeting materials and engage with shareholders. A counterbalancing lead director alternative must be accompanied by majority independence on the board and key committees, and the absence of any problematic governance practices.

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**Teachers, 2023, p. 22 – Président du conseil distinct du directeur général – Jugement défavorable au retour à un cumul des fonctions**

- Cloisonnement des rôles de président du conseil et de chef de la direction : Nous appuyons le cloisonnement des rôles du conseil et de la direction. En règle générale, nous ne voterons pas contre une liste d’administrateurs dans les cas où les rôles du conseil et de la direction ne sont pas cloisonnés. Cependant, nous le ferons si nous estimons que le cumul des rôles a une incidence négative sur l’efficacité du conseil ou si le rendement de la société reste insatisfaisant après une période raisonnable.
- Retour au cumul des rôles de président du conseil et de chef de la direction : Nous entretenons des doutes sérieux à propos d’un conseil qui, après avoir dissocié les fonctions de président du conseil et de chef de la direction, reviendrait au cumul de ces deux fonctions. En l’absence d’une explication convaincante selon laquelle le retour au cumul de ces deux fonctions est dans l’intérêt véritable des actionnaires, nous envisagerons de ne pas appuyer le président du comité de gouvernance (ou son équivalent) et/ou ses membres responsables de cette décision.

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**Vanguard, 2022, p. 7 – Contre la séparation du rôle de président du conseil et de directeur général si cette proposition n’est pas appuyée par des inquiétudes apparentes en lien à l’indépendance et l’efficacité du conseil**

- Many proposals seek to require that companies not permit the same person to serve as both CEO and chair of the board of directors. Proponents believe that separation of these duties will create a more independent board. These proposals are most often submitted by shareholders.
- The funds believe this matter should be within the purview of a company’s board. Therefore, a fund will generally vote against shareholder proposals to separate CEO and chair, absent significant concerns regarding independence or effectiveness of the board. (Independence concerns: Lack of lead independent director role, Lack of board accessibility, Low overall board independence, Gouvernance structural flaws, Lack of responsiveness, Oversight failings p. 7 et 8)

**BlackRock, 2023, p. 6 – Comparaison des deux approches (Séparation des postes vs administrateur principal indépendant) – Prérrogative du conseil**

- There are two commonly accepted structures for independent leadership to balance the CEO role in the boardroom: 1) an independent Chair; or 2) a Lead Independent director when the roles of Chair and CEO are combined, or when the Chair is otherwise not independent.
- In the absence of a significant governance concern, we defer to boards to designate the most appropriate leadership structure to ensure adequate balance and independence. [NBP: To this end, we do not view shareholder proposals asking for the separation of Chair and CEO to be a proxy for other concerns we may have at the company for which a vote against directors would be more appropriate. Rather, support for such a proposal might arise in the case of overarching and sustained governance concerns such as lack of independence or failure to oversee a material risk over consecutive years.] However, BIS may vote against the most senior non-executive member of the board when appropriate independence is lacking in designated leadership roles.

- In the event that the board chooses to have a combined Chair/CEO or a non-independent Chair, we support the designation of a Lead Independent director, with the ability to: 1) provide formal input into board meeting agendas; 2) call meetings of the independent directors; and 3) preside at meetings of independent directors. These roles and responsibilities should be disclosed and easily accessible.

**BMO, 2021, p. 5 – Président du conseil distinct du directeur général**

- The roles of the chair and CEO are substantively different and generally should be separated. We regard separation of the roles as important for securing a proper balance of authority and responsibility between executive management and the board, as well as preserving accountability within the board. If for any reason the roles are combined, e.g. over an unexpected transitional period, this should be explained and justified in the report and accounts. In all such cases, a strong senior independent non-executive director should be nominated.
- We would not expect a retiring CEO to assume the role of chair. In such cases, we would look for reasoned justification from the company to explain this deviation from good practice.

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**CDPO, 2020, p. 7 – Président du conseil indépendant de la direction – Préférence pour (1) la séparation du rôle de président du conseil et de directeur général au lieu de (2) procéder à la nomination d’un administrateur principal indépendant**

- The appointment of a chair of the board of directors who is independent of management is preferred. If such is not the case, the recommendation will be examined based on the circumstances.
- Should the functions of the chair of the board of directors and chief executive officer be combined, or should the chair of the board of directors not be independent of management, a lead director position should be created and filled by an independent board member who will oversee the effective execution of work by the board and ensure that meetings with the independent board members can be convened at any time. This lead director should be independent of any shareholder who holds a large block of shares, should such be the case.

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**Share, 2022, p. 10, 11 – Président du conseil distinct du directeur général – Procéder à la nomination d’un administrateur principal indépendant doit être une étape provisoire vers la nomination d’un administrateur indépendant à la présidence du conseil (un an)**

- Le président du conseil d’administration doit être un administrateur indépendant, tel que défini ci-dessus, pour qu’il puisse guider le conseil dans la supervision de la performance des dirigeants de la société. Il s’agit d’un principe fondamental d’une bonne gouvernance d’entreprise. [Le fonds] votera contre les administrateurs non indépendants qui seraient également président du conseil ou occuperait ce poste s’ils étaient élus comme administrateur. Si le président du conseil d’administration n’est pas un administrateur indépendant, [le fonds] votera également contre le comité de gouvernance. [Le fonds] votera pour les propositions demandant que le président du conseil soit un administrateur indépendant.
- Certaines sociétés dont les présidents de conseil ne sont pas indépendants ont tenté de remédier à cette situation en nommant un administrateur principal indépendant. Cependant, les sociétés ayant un administrateur indépendant comme président ont de meilleurs résultats et offrent un salaire moins important aux cadres comparées aux sociétés où le président est un cadre de la société, même si celles-ci ont des administrateurs principaux.
- La nomination d’un administrateur principal indépendant peut constituer une étape provisoire vers la nomination d’un administrateur indépendant à la présidence du conseil d’administration, mais elle ne remplace pas un président indépendant. Un administrateur principal indépendant ne doit pas occuper ce poste pendant plus d’un an avant la nomination d’un président indépendant. [Le fonds] votera pour les propositions visant à nommer un administrateur principal indépendant à condition que ce poste ne dure pas plus d’un an.

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**ÉTATS-UNIS**

**CII, 2023, point 2.4, p. 3 – Président du conseil distinct du directeur général sauf exception**

- 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,

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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.

**NACD, 2022, p. 25 – Président du conseil indépendant de la direction**

- Appointing a board leader (whether in the role of chair or lead director) who is not a member of management (and in a listed company qualifies as independent) and then defining that leadership role to include the power to convene board and executive sessions, to influence the board agenda and information flow, and to engage as appropriate with shareholders and other stakeholders helps position the board to provide objective oversight and to act with agility in the face of rapid change and external pressures. The board should consider its leadership structure periodically. When selecting a board leader who is independent of management and its controlling shareholder (if any) to serve as either chair or lead director, consideration should be given to choosing a director who is prepared to serve in that role for several years to allow for some leadership durability

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**Commonsense Principles, 2018, p. 8 – Comparaison des deux approches (Séparation des postes vs administrateur principal indépendant) – Prérrogative du conseil**

- The board's independent directors should decide, based upon the circumstances at the time, whether it is appropriate for the company to have separate or combined chair and CEO roles. The board should periodically review its leadership structure and explain clearly (ordinarily in the company's proxy statement) to shareholders why it has separated or combined the roles, consistent with the board's oversight responsibilities.
- If a board decides to combine the chair and CEO roles, it is critical that the board has in place a strong designated lead independent director and governance structure. The role of the lead independent director should be clearly defined and sufficiently robust to ensure effective and constructive leadership. The responsibilities of the lead independent director and the executive chair should be clearly delineated, agreed upon by the board, and disclosed to shareholders

**State Street, 2023, p. 7 – Appréciation au cas par cas – Administrateur principal indépendant nécessaire en cas de cumul des fonctions**

- We analyze proposals for the separation of Chair/CEO on a case-by-case basis taking into consideration numerous factors, including the appointment of and role played by a lead director, a company's performance, and the overall governance structure of the company.
- However, we may take voting action against the chair or members of the nominating committee at S&P 500 companies that have combined the roles of chair and CEO and have not appointed a lead independent director.

**GRANDE-BRETAGNE**

**UK Code, 2018, p. 6 – Président du conseil distinct du directeur général**

- The roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company. If, exceptionally, this is proposed by the board, major shareholders should be consulted ahead of appointment. The board should set out its reasons to all shareholders at the time of the appointment and also publish these on the company website. **p.6**

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**LSE, 2012, p. 99 – Président du conseil distinct du directeur général**

- The role of chairman and chief executive should be separate and not be exercised by the same individual (QCA Guidelines). If the roles are combined, there should be an explanation as to how governance is protected (for example, through the appointment of a senior independent director), the exceptional circumstances that cause the roles to be combined and the intentions for the separation of the roles (QCA Guidelines and NAPF AIM Policy). The chief executive should not go on to be chairman of the same company. If, exceptionally, this does happen, appropriate explanation needs to be provided (UK Corporate Governance Code and NAPF AIM Policy)

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**AUSTRALIE**

**ASX Council, 2019, p. 15 – Préférence pour (1) la séparation du rôle de président du conseil et de directeur général au lieu de (2) procéder à la nomination d'un administrateur principal indépendant – Comparaison des deux approches**

- The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity.
- If the chair is not an independent director, a listed entity should consider the appointment of an independent director as the deputy chair or as the “senior independent director”, who can fulfil the role whenever the chair is conflicted. Even where the chair is an independent director, having a deputy chair or senior independent director can also assist the board in reviewing the performance of the chair and in providing a separate channel of communication for security holders (especially where those communications concern the chair).

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**FRANCE**

**AFEP & MEDEF, 2022, p. 4, 5 – Prérrogative du conseil**

- Le droit français offre à toutes les sociétés anonymes le choix entre la formule moniste (conseil d'administration) et la structure duale (directoire et conseil de surveillance) (3.1). **p. 4**
- En outre, les sociétés à conseil d'administration ont le choix entre la dissociation et l'unicité des fonctions de président et de directeur général. La loi ne privilégie aucune formule et donne compétence au conseil d'administration pour choisir entre les deux modalités d'exercice de la direction générale. Il appartient au conseil de se prononcer et d'expliquer sa décision. Le conseil peut désigner un administrateur référent parmi les administrateurs indépendants, notamment lorsqu'il a été décidé de l'unicité des fonctions. En cas de dissociation des fonctions de président et de directeur général, les missions confiées, le cas échéant, au président du conseil en sus de celles conférées par la loi, sont décrites. (3.2) **p. 4**
- Les sociétés anonymes françaises ont ainsi la faculté de choisir entre trois formules d'organisation des pouvoirs de direction et de contrôle. La formule retenue et les motivations sont portées à la connaissance des actionnaires et des tiers.(3.4) **p. 5**

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**AMF, recommandation 2012-02, p. 5, 8 – Prérrogative du conseil – Divulgence d'explication à l'appui du choix de gouvernance**

- Le choix entre dissociation et unicité (ou cumul) des fonctions de président et de directeur general: L'AMF recommande que l'exigence d'explication de la décision relative au choix du mode de gouvernance, posée par les articles 3.2 et 3.4 du code AFEP-MEDEF, s'applique non seulement lorsque la société fait évoluer son mode de gouvernance, mais également lorsque, ayant déjà opté pour l'unicité des fonctions, elle décide de renouveler le mandat de son président-directeur général (une telle décision impliquant que la société a, à nouveau, décidé de choisir l'unicité de fonctions comme mode de gouvernance) ou bien lorsque, ayant déjà opté pour la dissociation de fonctions, elle décide de désigner un nouveau directeur général ou un nouveau président du conseil d'administration (une telle décision impliquant que la société a, à nouveau, décidé de choisir la dissociation comme mode de gouvernance). **p. 5**
- L'AMF recommande que les explications fournies par les sociétés sur le mode de gouvernance choisi soient précises et circonstanciées. **p. 5**
- L'AMF invite en outre les sociétés n'ayant effectué aucun changement au cours de l'exercice précédent à reprendre, tous les ans au sein de leur rapport sur le gouvernement d'entreprise, les explications qui avaient été fournies par leur conseil lorsqu'il avait pris la décision d'adopter le mode de gouvernance actuel. **p. 5**

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- L'AMF recommande aux sociétés dont le conseil d'administration a opté pour une dissociation des fonctions, tout en proposant à l'assemblée générale la nomination du directeur général en tant qu'administrateur, d'en expliquer les motivations au sein du rapport du conseil à l'assemblée générale et au sein du rapport sur le gouvernement d'entreprise. **p. 5**
- L'AMF recommande aux sociétés de clarifier les modalités d'exercice des missions respectives du directeur général et du président du conseil d'administration, en particulier en matière de relation avec les tiers. Une attention particulière devrait être accordée aux zones de chevauchement potentiel. Les sociétés ayant octroyé des missions particulières à leur président non exécutif devraient s'assurer que celles-ci restent limitées et que leur exercice n'est pas susceptible d'empiéter sur les pouvoirs du directeur général tels que prévus par l'article L. 225-56, I. du code de commerce **p. 8**

## INTERNATIONAL

### **ICGN, 2021, p. 12 – Préférence pour (1) la séparation du rôle de président du conseil et de directeur général au lieu de (2) procéder à la nomination d'un administrateur principal indépendant**

- Independent leadership: There should be a clear division of responsibilities between the role of the chair of the board and the CEO to avoid unfettered powers of decision-making in any one individual. This is particularly relevant in controlled companies when either the chair or CEO are significant shareholders. The Board should be chaired by an independent director who should be independent on the date of appointment. Should the role of the chair and CEO be combined, the board should explain the reasons why this is in the best interests of the company in the annual report and keep the structure under review. The responsibilities of the chair, CEO, lead independent director and committee chairs should be clearly described and publicly disclosed.

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### **BlackRock Global, 2023, p. 7 – Comparaison des deux approches**

- In our experience, boards are most effective at overseeing and advising management when there is a senior independent board leader. This director may chair the board, or, where the chair is also the CEO (or is otherwise not independent), be designated as a lead independent director. The role of this director is to enhance the effectiveness of the independent members of the board through shaping the agenda, ensuring adequate information is provided to the board, and encouraging independent director participation in board deliberations. The lead independent director or another appropriate director should be available to shareholders in those situations where an independent director is best placed to explain and contextualize a company's approach.

### 3.1.3 Généralités

## CANADA

### **CCGC, 2018 p. 20 – Procédures devant être mises en place pour appuyer les administrateurs dans l'ensemble de leurs responsabilités – suffisance d'information, de temps et de conseils leur étant prodigués**

- Board independence must be supported by the establishment of robust and well-defined board processes and procedures that will assist directors in meeting their oversight responsibilities. Board processes and procedures should ensure that directors are provided with sufficient information, time, and independent advice to be able to make meaningful decisions in an independent manner. Meeting materials provided to boards by management must be sufficiently detailed, comprehensive, and succinct to support meaningful decisions by directors. All board meetings should include in-camera sessions with independent directors only.

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### **CCGC, 2022, p. 10**

- Stantec uses a table to clearly identify which directors are independent and why certain directors are not classified as independent. As well, more than two thirds of the board is comprised of independent directors.
- To promote independent functioning, CCGG recommends that a portion of each board meeting be held in-camera - a session of independent directors only. Stantec meets this expectation as well.

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**GL, 2023, p. 12, 13 – Seuil minimal d’indépendance – Comité d’audit, de rémunération, de nomination et de gouvernance devrait être réservés aux administrateurs indépendants**

- **Independent Director** — A director is independent if they have no direct or indirect material financial or familial connections with the company, its executives, its independent auditor or other board members, except for service on the board and the standard fees paid for that service. Employee relationships that have existed within the past five years and other relationships that have existed within the three years prior to the inquiry are usually considered to be “current” for purposes of this test. However, Glass Lewis does not apply the five-year look-back period to directors who have previously served as executives of the company on an interim basis for less than one year. **p. 12**
- **Affiliated Director** — A director is affiliated if they have a material, financial, familial or other relationship with the company, its independent auditor or its executives, but is not an employee of the company. This includes directors whose primary employers have a material financial relationship with the company, as well as those who own or control at least 20% of either the company’s issued share capital, or its outstanding voting rights, or explicitly serve as executives or director representatives of such significant shareholders. **p. 12**
- We will apply a three-year look back to directors who are no longer employed by an ongoing related party or large shareholder. We note that in every instance in which a company classifies one of its directors as non-independent, that director will be classified as an affiliate by Glass Lewis. **p. 12**
- We view 20% shareholders as affiliates because they typically have access to and involvement with the management of a company that is fundamentally different from that of ordinary shareholders. More importantly, 20% holders may have interests that diverge from those of ordinary holders, for reasons such as the liquidity (or lack thereof) of their holdings, personal tax issues, etc. Glass Lewis applies a three-year look back period to all directors who have an affiliation with the company other than former employment, for which we apply a five-year look back. **p. 12**
- In general, at least **a majority of a board should consist of independent directors**. However, Glass Lewis believes boards of companies in the S&P/TSX Composite Index should have a greater level of independence, reflecting both these companies’ size and best practice in Canada. Therefore, we will expect such companies’ boards to be at least **two-thirds independent**. Further, for venture-listed issuers, we apply a more lenient standard, requiring boards to have **at least two independent directors, representing no less than one-third of the board**. In the event that a board fails to meet these thresholds, we typically recommend shareholders withhold their votes from some of the inside and/or affiliated directors in order to satisfy these independence standards. **p. 13**
- We are firmly committed to the belief that only independent directors should serve on a company’s audit, compensation and nominating and/or governance committees (we may refer to these as “key committees”). As such, we typically recommend that shareholders withhold their votes from affiliated or inside directors seeking appointment to these committees; however, we allow for exceptions to this rule, including carve outs for significant shareholders and for controlled companies and firms listed on the TSX Venture Exchange, as discussed below. These exceptions do not extend to audit committee memberships, nor do they extend to members or affiliates of management seeking appointment to the compensation committee. **p. 13**

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**ISS, 2023, p. 11 – Comité d’audit, de rémunération, de nomination et de gouvernance devrait être réservés aux administrateurs indépendants – Les dirigeants non-indépendants ne devraient pas être en majorité au conseil afin que ce dernier puisse remplir ses fonctions de surveillance adéquatement**

- Best practice corporate governance standards do not advocate that no executive directors sit on boards. Company executives have extensive company knowledge and experience that provides a significant contribution to business decisions at the board level. In order to maintain, however, the independent balance of power necessary for independent directors to fulfill their oversight mandate and make difficult decisions that may run counter to management’s self-interests, executives, former executives and other related directors should not dominate the board or continue to be involved on key board committees charged with the audit, compensation, and nomination responsibilities.

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**Teachers, 2023, p. 16 – Préoccupations générales**

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- Nous envisagerons *de ne pas appuyer* la candidature d'un administrateur au conseil si, selon nous : (1) les décisions prises par un administrateur (ou par plusieurs) peuvent être liées à un rendement insuffisant de la société sur une période de temps raisonnable et/ou témoignent d'un manque d'indépendance face à la direction; (2) un administrateur a (ou plusieurs ont) fait preuve d'un comportement qui pourrait avoir une incidence négative sur le rendement à long terme de la société; (3) la relation d'affaires d'un administrateur (ou de plusieurs) , qu'elle soit : (a) directe, par exemple lorsqu'un administrateur fournit des services-conseils à la société ou qu'une entité dont il est propriétaire vend des biens ou services à la société, ou (b) indirecte, lorsque l'employeur d'un administrateur fournit des biens ou des services à la société (p. ex., l'administrateur est un employé du fournisseur de services financiers de la société), ce qui peut compromettre son indépendance; et/ou (4) le comportement d'un administrateur entraîne une perte de confiance quant à sa capacité d'agir dans l'intérêt supérieur à long terme de la société. Dans ce cas, nous pourrions envisager de *ne pas appuyer* sa candidature à tout autre conseil.

**State Street, 2023, p. 3, 4 – Critère d'indépendance (comité de surveillance adéquat)**

- Directors Elections : [...]Factors we consider when evaluating governance practices include, but are not limited to the following: (1) Shareholder rights (2) Board independence (3) Board structure. If a company demonstrates appropriate governance practices, we believe a director should be classified as independent based upon the relevant listing standards or local market practice standards. In such cases, the composition of the key oversight committees of a board should meet the minimum standards of independence. Accordingly, we may vote against a nominee at a company with appropriate governance practices if the director is classified as non-independent under relevant listing standards or local market practice and serves on a key committee of the board (compensation, audit, nominating, or committees required to be fully independent by local market standards).
- Conversely, if a company demonstrates negative governance practices, State Street Global Advisors believes the classification standards for director independence should be elevated. In such circumstances, we will evaluate all director nominees based upon the following classification standards: (1) Is the nominee an employee of or related to an employee of the issuer or its auditor? (2) Does the nominee provide professional services to the issuer? (3) Has the nominee attended an appropriate number of board meetings? (4) Has the nominee received non-board related compensation from the issuer?

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**Vanguard, 2022, p. 4 – Seuil minimal d'indépendance – Cas particuliers : interim, interlock**

- A fund will generally vote against the nominating committee and all nonindependent board members of a company if that company does not maintain a majority independent board. In the second year that a board is not majority independent, the fund may vote against the entire board.
- Independence is generally defined in accordance with the relevant exchange listing standards, with the following exceptions: (1) Former CEOs. Former CEOs will not be considered independent unless they held only an "interim" CEO position for less than 18 months. An interim CEO who held his or her temporary position for less than 18 months will be considered independent three years after leaving the interim CEO position. (2) CEO interlocks. CEOs who sit on one another's boards will not be considered independent. (3) Other factors. If it is determined, through engagement or research, that a director's independence has been compromised, that director may not be considered independent regardless of technical compliance with the exchange listing standards. Likewise, certain circumstances could lead to the determination that a director is independent, regardless of compliance with listing standards.

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**BlackRock, 2023, p. 4 – Seuil minimal d'indépendance – Comité d'audit, de rémunération, de nomination et de gouvernance devrait être réservés aux administrateurs indépendants**

- It is our view that a majority of the directors on the board should be independent to ensure objectivity in the decision-making of the board and its ability to oversee management. In addition, all members of audit, compensation, and nominating/governance committees should be independent. Our view of independence may vary from listing standards.
- Common impediments to independence may include: (1) Employment as a senior executive by the company or a subsidiary within the past five years (2) An equity ownership in the company in excess of 20% (3) Having any other interest, business, or relationship (professional or personal) which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the company and its shareholders

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- We may vote against directors who we do not consider to be independent, including at controlled companies and those listed on venture stock exchanges, when we believe oversight could be enhanced with greater independent director representation. To signal our concerns, we may also vote against the chair of the nominating/governance committee, or where no chair exists, the nominating/governance committee member with the longest tenure.

**CDPO, 2020, p. 3, 4 – Seuil minimal d’indépendance – Conflit d’intérêt**

- The majority of directors who sit on the board of each company must be independent. As an exception to the general principle stated above and solely where appropriate mechanisms are in place to manage any potential conflict of interest between a shareholder holding a large block of shares and the company, we consider the level of independence of the board to be sufficient when there is a shareholder with a large block of shares on the condition that at least: (1) The majority of the members are independent of the company; (2) The majority of the members are independent of the shareholder with the large block of shares; and (3) One-third of the members are independent of both the company and the shareholder with the large block of shares.
- In all cases, we expect that the company’s ties with each director and the circumstances that could create a conflict of interest or the appearance of a conflict of interest be disclosed.

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**ÉTATS-UNIS**

**CII, 2023, point 2.3, 2.5 et 7.2, p. 3, 4 et 18 – Seuil minimal d’indépendance – Comité d’audit, de rémunération, de nomination et de gouvernance devrait être réservés aux administrateurs indépendants**

- Independent Board : At least two-thirds of the directors should be independent; their seat on the board should be their only non-trivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer. The company should disclose information necessary for shareowners to determine whether directors qualify as independent. This information should include all of the company's financial or business relationships with and payments to directors and their families and all significant payments to companies, non-profits, foundations and other organizations where company directors serve as employees, officers or directors. **Point 2.3**
- All-independent Board Committees: Companies should have audit, nominating and compensation committees, and all members of these committees should be independent. The board (not the CEO) should appoint the committee chairs and members. Committees should be able to select their own service providers. Some regularly scheduled committee meetings should be held with only the committee members (and, if appropriate, the committee's independent consultants) present. The process by which committee members and chairs are selected should be disclosed to shareowners. **Point 2.5**
- Basic Definition of an Independent Director: An independent director is someone whose only nontrivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her only connection to the corporation. **Point 7.2**
- Guidelines for Assessing Director Independence (voir **Point 7.3**)

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**Commonsense Principles, 2018, p. 1 – Qualité d’un administrateur indépendant**

- Independent directors should be just that: strong and steadfast, independent of mind and willing to challenge the CEO and other directors constructively - concepts that may not be fully reflected in black-and-white rules. At the same time, directors should not be divisive or self-serving. Collaboration and collegiality also are critical for a healthy, functioning board.

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**AUTRES SOURCES**

- [HLS Roundtable, 2022, p.26 et 27](#)
- [Nasdaq, 5600, 5605 à IM-5605-2 \(p. 1 à 3 du pdf\)](#)

**GRANDE-BRETAGNE**

#### UK Code, 2018, p. 6, 7 – Seuil minimal d'indépendance

- At least half the board, excluding the chair, should be non-executive directors whom the board considers to be independent.
- The board should identify in the annual report each non-executive director it considers to be independent. Circumstances which are likely to impair, or could appear to impair, a non-executive director's independence include, but are not limited to, whether a director: **(voir point 10, p. 6 – notion d'indépendance)**

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#### Purplebricks Group PLC, 2021, p. 4 – Seuil minimal d'indépendance

- The board should have an appropriate balance between executive and non-executive directors and should have at least two independent non- executive directors. Independence is a board judgement.

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#### LSE, 2012, p. 66, 67 – CFO sur le conseil – Particularité du marché anglais – administrateurs actionnaires

- Readers more used to US-style corporate governance may be surprised by the presence on the board of the chief financial officer (CFO), but this is almost universal for companies on the UK Main Market. The expectation is that the CFO should be a highly strategic business person, able to complement the chief executive primarily by bringing a financial perspective to the business's decisions. In the UK system, the CFO and the chairman provide the checks and balances to ensure that the chief executive does not become too dominant in the leadership of the company in a way that could jeopardise its future prosperity. There can also be an advantage from the point of view of chief executive succession planning in having other executives at the top table. **p. 66**
- Given the independence criteria for board balance and committee membership, any directors appointed to the board who represent a major shareholder are simply numerically additional directors who may serve alongside those described in the panel opposite — up to a maximum of one fewer than the number of independent NEDs. **p. 67**
- As the independent NEDs are there to represent the interests of 100 per cent of the shareholders, there can be a natural tension between them and any shareholder directors. The chairman, or an independent deputy chairman if the chairman is a significant shareholder or is not independent for another reason, will have an important role in managing this tension and providing 'air cover' for the chief executive. **p. 67**
- UK institutional investors favour smaller boards, and the presence of shareholder directors is usually expected to be transitional. If they have been appointed after an IPO, a significant change in strategy, a company turnaround or a major transaction, the expectation tends to be that they will step down within one to two years. **p. 67**

### **AUSTRALIE**

#### ASX Council, 2019, p. 17 – Concept d'indépendance

- A director of a listed entity should only be characterised and described as an independent director if he or she is free of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party. *[Factors relevant to assessing the independence of a director, p. 14]*

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#### ACSI, governance guidelines, 2021, p. 12 – Concept d'indépendance

- ACSI recognises that independence is determined predominantly by an individual's character and integrity. While independence indicators are useful to highlight potential constraints to a director acting in the best interests of the company over the long-term, written guidelines will not always address particular circumstances. For example, a director may not meet strict independence guidelines but may have a proven record of exercising independent judgement.
- In such cases, they should not automatically be considered inappropriate to serve on the board, however the board should explain why they are an appropriate candidate.
- We encourage companies to disclose how potential conflicts of interest or affiliations are mitigated by the board.
- *[Factors that may compromise independence p.13]*

## ALLEMAGNE

**German Corporate Governance Code, 2022, p. 9, 10 – Seuil minimal d'indépendance – L'administrateur sera considéré indépendant selon l'absence de lien avec la direction et l'absence de lien avec un actionnaire majoritaire**

- The Supervisory Board shall include what it considers to be an appropriate number of independent members from the group of shareholder representatives, thereby taking into account the shareholder structure.
- Within the meaning of this recommendation, a Supervisory Board member is considered independent if he/she is independent from the company and its Management Board, and independent from any controlling shareholder.
- More than half of the shareholder representatives shall be independent from the company and the Management Board. Supervisory Board members are to be considered independent from the company and its Management Board if they have no personal or business relationship with the company or its Management Board that may cause a substantial - and not merely temporary - conflict of interest.
- When assessing the independence of Supervisory Board members from the company and its Management Board, shareholder representatives shall particularly take into consideration the following aspects; whether the respective Supervisory Board member - or a close family member: (1) was a member of the company's Management Board in the two years prior to appointment; (2) whether he/she currently is maintaining (or has maintained) a material business relationship with the company or one of the entities dependent upon the company (e.g. as customer, supplier, lender or advisor) in the year up to his/her appointment, directly or as a shareholder, or in a leading position of a non-group entity; (3) whether he/she is a close family member of a Management Board member; or, (4) whether he/she has been a member of the Supervisory Board for more than twelve years.
- If one or more of the indicators set out [above] are met and the Supervisory Board member concerned is still considered independent, the reasons for this shall be given in the Corporate Governance Statement.
- If the company has a controlling shareholder, and the Supervisory Board comprises more than six members, at least two shareholder representatives shall be independent from the controlling shareholder. If the Supervisory Board comprises six members or less, at least one shareholder representative shall be independent from the controlling shareholder.
- A Supervisory Board member is considered independent from the controlling shareholder if he/she, or a close family member, is neither a controlling shareholder nor a member of the executive governing body of the controlling shareholder, and does not have a personal or business relationship with the controlling shareholder that may cause a substantial - and not merely temporary - conflict of interest.
- The Chair of the Supervisory Board, the Chair of the Audit Committee, as well as the Chair of the committee that addresses Management Board remuneration, shall be independent from the company and the Management Board. The Chair of the Audit Committee shall also be independent from the controlling shareholder.
- No more than two former members of the Management Board shall be members of the Supervisory Board.
- Supervisory Board members shall not be members of governing bodies of, or exercise advisory functions at, significant competitors of the enterprise, and shall not hold any personal relationships with a significant competitor.

## FRANCE

**AMF, recommandation 2012-02 p.16**

- À l'instar du président du conseil d'administration, l'AMF recommande que les sociétés anonymes à directoire et conseil de surveillance qui considèrent leur président du conseil de surveillance comme indépendant, le justifient de manière étayée et adaptée à la situation particulière de la société
- S'agissant de l'indépendance des membres, l'AMF recommande aux sociétés : (1) d'identifier clairement les membres qualifiés d'indépendants par le conseil, qu'ils soient membres ou non de comités spécialisés (2) de bien préciser la conformité avec les critères retenus par le code AFEP-MEDEF pour définir l'indépendance des administrateurs et, lorsque la société déroge à l'un de ces critères, de le justifier précisément. Pour ce faire, l'AMF recommande que les sociétés intègrent ces éléments dans un tableau de synthèse précisant la situation (conformité ou non) des administrateurs au regard des critères retenus par le code AFEP-MEDEF pour définir l'indépendance

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des administrateurs (3) que toute exclusion du critère de définition de l'indépendance relatif à l'exercice de mandats sur plus de 12 années consécutives<sup>38</sup> ne soit pas justifiée par la seule expérience ou compétence de l'administrateur concerné (4) de fournir chaque année des éléments d'information détaillés afin d'expliquer la manière dont leur conseil a apprécié le caractère significatif ou non des relations d'affaires susceptibles d'être entretenues par des membres qualifiés d'indépendants avec la société dont ils sont administrateurs ou membres du conseil de surveillance. Dans ce cadre, l'AMF recommande aux sociétés de décrire avec précision les critères qualitatifs et/ou quantitatifs d'appréciation du caractère significatif de la relation entretenue avec la société ou son groupe<sup>40</sup> ainsi que le contenu de tout engagement que les administrateurs concernés auraient, le cas échéant, pris afin de préserver les conditions de cette qualification d'administrateur indépendant, ainsi que les conséquences d'une éventuelle violation de ces engagements

- À ce titre, l'AMF recommande aux émetteurs de ne pas apprécier le caractère significatif des relations d'affaires uniquement à l'aune de critères quantitatifs et de réaliser autant que possible une analyse qualitative selon des paramètres permettant d'apprécier si une telle relation est non significative et exempte de conflit d'intérêts, tels que et sans que cela soit limitatif : (1) la durée et la continuité (antériorité, historique, renouvellements) ; (2) l'importance ou « intensité » de la relation d'affaires (éventuelle dépendance économique, exclusivité ou prépondérance dans le secteur objet de la relation d'affaires, répartition du pouvoir de négociation...) ; (3) l'organisation de la relation (position de l'administrateur concerné dans la société contractante, pouvoir décisionnel direct sur le(s) contrat(s) constitutifs de la relation d'affaires, perception par l'administrateur d'une rémunération liée au contrat, lien ou relation d'affaires éventuels avec des sociétés dont relèvent d'autres administrateurs, montants des engagements réciproques des sociétés entre elles, etc.)
- Dans l'hypothèse où, aux fins de cette appréciation, une société souhaiterait conserver exclusivement un critère quantitatif, un plafond en montant absolu (à l'instar de ce que prévoient certaines agences de conseil en vote<sup>43</sup>) semble plus pertinent pour apprécier le caractère significatif d'une relation d'affaires. En tout état de cause, il convient que tout seuil quantitatif en pourcentage du volume d'affaires soit apprécié pour chacune des deux sociétés ou parties contractantes : (1) de mettre en place un délai de carence avant de considérer qu'un administrateur qui était jusqu'alors non indépendant devient indépendant du fait de l'évolution de sa situation personnelle, notamment au regard des décisions ou positions qu'il a dû prendre ou soutenir dans le cadre de ses précédentes fonctions

## INTERNATIONAL

### **ICGN, 2021, p. 12 – Nomination d'un administrateur principal indépendant même si le président du conseil est indépendant**

- The Board should appoint a Lead Independent Director (LID) even when the chair is independent. The LID provides shareholders, relevant stakeholders and directors with a valuable channel of communication to discuss matters that may involve a conflict of interest for the board chair which may include significant shareholders if there is a connection between them. The LID should not have directorship tenure in the company that raises questions as to the LID's independence as set out in Guidance 2.6.h. In a two-tier board the LID role could be assumed by a vice chair.

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### **3.1.4 Critique de la littérature / Déficience de la définition d'indépendance, manque d'efficacité au niveau de l'application du cadre établi, amélioration nécessaire de la divulgation en matière d'indépendance**

## ÉTATS-UNIS

### **The Case for Improving Director Independence Disclosure, 2017, abstract, p. 37 à 41, 50 à 52, 57, 58, 60, 69 à 72**

- Currently, boards designate themselves as independent, and as this Article demonstrates empirically, they provide little information to investors regarding the considerations that supported their designation.
- Regulating director independence is at heart a means of empowering investors to make informed decisions about where to invest and how to vote. The current regime of regulating director independence is blind to this function. It shuts investors out of the process, allowing boards to designate their own independence with virtually no transparency or investor oversight. This lack of information is particularly concerning considering the importance

of effective disclosure on capital markets. To that end, the SEC has recently requested input on means to improve its current disclosure rules under regulation S-K. This Article is a response to that request. It argues that investor accountability is a core function of regulating director independence and uses a theoretical framework and empirical findings to assert that the current system fails to achieve this end. The Article then proposes regulatory reforms aimed at a shift towards an enhanced disclosure regime. **abstract**

- If the purpose of independent boards is to ensure that directors are objective and free of conflicts that can impair their judgment when serving as monitors of management, then the definition and rules governing director independence must be properly crafted to achieve such goal. The example of Nike’s designation of Tim Cook (p. 37, 38) as lead independent director calls into question the efficacy of the current regulatory framework and whether all of the directors that companies designate as “independent” are in fact free of the conflicts that could cloud their ability to effectively and objectively serve as independent monitors of management. Moreover, it calls into question the ability of any definition of director independence that is not accompanied with a broad disclosure regime to successfully screen for all of the potential conflicts that might impede the independence of directors. This is particularly true in contemporary corporate America, where businesses and people are closely interconnected, often for the benefit of their shareholders. **p. 39**
  
- (1) **DEFICIENCIES IN THE DEFINITIONS OF DIRECTOR INDEPENDENCE THAT GOVERN PUBLICLY TRADED CORPORATIONS:** First, with respect to defining independence, Delaware law, federal regulations, and stock exchange rules have all tackled the issue of director independence with great variance. Delaware law, for instance, has treated the issue of independence as a factual issue to be determined on a case-by-case basis, after a challenge to the designation of independence has been made, examining “whether the director’s decision is based on the corporate merits of the subject before the board, rather than extraneous considerations or influences.” The stock exchange rules following SOX and Dodd-Frank are widely perceived as “bright-line” rules. They contain specific pre-requisites for independence— explicitly prohibiting some directors from being considered independent directors if they were employees of the company, received compensation that is not a director fee over a certain threshold, had ties to the company’s auditor, or had business or compensation interlocks with the company above a certain threshold. However, while these prerequisites serve well to disqualify a director from being considered independent in instances where a conflict is clear, the mere fact that a director does not fall into one of the listed disqualifications in the listing rules does not automatically render him or her to be independent, even under the current stock exchanges definition of “independence.” Regulators, recognizing the need to identify independent directors ex-ante, have sought a standard that would have both clear rules and the flexibility to address “gray zone” matters. Therefore, the listing standards start with a general requirement that “[n]o director qualifies as ‘independent’ unless the board of directors affirmatively determines that the director has no material relationship with the listed company.” The question of what is a material relationship is left to the board to decide, thus, in practice, leaving a considerable gray zone as to the definition of such relationship and, in turn, as to the classification of a director as “independent” by the company **p. 39, 40**
  
- **The listing requirements / definition of independence:** The NYSE and NASDAQ listing requirements adopt rules for deciding whether a director is adequately independent to count toward the requisite majority that include both specific requirements as well as a determination by the board that a nominee has no material direct or indirect relationship with the listed company. First, companies must follow objective standards when making director independence determinations. The objective requirements address past employment with the company, for both the director and immediate family member, compensation received from the company, as well as certain business affiliations. In regards to business affiliations, the NYSE prohibits a director from being classified as independent if he or she, or an immediate family member, is affiliated with an organization that has derived the greater of \$1 million or 2% of the organization’s consolidated gross revenues from the company hoping to classify the director as independent. The restrictions apply to any of the last three fiscal years. NASDAQ’s requirement is similar, only it applies to directors affiliated with organizations that received the greater of \$200,000, or 5% of its annual gross revenues from the company. Collectively, these objective requirements establish bright line rules for boards to utilize when considering director independence. However, even if a director clears the objective threshold, the board must determine that the director has no “material relationship with the listed company.” The NYSE encourages boards to consider all relevant facts and circumstances when making this determination. NASDAQ has similar subjective requirements, prohibiting individuals who have “a relationship which, in the opinion of the

[c]ompany's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director." In addition, the Securities and Exchange Commission ("SEC"), imposes disclosure requirements on publicly traded companies in regard to their independent directors. Item 407 of Regulation S-K establishes the following requirements: First, companies must disclose which directors have been determined to be independent by the board of directors. Second, companies must disclose any members of the compensation, nominating, or audit committee that are non-independent. Lastly, if any company has adopted its own director independence standards, in addition to their stock exchange rules, the company must disclose whether its own definition is available online. If the internal standards are available online, a hyperlink must be included for shareholders to access. Companies must satisfy the Item 407 requirements by including the disclosures within their annual proxy statement or annual 10-K. Operating in conjunction with the independence disclosure requirements are "specific transactions" disclosure requirements. Item 407(a)(3) requires companies to disclose "any transactions, relationships or arrangements...that were considered by the board of directors under the applicable independence definitions in determining that the director is independent."<sup>108</sup> This is in connection to disclosures made under Item 404, which requires companies to disclose any "related party transactions" over \$120,000 where a "related person" has a direct or indirect material interest. "Related person" includes directors, executive officers, and five percent shareholders, as well as any immediate family members. Item 407 clarifies that any company transaction over the past year that may have resulted in a direct or indirect conflicting interest for the independent director must be disclosed. Item 404 and 407 collectively require companies to disclose which directors are considered "independent," as well as any transactions that were considered in making that determination. As will be illustrated in Part IV, companies typically satisfy these disclosure requirements in their annual proxy statements. As will also be illustrated in Part IV, large cap sized companies typically adopt their own director independence standards in accordance with Item 404(a)(3). The company's website then publishes the standards. Before addressing the problems with current disclosure requirements, it is worth noting that publicly traded companies have no issues with meeting their majority requirements. As noted above, 85% of the directors in the S&P 500 were independent and 60% of boards had only one non-independent director—the company CEO. However, despite the high percentage of directors designated as independent, questions remain regarding individual determinations and the level of information provided to concerned shareholders. These problems are addressed next. **p. 50 et 51**

The issues with the listing requirements: The current definitions of director independence miss the mark in providing shareholders with an effective system for ensuring the true independence of their "independent" directors. [...]current stock exchange rules are comprised of a two-step process when certifying a director as independent. First, the company must ensure that the director meets the basic threshold requirements for his or her independence. From work relationship to blood relationships, clear cases of non-independence are ruled out. However, the second step requires the board to consider any material information that may affect the director's independence. This second step, while being praised for allowing companies flexibility in deciding whether to disqualify a director from being considered independent, goes too far in vesting the board with the ultimate, and unchecked, discretion in making such determination. [...] Boards of directors are empowered with making final determinations regarding director independence. This subjective aspect of board authority is problematic in multiple ways. First, a potential conflict of interest arises as boards are empowered to determine whether they themselves are independent. This concern is further heightened due to the requirement that a majority of board members be independent. Since companies are expected to have a supermajority of independent directors, and at the very least are obligated to have a simple majority, boards are therefore incentivized to continue to classify themselves individually as independent, to avoid having to be replaced with truly independent directors. While current rules do include objective components that carve out some of the common ways a director can lose his or her independence, the inherent conflicts of interest they face may incentivize the board to push the subjective requirements as far as possible.. p. 52, 53

- (2) **LACK OF EFFECTIVE ENFORCEMENT OF THESE INDEPENDENCE STANDARDS BY REGULATORS**: Second, the current regulatory approach has also lacked effective enforcement. Companies' self-designations of director independence are left uncontested and are done without proper vetting or auditing by the stock exchanges or the SEC,<sup>24</sup> as they have shown no effort to proactively enforce their own requirements. **p. 40**

- **The issues with the enforcement:** By allowing companies to declare directors as independent without effectively ensuring or enforcing their independence, regulators may be doing a disservice to shareholders by cultivating a false notion of trust in the independence of their directors. [...] The concerns regarding the true effectiveness of the designations of independence made by boards regarding their peers are magnified due to lack of an effective enforcement mechanism. First, state law enforcement is limited to litigation, and while shareholders can challenge the independence of directors in Delaware courts, these challenges must be made in connection with a shareholder challenge to a specific board action, and must cross procedural and substantive thresholds before discovery. Second, in the context of the stock exchange listing rules, the designation of directors as independent is designed to be difficult to enforce, and in practice is rarely enforced. Specifically, since the definition of director independence places much weight on the discretion of the board, it would be hard and costly to directly challenge a determination that was made by the board. Similarly, because there is no private right of action for the violation of exchange rules, and due to the lack of access to the information the board considered, there is also no private enforcement mechanism at the disposal of shareholders. **p. 52, 62**

- (3) LACK OF SUFFICIENT AND MEANINGFUL DISCLOSURES BY COMPANIES TO THEIR SHAREHOLDERS REGARDING THEIR DIRECTORS AND THE DESIGNATIONS THEY MADE REGARDING THEIR INDEPENDENCE: Third, and most notably, companies do not provide detailed information to shareholders and prospective investors regarding the reasoning justifying the designation of a director as independent. In essence, much of the information that boards are expected to consider when determining whether a director is independent is inputted into a “black box,” to which shareholders have no access. [...] Therefore, this Article calls for a re-conceptualizing of the current approach to regulating company disclosures. This new approach will shift some of the focus from the definition and designation of a director as independent to a disclosure-based regime. Alongside the current designation regime, companies would have to disclose, for each “independent” director, the entirety of the information they considered when declaring a director as independent, including some mandatory information that is currently hard or costly to independently obtain or verify. This in turn will allow investors and regulators not only to confirm the judgment of the board on each director, but also to possess a more nuanced position concerning the true independence of each director in regards to each matter at hand. **p. 40, 41**

- **The issues with the disclosure:** Boards do not have to disclose the steps taken to reach director independence decisions. Instead, simple disclosure statements are made regarding which directors are independent and which ones are not. There are some related-party transactions that must also be disclosed, but the vast majority of considerations that are made, with respect to director independence, are kept outside of the public’s eye. Simply put, investors have no easy way of knowing how or why a director was determined to be independent. Not surprisingly, investors are concerned and have voiced displeasure regarding the lack of effectiveness and completeness of these disclosures. [...] In connection with a board’s independence determinations, Item 407 of Regulation S- K requires that a company disclose, by specific category or type, any transaction, relationship or arrangement with any of the company’s independent directors that was (i) not disclosed under the related party transactions disclosure, but was (ii) considered by the board in determining the independence of the director. However, the related party disclosure under item 404 and the seemingly “catch all” disclosure under item 407 are subject to materiality qualifiers that afford the company with discretion regarding the decision of what transactions or relationships should be disclosed to investors. Item 404 specifically calls for “a direct or indirect material interest” and item 407 refers to the definition of director independence, which in turn refers to “material relationship with the listed company.” In other words, both under item 404 and 407 the board can decide that a transaction was not material, and therefore refrain from disclosing it. Therefore, and as further detailed in Part V below, the current system of disclosures fails to achieve its desired goal. Companies are disclosing information in piecemeal form, the information provided is highly selective, lacks context and is non-verifiable. This, in turn, leaves investors without a complete understanding of the steps taken to determine director independence. **p. 57, 58**

- **FIXING DIRECTOR INDEPENDENCE:**



- **Augmenting the Current Designation System with Stronger Disclosures** : At its core, the failure of current regulatory standards to ensure effective director independence regime stems from the fundamental approach that was taken regarding director independence. Regulators, recognizing the need to identify independent directors ex-ante have sought a standard that would have both clear rules but also flexibility to address “gray zone” matters. The combination of limited objective thresholds and a process led by the board to certify a director as independent has strived to strike that balance. However, as developed above, the current regulatory landscape has missed the mark. Companies are providing little information on their internal independence assessment of directors, there is a question as to the efficacy of their designation, and there is a lack of verification and enforcement mechanisms. Equally important, the choice of a standard-based approach also leads to a binary designation of a director as independent/non-independent, a designation that shareholders then rely on when making decisions based on board recommendations. However, since director independence is a context based issue, changing over time and in regard to the matter at hand, trying to capture it with the current regulatory process is a task that is destined to fail. Therefore, we need to re-conceptualize the current approach from focusing merely on the provision of a designation regarding each director to an approach that equally focuses on the provision of effective and detailed company disclosures to shareholders, who can then make individual determination as to the level of comfort and reliance they may have with the board. Under the suggested shift, companies will have to disclose, for each “independent” director the entire set of information they considered when declaring a director as independent. This in turn will allow investors and regulators not to only confirm the judgment of the board on each director but also to possess better sensitivity concerning the true independence of each director in regards to each matter at hand. The improved information will enable investors to make an informed decision regarding the validity of company assertions. Shareholders may decide to oppose the election of such director, and even if elected, they can decide to treat further recommendations of the board with increased doubt. It will also empower companies to tailor each disclosure to a given director’s unique circumstances. **p. 69, 70**

Independent Verification of Director Independence Determinations: the SEC should make sure that all regulatory demands with respect to director independence are fulfilled accurately. Therefore, a second, more limited solution to the current problems facing director independent disclosures is to require independent verification of board determinations by an outside gatekeeper; possibly the company’s outside independent auditor. As discussed above, stock exchanges and the SEC, are ill-equipped to enforce these rules. Because of this, investors must rely on these board determinations at their face value. However, as made evident by Nike, Apple, and other examples contained within, a lack of trust has rightfully arisen.<sup>202</sup> Requiring boards to obtain independent verification of their final determinations will correct this problem. **p. 71**

Adjusting the “Bright-Line” Rules and Disclosure Requirements: Finally, at a minimum, regulators should strive to tighten the “bright-line” rules governing director independence. This will ensure that the objective standards will become a key component of the definition rather than a mere basic threshold. It will also ensure conformity across companies in their interpretation of independence and will reduce the impact the inherent conflict of interests they possess may have on their determination. **p. 72**

## 3.2 Mandat du conseil

### 3.2.1 Rôle du CA relativement à la stratégie

#### CANADA

##### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 25, 26, 60

- **Évaluer le caractère approprié de l'allocation des ressources** humaines, technologiques et financières et des autres ressources nécessaires à l'atteinte des résultats attendus de la société dans son ensemble ainsi que de chacune des unités opérationnelles. **p.25**
- **Vérifier régulièrement que la stratégie de la société est en accord avec la finalité**, les objectifs ou les aspirations définis par la société. Approuver les modifications à apporter à la finalité ou aux objectifs lorsque les circonstances changent. **p.25**
- Pour déterminer la validité des hypothèses de la direction, **tester régulièrement la stratégie d'entreprise en fonction d'un éventail plausible de scénarios futurs** dans le cadre d'exercices de planification de scénarios effectués en collaboration étroite avec la direction. **p.26**
- Les conseils d'administration doivent approuver une stratégie à deux volets : **(1) Premièrement, une stratégie des unités opérationnelles** (ou stratégie concurrentielle); **(2) Deuxièmement, une stratégie d'entreprise globale**. Cette dernière doit permettre de répondre à deux questions posées par Peter Drucker dans Theory of the Firm : « Si vous n'exerciez pas déjà des activités dans ce secteur, y entreriez-vous aujourd'hui? » Si la réponse est non : « Qu'allez-vous faire à ce sujet? » Michael Porter adopte une approche semblable, qui peut se résumer comme suit : à quelles activités devrions-nous nous consacrer, et comment celles-ci devraient-elles être organisées? **p.60**

##### CCGC, 2022, p. 35 – Précisions sur la participation du conseil à la planification stratégique

- Strategic planning oversight is a fundamental area of board responsibility. In addition to providing insight into the board's processes to oversee the development of corporate strategy, **issuers should provide details on the board's involvement and contributions to strategic planning, including any specific trends considered by the board during this process and the strategic priorities that emerge given the context of the organization**. Unlike many Canadian issuers that provide boilerplate commentary, Emera and Sun Life provide details on the board's contribution and involvement in the strategic planning process and the key areas of consideration during the most recent strategic planning cycle. **p.35**

##### Lambay, 2020, p. 42, 43, 46, 47 – Délégation – Prévision des besoins stratégiques futurs/ risques futurs – Intégration de la stratégie dans chaque réunion du conseil en plus de retraites dédiées à des analyses stratégiques approfondies

- For boards in highly regulated sectors, Isabelle Courville says **boards can delegate certain requirements to committees in order to preserve more board time to discuss operations and strategy**. When she was chair of Laurentian Bank, Courville says she considered a meeting successful if the board spent at least 60% of its time on the business. **p.42**
- Kvisle: "Good boards today have elevated their analysis and discussion from just second-**looking at things that management has already looked at, to trying to get above that and think about what are the real strategic risks and opportunities and what's the world really going to look like five years from now.**" **p.43**
- Global Risk Institute's Hughes says **chairs should always be thinking about emerging issues and construct their agendas accordingly**. "You do have to maintain the business-as-usual agenda items, that's just how you run the place," he says. "But you should always look to discussion topics that can raise the awareness of your board, that allow them to challenge management and how they're thinking about these issues." **p.43**

- Bill Anderson takes the point a step further. Addressing strategy at every board meeting is now common for most companies in his circle, he says. Sun Life’s approach, one echoed by several other chairs, is to address a different strategy item at each meeting. “Sometimes it will be a bit more conceptual around certain areas and, therefore, you want to see how management’s thinking evolves as you go through the year. In other situations, the strategy is more about execution and you monitor that through regular operational performance.” [...] While the consensus is that **strategy needs to be a part of every board meeting**, several of those interviewed still see value in having dedicated off-site strategy sessions or retreats. Those are no longer the only times strategy is discussed, but they do allow for deeper dives on specific topics in a way that regular board meetings do not. **p.46 et 47**

## ÉTATS-UNIS

### CII, 2023, point 2.7 b, p. 4 – Surperviser par le conseil de la performance du pdg afin de garantir la poursuite d’une stratégie optimale

- 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.**

### NACD, 2022, p. 35, 36 et 37 – Comment établir des jalons stratégiques adéquats

- **Adapting strategy over the medium- and long-term as the business environment and context evolves requires monitoring the achievement of strategic milestones, while also watching for developments that may change assumptions and require adjustments.** In determining with management what strategic milestones to aim for, how to measure progress, and in what time frame, consideration should be given to how resources (including but not necessarily limited to financial capital and management talent) are being allocated to execute the company’s strategy, and who in the executive team is charged with driving the company’s most critical projects. [...] Boards should consider how to disclose milestones and their achievement in the broader context of long-term strategy to help shareholders and other key stakeholders understand prospects that extend well beyond the quarterly earnings period. **p. 35, 36**
- Consistent with directors’ fiduciary obligations and the board’s oversight role, directors need to understand how environmental and social issues affect the company’s strategy, operations, risk profile, and relationships with important stakeholders. The board should consider how corporate strategy affects environmental and social matters and what risks may affect that strategy. **p. 37**

### Business Roundtable 2016, p. 7, 9 – Structure générale

- The board’s oversight function encompasses a number of responsibilities, including: Approving corporate strategy and monitoring the implementation of strategic plans. The board should have meaningful input into the company’s long-term strategy from development through execution, should approve the company’s strategic plans and should regularly evaluate implementation of the plans that are designed to create long-term value. The board should understand the risks inherent in the company’s strategic plans and how those risks are being managed. **p. 7**
- Strategic planning. The CEO and senior management generally take the lead in articulating a vision for the company’s future and in developing strategic plans designed to create long-term value for the company, with meaningful input from the board. Management implements the plans following board approval, regularly reviews progress against strategic plans with the board, and recommends and carries out changes to the plans as necessary. **p. 9**

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## GRANDE-BRETAGNE

### Wates, 2018, p. 12 – Mise en œuvre de la stratégie dans l'ensemble de l'organisation

- An effective board develops a strategy and business model to generate long-term sustainable value. It is **responsible for ensuring that its strategy is clearly articulated and implemented throughout the organisation**, and that it, along with the company values, supports appropriate behaviours and practices.
- The board should lead on the establishment of **transparent policies** in relation to raising concerns about misconduct and unethical practices; such policies should include effective review processes.
- The board manages conflicts of interest and a balance should be struck between short-term targets or needs, and long-term aspirations.

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## AUSTRALIE

### Governance institute of Australia, 2023, p. 11 – Ensemble des composantes d'une stratégie efficace – Agenda

- An effective strategy will comply with all legal and policy requirements and typically: (1) have a longer time horizon than one year (2) take account of longer-term value drivers of the entity (3) examine the operating environment and external factors that have significant impact on the entity (4) analyse the internal strengths and weaknesses of the entity (5) consider government policy priorities (6) select between competing priorities to define goals, and ways to implement those goals (7) assess the funding implications of agreed goals or objectives (8) include key performance measures containing milestones and expected outcomes (9) consider risk appetite and tolerances, and (10) consider the views of stakeholders and the wider community.
- The board should review and update the strategy regularly to ensure it remains relevant and is responsive to changing conditions. This may involve setting annual strategic planning days in the board's annual workplan, periodic board meetings devoted to strategy, or including strategy as a recurring board meeting agenda item. Boards may also consider using an executive committee with the responsibility for monthly horizon scanning, identification of new or emerging risks to the strategy and reporting back to the board with any recommendations.

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## FRANCE

### Middlenext, 2021, p. 16, 17 – Rôles respectifs selon la démarche stratégique : élaboration, choix, mise en œuvre et contrôle

- Le « membre du Conseil » remplit-il sa mission dans le processus stratégique ? : Toute confusion nuit à la responsabilité de chaque acteur : « dirigeant » d'une part et « membre du Conseil », d'autre part. **Il est indispensable, en matière de stratégie, de distinguer clairement les rôles respectifs de chacun à l'occasion des quatre étapes d'une démarche stratégique : élaboration, choix, mise en œuvre et contrôle.** Le « dirigeant » a la responsabilité d'élaborer, de proposer puis de conduire la stratégie. Le « membre du Conseil » a comme première responsabilité de choisir parmi les scénarios possibles celui qui sert au mieux le projet, la pérennité de l'entreprise et sa performance durable. Il surveille ensuite que la mise en œuvre de la stratégie par le pouvoir exécutif soit en ligne avec les objectifs définis. Toute modification substantielle des orientations stratégiques est à nouveau explicitée en assemblée générale. **p. 16, 17**

## ALLEMAGNE

### Rationale of the amendments, 2022, p. 4 – Contrôle de la performance – durabilité des entreprises

- Effective implementation of the corporate strategy requires comprehensive corporate controlling and performance monitoring. Legal obligations in the area of sustainability already result from the Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz). The reporting requirements of the Act implementing the Non-financial Reporting Directive today and the Corporate Sustainability Reporting Directive (CSRD) in the future cannot be met without such system-related prerequisites.

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### 3.2.2 Rôle du CA relativement à la gestion de risque

#### CANADA

##### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 26, 72 et 76 – Détermination des moyens nécessaires pris par la direction pour mitiger les risques – Détermination des limites de prise de risque – Risques impossibles à évaluer – Rapports périodiques d'évaluation – Cyberrisques – Changements climatiques

- Les administrateurs doivent mettre à profit leur point de vue externe et leur expertise afin de collaborer avec la direction pour identifier les principaux risques liés aux activités. **Les administrateurs doivent déterminer si la direction prend les moyens nécessaires pour atténuer ces risques de manière rapide et efficace.** Presque toutes les sociétés doivent prendre des mesures particulières pour atténuer les risques liés à la **cybersécurité** et aux **changements climatiques**.
- Lorsque les risques peuvent être évalués, les **limites de prise de risque fixées par le conseil à l'intention de la direction** doivent être incluses dans le cadre de gestion des risques. Ce cadre doit aussi décrire le processus **d'examen périodique des plans portant sur la gestion des risques** qui sont interreliés ou difficiles à quantifier par l'évaluation de l'adéquation du capital et des liquidités, de la solidité des systèmes de secours et de l'étendue des compétences et du degré de diversification des marchés, des produits et des chaînes d'approvisionnement.
- Tenir compte de façon proactive de l'incidence éventuelle des incertitudes et des **risques impossibles à évaluer** en conservant des ressources en capital et des liquidités suffisantes, en mettant en place des systèmes de secours en cas de défaillance des principaux systèmes, en augmentant l'étendue des compétences et en prévoyant une plus grande diversification des marchés, des produits et des chaînes d'approvisionnement.
- Le conseil d'administration doit demander à la direction de lui présenter des **rapports périodiques d'évaluation du profil de risque** de la société en fonction de son appétit pour le risque afin de lui permettre de surveiller les activités de prise de risque. Ces rapports devraient également fournir des précisions sur les résultats des mesures d'atténuation mise en œuvre par la direction.

##### CCGC, 2022, p. 38, 39 – Décrire en détail les processus spécifiques par lesquels le conseil assure l'atténuation, l'évaluation et la surveillance des risques importants

- Unlike the boilerplate commentary provided by many Canadian issuers in this area, Bank of Nova Scotia, RioCan, and Thomson Reuters all describe the board's role in overseeing risk. Of note, these issuers provide an overview of the key risks currently facing their business and the risks that are being closely monitored by the board. **They also describe in detail the specific processes by which the board ensures that important risks are being adequately and systematically assessed, monitored, and mitigated.** In the case of the Bank of Nova Scotia and Thomson Reuters, circular disclosure also provides clear details on how certain risks are delegated to the various board committees. Notably, where material, environmental and social risks are being increasingly integrated into corporate risk management frameworks and elevated to the attention of the board.

##### CDPQ, rapport d'investissement durable, 2022, p. 80 – Cyberrisques

- Face à la multiplication des cyberattaques et à l'émergence des technologies de rupture, les risques technologiques sont en constante augmentation et peuvent affecter nos opérations et celles de nos sociétés en portefeuille. Afin d'en suivre l'évolution et de les prévenir, nous avons mis en place différents processus à travers l'ensemble de nos activités.
- Nous réalisons des analyses sectorielles et des revues régulières des risques de notre portefeuille global. Nous menons également des analyses de cybersécurité pour nos entreprises en portefeuille et élaborons au besoin des plans de réduction des risques. Nous appuyons nos équipes d'investissement et jouons un rôle-conseil auprès des entreprises, tant sur le plan de la prévention qu'en réponse à des incidents. Par ailleurs, dans certains cas, la mise en œuvre de nos recommandations peut être exigée avant d'effectuer un investissement.

- Nous révisons périodiquement l'exposition de nos entreprises en portefeuille aux technologies de rupture. Nous évaluons également leur niveau de résilience au sein de leur secteur d'activité ainsi que leur degré de maturité numérique et d'adaptation aux nouvelles technologies.

**GL, 2023, p. 24 – Cyberrisques**

- Given the regulatory focus on, and the potential adverse outcomes from, cyber-related issues, it is our view that cyber risk is material for all companies. We therefore believe that it is critical that companies evaluate and mitigate these risks to the greatest extent possible. With that view, we encourage all issuers to provide clear disclosure concerning the role of the board in overseeing issues related to cybersecurity.

**State Street, 2023, p. 16 – Divulgence de la manière par laquelle le conseil assure la surveillance de son système de gestion des risques et d'identification des risques – Création de valeur à long terme**

- We believe that risk management is a key function of the board, which is responsible for setting the overall risk appetite of a company and for providing oversight on the risk management process established by senior executives at a company. We allow boards to have discretion regarding the ways in which they provide oversight in this area. However, **we expect companies to disclose how the board provides oversight on its risk management system and risk identification.** Boards should also review existing and emerging risks that evolve in tandem with the changing political and economic landscape or as companies diversify or expand their operations into new areas.
- As responsible stewards, we believe in the importance of effective risk management and oversight of issues that are material to a company. To effectively assess the risk of our clients' portfolios and the broader market, **we expect our portfolio companies to manage risks and opportunities that are material and industry-specific and that have a demonstrated link to long-term value creation,** and to provide high-quality disclosure of this process to shareholders.
- Consistent with this perspective, we may seek to engage with our portfolio companies to better understand how their boards are overseeing risks and opportunities the company has deemed to be material to its business or operations. If we believe a company has failed to implement and communicate effective oversight of these risks, we may consider voting against the directors responsible.

## ÉTATS-UNIS

**CII, 2023, point 2.7 b, p. 4 – Partage de responsabilité des administrateurs à l'égard de la surveillance efficace du risque – Divulgence d'information aux actionnaires**

- Board's Role in Strategy and Risk Oversight: [...] 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 disclose to shareowners, at least annually, sufficient information to enable them to assess whether the board is carrying out its oversight responsibilities effectively.**

**NACD, 2022, p. 37, 38 – Système de gestion des risques – Taxonomie des risques**

- Robust oversight of risk management is critical to preventing—or mitigating the impact of—a crisis. In addition to understanding the risks associated with corporate strategy and business operations, **boards must provide**

**oversight of management’s efforts to manage and mitigate risks, which requires that systems are in place to bring risk and compliance issues to both management’s and the board’s attention [...] The taxonomy of risk will differ for each company, but risks to consider in the current environment include **supply chain disruption and resource scarcity, inflation, product safety failure, cybersecurity and privacy breaches, natural disasters and pandemics, liquidity concerns, and exposure to environmental and social issues and associated reputational harm.** In particular, the board should consider whether the company is positioned to withstand shocks from system-wide risks, such as climate change, water shortages, pandemic outbreaks, and global cyber threats, which will likely intensify in the coming years. Boards should evaluate whether they are appropriately structured for risk and compliance oversight, and should also review periodically the information and control systems designed to ensure that relevant information is brought to their attention in a timely manner. Information and reporting systems are key to the board’s ability to provide oversight of management performance generally, including compliance and risk management and mission-critical risks more specifically. **p. 37****

- Executive wrongdoing, significant product failures, cybersecurity breaches, environmental disasters, human rights violations within the supply chain, and customer mistreatment have all given rise to claims that boards were insufficiently attentive. Risk oversight requires boards to understand what is going on within the organization and how effective the company’s enterprise risk management (ERM) programs are in identifying, managing, and mitigating key risks. The board should explore with management whether data analytics and AI may provide some solutions. **p. 37**

**Business Roundtable 2016, p. 7, 9 – Divulgence de la manière par laquelle le conseil assure la surveillance de son système de gestion des risques et d’identification des risques**

- The board’s oversight function encompasses a number of responsibilities, including: Setting the company’s risk appetite, reviewing and understanding the major risks, and overseeing the risk management processes. The board oversees the process for identifying and managing the significant risks facing the company. The board and senior management should agree on the company’s risk appetite, and the board should be comfortable that the strategic **p.7**
- Identifying, evaluating and managing risks. Management identifies, evaluates and manages the risks that the company undertakes in implementing its strategic plans and conducting its business. Management also evaluates whether these risks, and related risk management efforts, are consistent with the company’s risk appetite. Senior management keeps the board and relevant committees informed about the company’s significant risks and its risk management processes. **p.9**

**GRANDE-BRETAGNE**

**UK Code, 2018, p. 12 – Description de la gestion des risques dans le rapport annuel – Révision annuelle de la gestion du risque**

- The board should carry out a robust assessment of the company's emerging and principal risks. The board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, what procedures are in place to identify emerging risks, and an explanation of how these are being managed or mitigated.
- The board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls.
- Taking account of the company's current position and principal risks, the board should explain in the annual report how it has assessed the prospects of the company, over what period it has done so and why it considers that period to be appropriate. The board should state whether it has a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary.

**AUTRES SOURCES**

- Purplebricks Group PLC, 2021, p. 4

## AUSTRALIE

### ASX Council, 2019, p. 26, 27, 28 – Comité de gestion de risque

- While ultimate responsibility for a listed entity's risk management framework rests with the full board, having a risk committee (be it a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk) can be an efficient and effective mechanism to bring the transparency, focus and independent judgement needed to oversee the entity's risk management framework. **p. 26**
- The boards of some listed entities may decide that they are able to oversee the entity's risk management framework efficiently and effectively without establishing a risk committee. If they do, the entity should disclose in its annual report or on its website the fact that it does not have a risk committee and explain the processes it employs for overseeing the entity's risk management framework. **p. 26**
- The board or a committee of the board should review the entity's risk management framework at least annually to satisfy itself that it continues to be sound and that the entity is operating with due regard to the risk appetite set by the board; and disclose, in relation to each reporting period, whether such a review has taken place. **p. 27**
- A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks. [...]The Council would encourage entities that believe they do not have any material exposure to environmental or social risks to consider carefully their basis for that belief and to benchmark their disclosures in this regard against those made by their peers. **p. 27**
- The Council would encourage entities that believe they do not have any material exposure to environmental or social risks to consider carefully their basis for that belief and to benchmark their disclosures in this regard against those made by their peers. **p. 28**

## ALLEMAGNE

### German Corporate Governance Code, 2022, p. 4 – Objectif liés à la durabilité

- The internal control system and the risk management system shall also cover sustainability-related objectives, unless required by law anyway. This shall include processes and systems for collecting and processing sustainability-related data.

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## BRÉSIL

### IBGC 2023, p. 63 – Trois lignes d'action de la gestion de risque – Politiques et directives

- Risk management is supported by three lines of action. The first corresponds to the managers of each business line; the second, to the risk management, internal controls, and compliance roles; and the third, to the internal auditors.
- As the highest governance body, the board of directors must ensure proper risk management, approving policies and guidelines that develop monitoring mechanisms. In organizations where the board does not exist, the shareholders are responsible for this. In addition to the board, the audit committee, the board committees, the executive management, and the fiscal council play an important role in risk management. **p. 63**

## INTERNATIONAL

### ICGN, 2021, p. 24 – Approche globale de la surveillance des risques – Éléments à inclure dans l'analyse des risques

- Comprehensive approach: **The board should adopt a comprehensive approach to the oversight of risk which should be enterprise-wide and include threats to the company's business model, cyber-security, supply chain resilience, performance, solvency, liquidity and reputation.** Risk oversight should extend beyond financial capital to include human capital and natural capital and in particular, systemic risks identified in the United Nations Sustainable Development Goals, where these are relevant to the company's business model and strategy. Fundamental to this is the board's agreement on its risk appetite, and the board should seek to publicly communicate this in basic terms.



- Risk culture: The board should lead by example and foster an effective risk culture that encourages openness and constructive challenge of judgements and assumptions. This entails recognizing the nature of the wide spectrum of risks a company may face classified by frequency, severity (e.g., low, medium, high) and a recognition of the human element in risk. The company's culture regarding risk and the process by which issues are escalated and de-escalated within the company should be evaluated periodically.
- Dynamic process : The board should ensure that risk is appropriately reflected in the company's strategy and capital allocation. Risk should be managed in a rational, appropriately independent, dynamic and forward-looking way. This process of managing risks should be continual and include consideration of a range of plausible impacts.

### 3.2.3 Gestion des comités (Structure, rôle et indépendance)

#### CANADA

##### Lambay, 2020, p. 52, 53 – Évolution des rôles des comités afin d'adresser adéquatement les risques et les opportunités à venir – Mutation du rôle du comité d'audit

- In Stevenson's view, the critical starting point is that boards need to proactively revisit committee and board mandates on a regular basis. "There's no prescription," she says. "But it does matter that we revisit our mandates to make sure that they're relevant, to **make sure that the biggest issues are getting exposure at the full board and that we are adaptive, that our committee mandates evolve to make sure that we're addressing these emerging issues and opportunities one way or another.**" p.52
- James Cherry points to audit as an area where current committee mandates might evolve to incorporate new issues. "**Audit committees'** responsibilities are extending into the culture of the organization. They're extending into behaviours, what are acceptable and not acceptable," says Cherry. "The boards that I'm on, the audit committee is responsible for things like the whistleblower line. "[Likewise,] from an ESG reporting perspective, if claims are being made, the audit committee is going to want to understand what the sources of those are and if the board is comfortable with what's being said." Data governance is another emerging area where some suggested that the audit committee mandate could be extended to incorporate its oversight. As noted, more companies are learning to view and use data as an asset, commercialize it, apply AI and other technologies to analyze and deploy it. As such, there's an argument to be made that the function traditionally tasked with being custodian of the "truth" when it comes to financial information should also have responsibility for ensuring data integrity. p.53

##### GL, 2023, p. 17 – Comptable, CFO ou contrôleur d'expérience analogue au sein du comité d'audit

- At a minimum, we believe audit committees should have **at least one member with experience as a certified public accountant, CFO or corporate controller of similar experience**, or demonstrably meaningful experience overseeing such functions as senior executive officers (financial expert). This is a slightly stricter definition than the CSA's 'financial literacy' requirement and would be closer to that of the SEC for audit committee financial experts.

##### State Street, 2023, p. 3, 4 – Indépendance des membres des comités – Comité d'audit, de rémunération et de nomination

- Directors Elections : [...]Factors we consider when evaluating governance practices include, but are not limited to the following: (1) Shareholder rights (2) Board independence (3) Board structure. If a company demonstrates appropriate governance practices, we believe a director should be classified as independent based upon the relevant listing standards or local market practice standards. In such cases, **the composition of the key oversight committees of a board should meet the minimum standards of independence**. Accordingly, we may vote against a nominee at a company with appropriate governance practices if the director is classified as non-independent under relevant listing standards or local market practice and serves on a key committee of the board (compensation, audit, nominating, or committees required to be fully independent by local market standards).
- Conversely, if a company demonstrates negative governance practices, State Street Global Advisors believes the classification standards for director independence should be elevated. In such circumstances, we will evaluate all

director nominees based upon the following classification standards: (1) Is the nominee an employee of or related to an employee of the issuer or its auditor? (2) Does the nominee provide professional services to the issuer? (3) Has the nominee attended an appropriate number of board meetings? (4) Has the nominee received non-board related compensation from the issuer?

**Vanguard, 2022, p. 4 – Indépendance des membres du comité de nomination**

- A fund will generally vote against the nominating committee and all nonindependent board members of a company if that company does not maintain a majority independent board. In the second year that a board is not majority independent, the fund may vote against the entire board.

**ISS, 2023, p. 11 et 12 – Indépendance des membres des comités – Comité d’audit, de rémunération et de nomination**

- Non-Independent Directors on Key Committees : General Recommendation: Vote withhold for members of the audit, compensation, or nominating committee who: (1) Are Executive Directors; (2) Are Controlling Shareholders; or (3) Is a Non-employee officer of the company or its affiliates if he/she is among the five most highly-compensated.
- Background: In order to promote independent oversight of management, the board as a whole and its key board committees should meet minimum best practice expectations of no less than majority independence. The presence of executive directors and those having significant influence over management may impede the ability of key board committees to provide independent oversight of audit, executive compensation or nomination matters. Director elections are seen to be the single most important use of the shareholder franchise.

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**BlackRock, 2023, p. 4 – Indépendance des membres des comités – Comité d’audit, de rémunération et de nomination**

- It is our view that a majority of the directors on the board should be independent to ensure objectivity in the decision-making of the board and its ability to oversee management. In addition, all members of audit, compensation, and nominating/governance committees should be independent. Our view of independence may vary from listing standards.
- Common impediments to independence may include: (1) Employment as a senior executive by the company or a subsidiary within the past five years (2) An equity ownership in the company in excess of 20% (3) Having any other interest, business, or relationship (professional or personal) which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the company and its shareholders
- We may vote against directors who we do not consider to be independent, including at controlled companies and those listed on venture stock exchanges, when we believe oversight could be enhanced with greater independent director representation. To signal our concerns, we may also vote against the chair of the nominating/governance committee, or where no chair exists, the nominating/governance committee member with the longest tenure.

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**BMO, 2021, p. 6, 10 – Cas de l’actionnaire majoritaire – Comité d’audit, de rémunération et de nomination**

- For companies with controlling shareholders, we encourage boards to have a majority of independent directors. However, in cases where the controlling or majority shareholder opts to put forward a majority of non-independent directors to the board, there should be a sufficient number of independent non-executives on the board to allow **key committees – audit, compensation and nomination** – to operate with independence. For this to be achieved we would, in most cases, expect there to be a **minimum of one-third of fully independent directors on the board.** p. 6
- We encourage companies to move towards **fully independent audit and compensation committees, as well as a nomination committee composed of a majority of independent directors** [...] If the audit committee includes non-independent directors, the review of related-party transactions should be conducted exclusively by independent audit committee members. This is particularly important for related-party transactions that involve executive management or controlling shareholders. [...] As a best practice we believe that compensation committees should consist exclusively of independent non-executive directors. [...] A nomination committee should oversee all board and senior executive appointments. Normally it should be a committee of independent non-executive directors and the company chair, drawing on executive advice as required. We prefer a fully

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independent committee. However, we recognise that in some instances, a non-independent director or representative of a large shareholder may be appropriate.

**Share, 2022, p. 11 – Comité responsable de la vérification, de la rémunération et de la nomination constitués de membres indépendants, sans être choisis ni nommés par la direction**

- Tous les conseils devraient avoir des comités responsables de la vérification, de la rémunération et de la nomination de nouveaux membres du conseil. Tous les membres de ces comités doivent être des administrateurs indépendants. Ils ne doivent ni être nommés ni choisis par la direction.
- Les comités de vérification devraient avoir au moins un membre ayant une expérience financière récente et pertinente.
- [...]
- Si le comité de rémunération d'une société inclut des membres qui ne sont pas indépendants, [le fonds] portera une attention particulière aux régimes de rémunération de la société. Il pourra voter contre certains régimes s'il estime que le manque d'indépendance du comité a un impact sur la rémunération des dirigeants de la société.

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**CDPO, 2020, p. 4 – Cas de l'actionnaire majoritaire – Comité d'audit, de rémunération et de nomination**

- The nomination, compensation and audit committees or their equivalents must be made up entirely of independent members.
- **When a shareholder holds a large block of shares, the nomination and compensation committees or their equivalents must be made up entirely of members who are independent of the company**, with the majority of these members also independent of the shareholder with the large block of shares. The **audit committee**, however, must be made up entirely of members who are independent of both the company and the shareholder with the large block of shares.
- We recommend that, in addition to adopting mandates for each of these committees, the companies make the mandates available on their websites and to include an annual summary of the activities of each committee in the proxy.

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**Teachers, 2023, p. 11 – Indépendance des membres du comité de gouvernance**

- Comité de gouvernance et des mises en candidature : Nous appuyons la mise sur pied d'un comité de gouvernance et des mises en candidature totalement indépendant. Nous envisagerons de ne pas appuyer les administrateurs si nous estimons que l'absence ou le manque d'indépendance d'un comité de gouvernance et des mises en candidature, de ses activités ou de ses décisions ont nui à la composition du conseil et à la gouvernance de la société. En règle générale, nous faisons état de nos préoccupations en votant d'abord contre le président du comité. Si les préoccupations ne sont pas réglées ou dans des situations extraordinaires, nous voterons contre l'ensemble du comité.

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## ÉTATS-UNIS

**CII, 2023, point 2.13 a, p. 6 et 7 – Gestion du comité d'audit – Contenu du rapport d'audit – Compensation des membres du comité d'audit**

- **Audit Committee Responsibilities Regarding Independent Auditors:** The audit committee should fully exercise its authority to hire, compensate, oversee and, if necessary, terminate the company's independent auditor. In doing so, the committee should take proactive steps to promote auditor independence and audit quality. [...]
- **The audit committee report** should provide meaningful information to investors about how the committee carries out its responsibilities. The report should include an explanation of how the committee carries out its auditor compensation responsibilities in consideration of audit quality objectives. The report should include a fact specific explanation for not changing the company's auditor if the committee chooses to renew the engagement of an auditor with more than 10 consecutive years of service, or if the auditor is retained despite knowledge of substantive deficiencies identified during the committee's review of the considerations described above.
- **Competitive Bids:** The audit committee should seek competitive bids for the external audit engagement at least every five years. **point 2.13 b**

- **Audit Committee Charters:** The proxy statement should include a copy of the audit committee charter and a statement by the audit committee that it has complied with the duties outlined in the charter. **point 2.13 d**

**Commonsense Principles, 2018, p. 1 – Rotation des rôles de leadership au sein des comités**

- Boards should consider periodic rotation of board leadership roles (i.e., committee chairs and the lead independent director), balancing the benefits of rotation against the benefits of continuity, experience and expertise.

**ISG, 2017, principe 5 – Délégation – Indépendance au sein du comité d’audit, de rémunération, de nomination et de gouvernance**

- 5.3 Boards should establish committees to which they delegate certain tasks to fulfill their oversight responsibilities. At a minimum, these committees should include fully independent audit, executive compensation, and nominating and/or governance committees.

**AUTRES SOURCES**

- [Nasdaq, 5600, IM-5605-2 à IM-5605-5 \(p. 4 et 5 du pdf pour le comité d’audit\)](#)
- [Nasdaq, 5600, IM-5605-5 et IM-5605-6 \(p. 5 à 7 du pdf pour le comité de compensation\)](#)

**GRANDE-BRETAGNE**

**UK Code, 2018, p. 10 – Indépendance et nombre de membre du comité d’audit – Mandat du comité d’audit**

- The board should establish an audit committee of independent non-executive directors, with a minimum membership of three, or in the case of smaller companies, two. The chair of the board should not be a member. The board should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole shall have competence relevant to the sector in which the company operates.
- **The main roles and responsibilities of the audit committee** (1) monitoring the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance, and reviewing significant financial reporting judgements contained in them; (2) providing advice (where requested by the board) on whether the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for shareholders to assess the company's position and performance, business model and strategy; (3) reviewing the company's internal financial controls and internal control and risk management systems, unless expressly addressed by a separate board risk committee composed of independent non-executive directors, or by the board itself; (4) monitoring and reviewing the effectiveness of the company's internal audit function or, where there is not one, considering annually whether there is a need for one and making a recommendation to the board;

**AUSTRALIE**

**ACSI, governance guidelines, 2021, p. 15 – Taille des comité – Indépendance – Gestion des réunions avec des membres externes au comité – Consultant – Conflits d’intérêt**

- The board should ensure that it establishes audit, risk, remuneration and nomination committees, and any other committees as appropriate for the nature of its business.
- In general, the following expectations apply: (1) A committee should be a reasonable size taking into account the size of the board. (2) The chair of any board committee should be an independent non-executive director other than the board chair. (3) Committees should be majority independent, except the audit committee which should have only independent directors. (4) Although it may be appropriate for committees to invite executives and executive directors to be present at meetings, committees should meet regularly without executives present. (5) Committees should have the opportunity to select their own service providers and advisers at a reasonable cost to the company (6) Companies are encouraged to disclose which material service providers the board and/or committees have appointed, the types of services those service providers have supplied, and the types of services supplied by the same service providers to other parts of the company. (7) During takeovers and related-party

transactions, all committees formed should only comprise directors that are not associated with the counterparty to the transaction.

## BRÉSIL

### IBGC 2023, p. 39 – Nombre de comité – Règlement intérieur – Rapport périodique – Évaluation des comités

- The number and nature of board committees should observe the organization's need, so the scope and benefit of each committee's existence should be periodically reassessed to ensure that all of them have an effective role.
- Each board committee must have bylaws, approved by the board of directors, that establish its composition, scope of action, coordination, operation, among others.
- The board committees must present a work plan and periodically report on their activities to the board of directors.
- The board committees must meet regularly with the board of directors, the fiscal council, and the other board committees in order to ensure an adequate flow of information.
- In line with the board's evaluation process, board committees should be evaluated periodically.

## FRANCE

### AFEP & MDEDF, 2022, p. 13, 14 – Pourcentage d'administrateurs indépendants – Interlocking (croisé) – Responsabilité du conseil suivant l'établissement de comités spécialisés – Modalités de fonctionnement – Règlement intérieur – Étendue des fonctions des comités

- **La proportion d'administrateurs indépendants pour les comités**, recommandée par le code, est précisée ci-après. Pour établir les pourcentages d'administrateurs indépendants au sein des comités du conseil, les administrateurs représentant les actionnaires salariés ainsi que les administrateurs représentant les salariés ne sont pas comptabilisés. Il convient d'éviter la présence dans les comités d'administrateurs croisés. (c.à.d. : Les administrateurs croisés ou réciproques visent la situation d'un dirigeant mandataire social de la société A qui siège dans un comité du conseil de la société B et inversement, un dirigeant mandataire social de la société B qui siège dans le comité analogue du conseil de la société A. ) **p. 13**
- **Lorsque le conseil s'est doté de comités spécialisés**, en aucun cas la création de ces comités ne doit dessaisir le conseil lui-même qui a seul le pouvoir légal de décision, ni conduire à un démembrement de son collège qui est et doit demeurer responsable de l'accomplissement de ses missions. Les comités ne doivent pas, en effet, se substituer au conseil mais en être une émanation qui facilite le travail de ce dernier. Pour cette raison notamment, il convient d'insister sur la qualité des comptes rendus d'activités établis par les comités au conseil et sur les règles qui doivent permettre à ce dernier d'être pleinement informé, facilitant ainsi ses délibérations et sur l'inclusion dans le rapport sur le gouvernement d'entreprise d'un exposé sur l'activité des comités au cours de l'exercice écoulé. **p. 14**
- **Les comités du conseil peuvent** prendre contact, dans l'exercice de leurs attributions, avec les principaux dirigeants de la société après en avoir informé les dirigeants mandataires sociaux et à charge d'en rendre compte au conseil. Les comités du conseil peuvent solliciter des études techniques externes sur des sujets relevant de leur compétence, aux frais de la société, après en avoir informé le président du conseil d'administration ou le conseil d'administration lui-même et à charge d'en rendre compte au conseil. En cas de recours par les comités aux services de conseils externes (par exemple, un conseil en rémunération en vue d'obtenir notamment des informations sur les systèmes et niveaux de rémunérations en vigueur dans les principaux marchés), les comités veillent à l'objectivité du conseil concerné. Chaque comité est doté d'un règlement précisant ses attributions et ses modalités de fonctionnement. Les règlements des comités, qui doivent être approuvés par le conseil, peuvent être intégrés au règlement intérieur du conseil ou faire l'objet de dispositions distinctes. Le secrétariat des comités est assuré par des personnes désignées par le président du comité ou en accord avec celui-ci. **p. 14**

### AMF, recommandation 2012-02, p. 23 – Fonctionnement et bilan des comités – Description des travaux

- L'AMF recommande aux sociétés de décrire le fonctionnement, les missions ainsi que le bilan des comités, en exposant les interactions entre ces comités et le conseil. Les investisseurs attendent une description des travaux des différents comités réalisés ou engagés au cours de l'exercice écoulé.
- S'agissant de la composition des comités et notamment du comité d'audit, l'AMF encourage les sociétés à confier leur présidence à des administrateurs indépendants et à augmenter la présence de ces derniers dans l'ensemble

des comités. Elle incite également les sociétés à éviter, autant que possible, la présence de dirigeants mandataires sociaux au sein des comités et a fortiori de leur en confier la présidence.

## INTERNATIONAL

### [BlackRock Global, 2023](#), p. 9 – **Conflits d'intérêt – Comité ad hoc**

- There are matters for which the board has responsibility that may involve a conflict of interest for executives or for affiliated directors. It is our view that objective oversight of such matters is best achieved when the board forms committees comprised entirely of independent directors. In many markets, these committees of the board specialize in audit, director nominations, and compensation matters. An ad hoc committee might also be formed to decide on a special transaction, particularly one involving a related party, or to investigate a significant adverse event.

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## 3.2.4 Généralités

## ÉTATS-UNIS

### [ISG, 2017](#), principe 4 – **Indépendance du président du conseil**

- 4.3 The role of the independent board leader should be clearly defined and sufficiently robust to ensure effective and constructive leadership. The responsibilities of the independent board leader and the executive chairperson (if present) should be agreed upon by the board, clearly established in writing and disclosed to shareholders. Further, boards should periodically review the structure and explain how, in their view, the division of responsibilities between the two roles is intended to maintain the integrity of the oversight function of the board.

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## AUSTRALIE

### [ASX Council, 2019](#), p. 8 – **Mandat écrit avec tous les administrateurs et dirigeants – Signé personnellement plutôt que par l'entremise d'une société de gestion**

- A listed entity should have a written agreement with each director and senior executive setting out the terms of their appointment.
- Usually the agreement will take the form of a letter of appointment in the case of a non-executive director and a service contract in the case of an executive director or other senior executive.
- With one exception, the agreement in question should be with the director or senior executive personally rather than an entity supplying their services. This is to ensure that the director or senior executive is personally accountable to the listed entity for any breach of the agreement

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### [ACSI, governance guidelines, 2021](#), p. 8 – **Appréciation par les administrateurs des conseils fournis par un expert**

- Directors must not blindly follow the advice of experts and should critically assess all matters put before them. Although there is long-standing law and guidance for directors, evidence persists that this approach is not always implemented in practice, and that continued vigilance is required

### 3.3 Orientation / formation continue / évaluation des compétences

#### 3.3.1 Évaluations périodiques

##### CANADA

###### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 29 – Auto-évaluation périodique – Processus suffisamment dynamique

- Les lignes directrices actuelles en matière de gouvernance du Canada exigent que chaque conseil d'administration procède à une auto-évaluation périodique. Ce processus d'évaluation doit être suffisamment dynamique pour refléter l'environnement opérationnel en mutation de l'entreprise et permettre de mesurer ses résultats par rapport aux attentes croissantes des parties prenantes.

###### BlackRock, 2023, p. 8 – Le comité de nomination/gouvernance ou l'administrateur principal indépendant devrait procéder aux évaluations de performance et de compétence

- We encourage boards to periodically review director qualifications and skills to ensure relevant experience and diverse perspectives are represented in the boardroom. To this end, performance reviews and skills assessments should be conducted by the nominating/governance committee or the Lead Independent Director. This process may include internal board evaluations; however, boards may also find it useful to periodically conduct an assessment with a third party. We encourage boards to disclose their approach to evaluations, including objectives of the evaluation; if an external party conducts the evaluation; the frequency of the evaluations; and, whether that evaluation occurs on an individual director basis.

##### ÉTATS-UNIS

###### CII, 2023, point 2.8 c, p. 5 – Évaluation des administrateurs ayant reçu un vote négatif de la part d'un nombre important d'actionnaire

- Evaluation of Directors: Boards should review their own performance periodically. That evaluation should include a review of the performance and qualifications of any director who received "against" votes from a significant number of shareowners or for whom a significant number of shareowners withheld votes.

###### Commonsense Principles, 2018, p. 4 – L'administrateur non exécutif, l'administrateur principal indépendant ou un comité approprié devrait procéder aux évaluations de performance et de compétence

- A board should have a robust process to evaluate itself on a regular basis, led by the non-executive chair, lead independent director or appropriate committee chair. The board should have the fortitude to replace ineffective directors.

##### GRANDE-BRETAGNE

###### UK Code, 2018, p. 10 – Évaluateur externe

- There should be a formal and rigorous annual evaluation of the performance of the board, its committees, the chair and individual directors. The chair should consider having a regular externally facilitated board evaluation. In FTSE 350 companies this should happen at least every three years. The external evaluator should be identified in the annual report and a statement made about any other connection it has with the company or individual directors.
- The chairs should act on the results of the evaluation by recognising the strengths and addressing any weaknesses of the board. Each director should engage with the process and take appropriate action when development needs have been identified.

###### Wates, 2018, p.14 – Avantage des évaluations

- Regular evaluation of the board can help individual directors to contribute effectively and highlight the strengths and weaknesses of the board as a whole. The chair should act on the recommendations of such evaluations. This approach may be part of board refreshment and succession plans.

**Purplebricks Group PLC, 2021, p. 5 – Évaluation interne vs externe**

- The board should regularly review the effectiveness of its performance as a unit, as well as that of its committees and the individual directors.
- The board performance review may be carried out internally or, ideally, externally facilitated from time to time. The review should identify development or mentoring needs of individual directors or the wider senior management team

## AUSTRALIE

**ASX Council, 2019, p. 11 – Facilitateurs externes dans l'évaluation de la performance**

- The board should consider periodically using external facilitators to conduct its performance reviews.
- A suitable non-executive director (such as the deputy chair or the senior independent director, if the entity has one) should be responsible for the performance evaluation of the chair, after having canvassed the views of the other directors.
- A listed entity should: have and disclose a process for evaluating the performance of its senior executives at least once every reporting period; and disclose for each reporting period whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

**ACSI, governance guidelines, 2021, p. 14 – Alignement de l'évaluation de la performance avec la stratégie de l'entreprise et la matérialité des risques – Communication aux actionnaires**

- The assessment of director skills and performance should: (1) be relevant and aligned to the company strategy, including the material risks (2) be robust and independent. Directors should not be solely responsible for assessing their own skills; and (3) be communicated to shareholders.

## BRÉSIL

**IBGC 2023, p. 43, 55 – Identification des forces et des faiblesses de chaque membre sujet à une évaluation – Présentation de l'information aux actionnaires de manière claire**

- To conduct an effective board evaluation, members must be committed to identifying the strengths and areas for improvement of each individual board member and of the body as a whole. It is the board's responsibility to disclose information about the evaluation process and the summary of the main points identified for the body's improvement and the corrective actions implemented, so that members and other stakeholders can properly understand its performance **p. 43**
- The chief executive officer is directly responsible for the evaluation of the executive management members and should implement a process for their systematic and annual performance appraisal. He must ensure that all managers, or at least the organization's senior management, undergoes periodic evaluation. The evaluation process made up by human resources can be supported by the personnel committee, if there is one. The results of the evaluation must be shared with the board of directors, which is in turn responsible for the evaluation of the chief executive officer. **p. 55**

## FRANCE

**AFEP & MDEDF, 2022, p. 11 – Évaluation de la composition, de l'organisation et du fonctionnement du conseil devant être en mesure de répondre aux attentes des actionnaires – Évaluation formalisée – Rapport aux actionnaires**



- Le conseil procède à l'évaluation de sa capacité à répondre aux attentes des actionnaires qui lui ont donné mandat d'administrer la société, en passant en revue périodiquement sa composition, son organisation et son fonctionnement (ce qui implique aussi une revue des comités du conseil).
- Chaque conseil réfléchit à l'équilibre souhaitable de sa composition et de celle des comités qu'il constitue en son sein et s'interroge périodiquement sur l'adéquation à ses tâches de son organisation et de son fonctionnement.
- L'évaluation vise trois objectifs : (1) faire le point sur les modalités de fonctionnement du conseil ; (2) vérifier que les questions importantes sont convenablement préparées et débattues ; (3) apprécier la contribution effective de chaque administrateur aux travaux du conseil.
- L'évaluation est effectuée selon les modalités suivantes : (1) une fois par an, le conseil d'administration débat de son fonctionnement ; (2) une évaluation formalisée est réalisée tous les trois ans au moins. Elle peut être mise en œuvre, sous la direction du comité en charge de la sélection ou des nominations ou d'un administrateur indépendant, avec l'aide d'un consultant extérieur ; (3) les actionnaires sont informés chaque année dans le rapport sur le gouvernement d'entreprise de la réalisation des évaluations et, le cas échéant, des suites données à celles-ci.

**AMF, recommandation 2012-02 p.19 – Intervenant externe – Communication efficace des résultats – Explication circonstanciée et adaptée à l'égard de toute exclusion de la mesure de la contribution effective d'un administrateur aux travaux du conseil**

- L'AMF recommande : (1) aux sociétés de procéder, autant qu'il est possible, à une évaluation du fonctionnement du conseil et de préciser la façon dont cette évaluation a été menée, notamment s'il a été fait appel à un intervenant externe. L'AMF encourage les sociétés à communiquer de manière suffisamment détaillée sur la procédure d'évaluation du fonctionnement du conseil mise en place, les résultats de cette évaluation, ainsi que sur les suites et plus particulièrement les pistes d'amélioration qui pourraient être envisagées par la société (2) d'intégrer, dans le cadre de l'information donnée sur les résultats de l'évaluation du conseil et sur les évolutions souhaitables exprimées à cette occasion, les réflexions conduites sur la question de la diversification de la composition des conseils (3) que toute exclusion de la mesure de la contribution effective de chaque administrateur aux travaux du conseil ne soit pas justifiée par le seul caractère collégial du conseil mais donne lieu à des explications circonstanciées et adaptées à la situation particulière de la société. À cet égard, une évaluation réalisée exclusivement au moment du renouvellement du mandat d'un administrateur ne permet pas de justifier que la mesure de sa contribution effective aux travaux du conseil soit écartée. Cette évaluation ne saurait, en effet, répondre à l'esprit de la recommandation du code AFEP-MEDEF qui vise une amélioration continue et permanente de la contribution de chaque administrateur aux travaux du conseil

### 3.3.2 Formation continue

#### CANADA

**Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 29 – Mise à jour au niveau de l'environnement externe**

- Individuellement et collectivement, consacrer le temps nécessaire à la formation continue en lien avec les particularités de l'entreprise et de son secteur d'activité, y compris afin de se tenir à jour sur les changements touchant l'environnement externe au sens large qui sont susceptibles d'avoir une incidence sur l'ensemble des activités

**CCGC, 2022, p. 24 – Mise à jour au niveau des enjeux émergents – Programme de formation externe**

- Directors should participate in continuing education programs and events in order to enhance their understanding of the company and its business, gain familiarity with key executives, and to address ongoing and emerging issues in the functional areas of the board. Issuers should also encourage their directors to attend external educational programs and events.

- To encourage board members to proactively address any perceived or potential gaps in their knowledge of the corporation's business, board members should also have the opportunity to provide input on educational topics in which they would like to enhance their understanding.

**CCGC, 2018, p. 21 – Mise à jour au niveau des enjeux émergents – ESG – Conseiller externe**

- Board orientation and continuing education should include building awareness and understanding of complex and emerging E&S issues, where relevant. Boards should consider the use of independent advisors and/or external speakers to provide exposure to additional viewpoints. Education topics should be disclosed, for example, as part of the committee updates in the proxy circular.

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**AUTRES SOURCES**

- CDPO, rapport annuel, 2022, p. 109 – Exemple

**GRANDE-BRETAGNE**

**Wates, 2018, p.14 – Développement continu des administrateurs dont les fonctions exigent de maintenir leur objectivité dans des situations complexes**

- The closely held nature of ownership within many large private companies means directors are often required to maintain objectivity in complex situations, in particular when there is an influential shareholder.
- Companies should demonstrate a commitment to the ongoing professional development of their board, and directors should embrace such opportunities and ensure that they have sufficient time to discharge their duties.

**AUSTRALIE**

**ASX Council, 2019, p. 15 – Encadrement des nouveaux administrateurs – Programme de perfectionnement pour les anciens administrateurs**

- A listed entity should have a program for inducting new directors and for periodically reviewing whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their role as directors effectively.
- All new directors should be offered induction training, tailored to their existing skills, knowledge and experience, to position them to discharge their responsibilities effectively and to add value. This could include, for example, having interviews with key senior executives to gain an understanding of the entity's structure, business operations, history, culture and key risks, and conducting site visits of key operations.
- If a director is not familiar with the legal framework that governs the entity, the entity's induction program should include training on their legal duties and responsibilities as a director under the key legislation governing the entity and the listing rules (including ASX's continuous and periodic reporting requirements).
- If a director does not have accounting skills or knowledge, the entity's induction program should also include training on key accounting matters and on the responsibilities of directors in relation to the entity's financial statements

**BRÉSIL**

**IBGC 2023, p. 44 – Le président du conseil est responsable d'avoir un programme en place pour former adéquatement les nouveaux administrateurs**

- The chairman or chairwoman of the board of directors should ensure that the organization structures integration programs that help new board members become more quickly acquainted with the organization's culture and values, people, and operating context.
- All new board members must go through an integration program, in which they: receive the information necessary to perform their duties; are introduced to the organization's key people; have the opportunity to learn about the organization's main activities, activities, and facilities.

- The chairman or chair woman of the board must encourage the continued education of board members, through refresher programs, congresses, industry fairs, and other events that can enhance their ability to contribute to the organization, based on the evaluation process and the context of the organization.

## FRANCE

### Middlenext, 2021, p. 16, 17 – Plan de formation triennal

- Il est recommandé que le Conseil prévoie un plan de formation triennal (équivalent, par exemple, à 4 à 6 jours de formation par « membre du Conseil » sur la période) adapté aux spécificités de l'entreprise, destiné aux « membres du Conseil » salariés ou non. Ce plan prend en compte les équivalences acquises par l'expérience. Chaque année, le Conseil fait un point sur l'avancement du plan de formation et en rend compte dans le rapport sur le gouvernement d'entreprise. **p. 25**

### AMF, 2022, p. 31 – Formation RSE – Programme pour les nouveaux administrateurs

- Constituent de bonnes pratiques le fait de prévoir une formation régulière sur des sujets pertinents pour la société, en particulier en matière de RSE, et le fait de détailler la formation des administrateurs, notamment en matière de RSE. ([AMF, recommandation 2012-02](#) p.21) Cette formation n'est pas seulement théorique : elle peut se révéler très pratique, notamment au travers de visites. En ce sens, la société Michelin indique que : « Les membres du Conseil ont effectué une visite de deux jours sur un site industriel de production de pneumatiques en Italie au cours de laquelle ils ont pu apprécier les nouvelles générations de machines robotisées, les avancées en termes de maintenance et la stratégie de ce site vers un objectif de zéro émission nette de CO2. »
- L'élaboration d'un programme de formation des administrateurs nouvellement nommés est également une bonne pratique. Au sein de la société Unibail-Rodamco-Westfield, «Chaque nouveau membre du CS [conseil de surveillance] participe à un programme d'intégration, adapté aux compétences individuelles, à l'expérience et à l'expertise de chacun d'entre eux. Le programme d'intégration forme le nouveau membre aux spécificités du Groupe, notamment aux activités commerciales, aux rapports financiers, aux affaires juridiques, à la conformité, aux enjeux environnementaux et sociétaux, et aussi à la gestion de crise. ». Elle précise « qu'une journée de formation annuelle est organisée pour tous les membres du CS souvent associée à la visite d'un ou plusieurs actifs du Groupe, la visite d'actifs à cette occasion n'ayant pas pu se réaliser en juillet 2021 en raison de la pandémie de la COVID-19. L'année 2021 a comporté une session plénière pour laquelle un temps conséquent fut dédié aux questions / réponses. Cette session fut centrée sur [...] notre stratégie RSE présentée conjointement par la Directrice Générale des Fonctions Centrales et le Directeur Groupe du Développement Durable ». En outre «La RSE est également un sujet régulièrement abordé lors des réunions stratégiques annuelles, du programme d'intégration et des formations continues suivies par le CS ».
- L'animation de la formation par des salariés apparaît judicieux afin de donner une dimension opérationnelle.

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### 3.4 Encadrement de la culture, de l'éthique et de la conduite

#### CANADA

[Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022](#), p. 31, 107 –  
Norme de conduite – Surveillance de la fréquence et nature d'incidents – Valeur des employés

- Surveiller le caractère approprié de toute exception ou dérogation à la culture et aux normes de conduite au sein de l'entreprise.
- Surveiller la fréquence et la nature des incidents lors desquels les comportements et les valeurs des employés sont incompatibles avec la culture de l'entreprise ou constituent des violations des politiques en matière de conduite et d'éthique. Évaluer le caractère opportun des conséquences pour les employés concernés.
- Les entreprises doivent s'efforcer d'atteindre un double objectif : d'abord, définir les valeurs et les comportements ambitieux qui suscitent un rendement élevé et gagnent la confiance des parties prenantes; ensuite, respecter les normes de conduite et d'éthique auxquelles on s'attend depuis toujours de la part des entreprises.
- Veiller à ce que, lorsque les employés attestent chaque année leur conformité au « code » de l'entreprise, ils s'engagent tant sur le plan de la conduite et de l'éthique que sur celui de la culture d'entreprise.

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#### AUTRES SOURCES

- [Lambay, 2020](#), p. 17 et 18

#### ÉTATS-UNIS

[NACD, 2022](#), p. 44, 46 – Définir les paramètres de la culture d'entreprise, laquelle doit être communiquée par le conseil à la direction – Considération des propositions de la direction faites au conseil

- The board should encourage an appropriate corporate culture by communicating to senior management how seriously it views corporate culture, by defining the parameters of the desired culture, and by monitoring information systems and controls that are designed to ensure that information relevant to corporate culture is reported up to the board. Culture is revealed through the behaviors of employees at all levels and through incentives and accountability mechanisms. It is also revealed by how the CEO and other members of management model their behavior. Boards should observe these matters to ensure that the agreed culture is actually rooted within the company (including review of compliance and ethics and of guardrails for tolerated risk-taking) and continually assess the integrity and ethics of senior management. **p. 44**
- Boards should assess management integrity and ethics when considering management proposals, assessing internal controls and procedures, reviewing financial reporting and accounting decisions, reviewing political spending and lobbying activity, and (more generally) when discussing management development and succession planning. The board should pay special attention to how members of senior management approach their own conflicts of interest, including around proposed related-person transactions and compensation decisions, and around how senior management supports a diverse, equitable, and inclusive workforce. p. 46

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#### AUTRES SOURCES

- [Nasdaq, 5600, 5610](#) (p. 12 du pdf)

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#### GRANDE-BRETAGNE

[UK Code, 2018](#), p. 4 – Rôle complémentaire de la direction et du conseil

- The board should assess and monitor culture. Where it is not satisfied that policy, practices or behaviour throughout the business are aligned with the company's purpose, values and strategy, it should seek assurance that management has taken corrective action. The annual report should explain the board's activities and any action taken. In addition, it should include an explanation of the company's approach to investing in and rewarding its workforce.

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**Wates, 2018, p. 11 – Communication de la culture dans l'ensemble de l'organisation – Sondage, Taux d'absentéisme, entrevue de fin d'emploi, séance de rétroaction**

- A company's purpose and values should inform expected behaviours and practices throughout the organisation. The values should be explained and integrated into the different functions and operations of the business. This may include internal assurance, employment practices, risk management and compliance functions.
- A healthy culture is critical to the company's competitive advantage, and vital to the creation and protection of long-term value. Culture can be defined as a combination of the values, attitudes and behaviours manifested by a company in its operations and relationships with its stakeholders. The board, shareholders and management must make and maintain a commitment to embedding the desired culture throughout the organisation.
- Effective ways of monitoring culture include (but are not limited to) employee surveys, engagement with trade unions, absenteeism rates, exit interviews and board feedback sessions.

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**Purplebricks Group PLC, 2021, p. 5 – Communication de la culture dans l'ensemble de l'organisation**

- The policy set by the board should be visible in the actions and decisions of the chief executive and the rest of the management team. Corporate values should guide the objectives and strategy of the company.
- The culture should be visible in every aspect of the business, including recruitment, nominations, training and engagement. The performance and reward system should endorse the desired ethical behaviours across all levels of the company.
- The corporate culture should be recognisable throughout the disclosures in the annual report, website and any other statements issued by the company.

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**AUSTRALIE**

**ASX Council, 2019, p. 16, 18 – Définir les paramètres de la culture d'entreprise, laquelle doit être communiquée par le conseil à la direction**

- The board should approve an entity's statement of values and charge the senior executive team with the responsibility of inculcating those values across the organisation. This includes ensuring that all employees receive appropriate training on the values and senior executives continually referencing and reinforcing those values in their interactions with staff (ie setting the "tone at the top"). **p. 16**
- The board or a committee of the board should be informed of any material breaches of the entity's code of conduct, as they may be indicative of issues with the culture of the organisation. **p. 16**
- For a code of conduct to be effective, all employees must receive appropriate training on their obligations under the code. Directors and senior executives must speak and act consistently with the code (again, setting the "tone at the top") and reinforce it by taking appropriate and proportionate disciplinary action against those who breach it. **p. 16** [*Suggestions for the content of a code of conduct, p. 17*]
- A listed entity should: have and disclose an anti-bribery and corruption policy; and ensure that the board or a committee of the board is informed of any material breaches of that policy. The board or a committee of the board should be informed of any material incidents of bribery or corruption, as they may be indicative of issues with the culture of the organisation. **p. 18**
- A listed entity's anti-bribery and corruption policy can be a stand-alone policy or form part of its code of conduct. **p. 18**

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**ACSI, governance guidelines, 2021, p.34, 35 – Rôle des administrateurs dans l'élaboration de la culture d'entreprise – Politique de dénonciation – Divulgateion de la culture d'entreprise**

- Boards are equally as responsible for oversight of culture as they are for financial performance, and directors play a critical role in governing culture. Understanding the company's actual culture and devising a roadmap to the desired culture is crucial. Directors have access to a breadth of different metrics and should take a sophisticated approach to interrogating and synthesising this data. We expect directors to be curious, persistent and willing to synthesise many formal and informal sources of information when overseeing the company's culture. **p.34**
- We expect companies to: (1) articulate their values through the creation and enforcement of codes of conduct that are tailored to the risks faced by the business. Companies should also have a whistleblowing policy and a bribery and corruption policy. Policies should be regularly reviewed and adjusted as needed (2) articulate and

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disclose their behavioural expectations of employees, contractors, suppliers and other partners (3) invest adequate resources into training staff (4) encourage a ‘speak-up’ culture where boards, executives, managers and employees can safely raise concerns (eg through a confidential mechanism) and ensure there is robust investigation, internal reporting and disciplinary action as necessary, where poor behaviours are detected (5) encourage a culture supported by the board and the CEO, where the organisation is quick to learn from mistakes and change practices

**p.35**

- The board should oversee regular assessments of corporate culture to identify any issues or opportunities and take action accordingly. The board should take into account a wide range of measures in overseeing culture, including employee feedback and external inputs. **p.35**
- Disclosure : (1) Companies should make meaningful disclosures in relation to their corporate culture, for example regarding assessments of culture, relevant policies, and action taken to promote compliance with corporate values and policies. (2) Companies should consider reporting the number of breaches of the code of conduct and the related consequences, including terminations and remuneration consequences. (3) Companies should disclose whether the board has an oversight process in place regarding NDAs. (4) Companies should disclose relevant metrics to reflect their workforce. Like financial statements, workforce reporting should provide investors with information that is material to investment decisions. This includes the overall scope and composition of human resourcing available to management, as well as the opportunities and risks in attracting, developing, and retaining a productive workforce. Workforce indicators will naturally differ from company to company but may include measures related to employee and customer satisfaction levels, training and development, turnover, absenteeism, diversity and remuneration. p.35

## BRÉSIL

### **IBGC 2023, p. 32, 67, 68 – Responsabilité du conseil – Protection de l’entreprise – Durabilité – Création de valeur à long terme**

- It is up to the board of directors to identify, discuss, and ensure the dissemination and promotion of an ethical culture centered on organizational purpose, principles, and values. It should define strategies and make purpose-aligned decisions that protect and enhance the organization, optimize sustainable long-term value creation, and balance stakeholder demands. It must also provide an environment of trust and psychological safety, where people can express dissenting thoughts, report errors, and discuss ethical dilemmas, at all hierarchical levels of the organization.

## FRANCE

### **Middlenext, 2021, p. 16, 17, 21, 22 – Générer la confiance au sein de l’entreprise – Règles déontologiques recommandées pour les membres du conseil**

- **L’exemplarité du « membre du Conseil » contribue-t-elle à renforcer la confiance ?** Comme l’« actionnaire » et le « dirigeant », le « membre du Conseil » doit être exemplaire pour générer de la confiance au sein et à l’égard de l’entreprise. La manière dont il exerce sa mission est un signal fort de la qualité de la gouvernance. Cela implique un réel engagement et une disponibilité pour assumer pleinement sa mission avec l’assiduité et l’implication nécessaires. La loi et / ou les statuts prévoient la collégialité des décisions. Chaque « membre du Conseil » y contribue grâce à un échange loyal d’opinions pour une prise de décisions après considération de tous les points de vue. Les conflits d’intérêts qui pourraient conduire un « membre du Conseil » à biaiser son évaluation des décisions doivent être identifiés puis signalés. C’est le rôle du président<sup>8</sup> d’assurer aux parties prenantes, que de tels conflits n’existent pas ou, s’ils existent, que les personnes concernées soit se sont abstenues, soit aient quitté la salle afin d’éviter toute influence sur la prise de décision. **p. 16, 17**
- **Il est recommandé que chaque « membre du Conseil » observe les règles de déontologie suivantes :** (1) la recherche de l’exemplarité implique, à tous moments, un comportement cohérent entre paroles et actes, gage de crédibilité et de confiance ; (2) au moment de l’acceptation du mandat, chaque « membre du Conseil » prend connaissance des obligations en résultant et, notamment, celles relatives aux règles légales de cumul des mandats ; (3) au début de l’exercice de son mandat, il signe le règlement intérieur du conseil qui fixe, entre autres, le nombre minimum d’actions de la société que doit détenir chaque « membre du Conseil », sous réserve des

dispositions statutaires ; (4) au cours du mandat, chaque « membre du Conseil » se doit d'informer le conseil de toutes situations de conflit d'intérêts éventuelles (client, fournisseur, concurrent, consultant,...) ou avérées (autres mandats) le concernant ; (5) en cas de conflit d'intérêts, et en fonction de sa nature, le « membre du Conseil » s'abstient de voter, voire de participer aux délibérations, et à l'extrême, démissionne ; (6) chaque « membre du Conseil » respecte les prescriptions légales et réglementaires en vigueur en matière de déclaration des transactions et de période d'abstention d'intervention sur les titres de la société ; (7) chaque « membre du Conseil » est assidu et participe aux réunions du conseil et des comités dont il est membre ; (8) chaque « membre du Conseil » s'assure qu'il a obtenu toutes les informations nécessaires et en temps suffisant sur les sujets qui seront évoqués lors des réunions ; (9) chaque « membre du Conseil » respecte à l'égard des tiers une véritable obligation de confidentialité qui dépasse la simple obligation de discrétion prévue par les textes, il s'y engage formellement en apposant sa signature sur le règlement du Conseil ; (10) chaque « membre du Conseil » assiste aux réunions de l'assemblée générale. **p. 21, 22**

## INTERNATIONAL

### **ICGN, 2021, p. 18, 19 – Règles encadrant le risque de corruption – Politique de dénonciation – Communication de la culture dans l'ensemble de l'organisation**

- Anti-corruption: The board should ensure that management has implemented appropriately stringent policies and procedures to mitigate the risk of bribery and corruption or other malfeasance. Such policies and procedures should be communicated to shareholders and relevant stakeholders.
- Whistleblowing: The board should ensure that the company has in place an independent, confidential mechanism whereby a worker, supplier, shareholder or relevant stakeholder can (without fear of retribution) raise issues of particular concern with regard to potential or suspected breaches of a company's code of ethics or local law.
- Behaviour and conduct: The board should foster a corporate culture which ensures that management, the workforce, and the board itself, act with integrity and understand their responsibility for appropriate behaviour and ethical conduct facilitated through codes and training. Due diligence and monitoring programmes should facilitate understanding of codes of conduct and help ensure effective adoption and application.

## 3.5 Compétences des administrateurs

### 3.5.1 Compréhension de l'entreprise

#### CANADA

##### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 29, 30 – Diversité d'opinion et d'expérience – compréhension du secteur

- Lors du recrutement de nouveaux administrateurs, tenir compte de la capacité de chaque candidat à comprendre l'ensemble des questions pertinentes pour l'entreprise et à y apporter une contribution utile. Le conseil d'administration doit s'efforcer de réunir à la fois de nouveaux administrateurs et des administrateurs chevronnés afin d'encourager une diversité d'opinion et d'expérience. **p. 29**
- Évaluer, pour chaque candidat, sa compréhension du secteur d'activité de la société, de son modèle d'entreprise et de l'environnement dans lequel celle-ci exerce ses activités. **p. 30**

#### ÉTATS-UNIS

##### CII, 2023, point 2.12 a, p. 6 – Demeurer à jour dans les opérations de l'entreprise

- Informed Directors: Directors should receive training from independent sources on their fiduciary responsibilities and liabilities. Directors have an affirmative obligation to become and remain independently familiar with company operations; they should not rely exclusively on information provided to them by the CEO to do their jobs. Directors should be provided meaningful information in a timely manner prior to board meetings and should be allowed reasonable access to management to discuss board issues. The board should periodically assess whether directors feel they have sufficient information to make well-informed decisions and reasonable access to management on matters relevant to shareholder value. For ease of implementation, such assessment may be incorporated into existing director surveys.

#### GRANDE-BRETAGNE

##### Wates, 2018, p. 13 – Compréhension des besoins de l'entreprise

- The board should collectively demonstrate a high-level of understanding relevant to the company's business needs and stakeholder interests.

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### 3.5.2 Grille de compétence

#### CANADA

##### CCGC, 2022, p. 16, 19 – Utilisation adéquate de la grille de compétence

- Boards should have a plan in place for the orderly succession of directors and should maintain an evergreen list of potential candidates. To facilitate this, boards should identify the key skills that are required of directors and use a skills matrix to ensure that these skills are accounted for among current and prospective directors. p. 16
- A board skills matrix denotes the areas of expertise that are prioritized on a company's board. To aid in renewal planning and assessments of board effectiveness, skills matrices also reveal any existing or potential gaps in the collective skillset of directors. In some cases, issuers have limited each director's skill set, as identified in their skills matrices, to a director's top 3 or 4 skills and competencies. In other cases, issuers have differentiated between directors who are experts and those with general or limited experience in each area. In addition to the example of TELUS cited above, the following excerpt taken from the director skills matrix of Enerflex Ltd. demonstrates this best practice. Both TELUS and Enerflex also provide a definition as to the type of experience



that is included under each area of competency such that readers may better understand the relevance of each skillset to the particular business. p.19

- Notably, both TELUS and Enerflex’s skills matrices also track skills and experiences related to E&S matters. E&S-focused capabilities should be captured in the board skills matrix when such matters are material to the corporation’s business and pertinent to the board’s role in risk management and strategic planning oversight. Furthermore, issuers should clearly define the skills and experience that this type of expertise entails given the unique context and circumstances of their business to ensure that they are recruiting directors with the relevant knowledge to provide guidance in these areas. **p.19**

#### **Teachers, 2023, p. 19 – Limitation du nombre de compétence**

- Création et publication d’une grille des compétences : Nous encourageons et appuyons les propositions demandant l’adoption et la diffusion d’une grille des compétences du conseil. Cette grille devrait mettre en lumière les compétences et les domaines d’expertise utiles dans le cadre de la stratégie et des risques importants de la société et représenterait une pratique exemplaire à cette fin. Nous décourageons la divulgation d’une liste interminable des compétences.

#### **CDPO, 2020, p. 5 – Divulgation de la grille de compétence**

- The nomination committee or its equivalent is encouraged to establish a profile of the expertise and experience desirable for the board (by developing a competency matrix or otherwise) and to adopt a candidate selection procedure. This procedure should take into account the skills and competencies that the board as a whole should possess, as well as the skills and competencies of each candidate. We recommend that companies disclose the skills matrix in their proxies.

## **AUSTRALIE**

#### **ASX Council, 2019, p. 13 – Divulgation de la grille de compétence – Format de la grille de compétence**

- A listed entity should have and disclose a board skills matrix setting out the mix of skills that the board currently has or is looking to achieve in its membership.
- Disclosing the board skills matrix gives useful information to investors and helps to increase the accountability of the board in ensuring it has the skills to discharge its obligations effectively and to add value.
- There is no prescribed format for a board skills matrix. It can set out either the mix of skills that the board currently has or the mix of skills that the board is looking to achieve in its membership or both. If an entity chooses to do the former, this need only be done collectively across the board as a whole, without identifying the presence or absence of particular skills by a particular director. Commercially sensitive information, such as the fact that the board may be looking to acquire a particular skill as part of an as-yet unannounced and incomplete plan to move into a different field of activity, can be excluded.
- Whichever format it follows, it would be helpful to investors for the entity to explain what it means when it refers to a particular skill in its board skills matrix and the criteria a director must meet to be considered to have that skill.

#### **Directors’ Toolkit, 2022, p. 121 – Divulgation de la grille de compétence**

- In addition to a technical competency assessment, the skills matrix should ideally also include an analysis of the current or desired behaviours to help the board function as an effective decision-making body.
- The skills matrix is a useful tool to identify gaps in the collective board’s skills (which should be addressed by appointing new members or providing professional development to existing directors) as well as succession planning.
- Disclosing the board skills matrix also “gives useful information to investors and helps to increase the accountability of the board in ensuring it has the skills to discharge its obligations effectively and to add value”.

#### **ACSI, governance guidelines, 2021, p. 14 – Considération ESG**

- The board should disclose its processes for renewal and composition, including its skills matrix. We encourage entities to provide meaningful information on the mix of skills and experience the board has, and is looking to

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achieve, along with how the board's composition aligns to the company's strategy and key risks, including material ESG risks.

## BRÉSIL

### IBGC 2023, p. 34

- When renewing its board, the collective itself must lead the process by nominating profiles, qualifications, and expectations about the candidates. It is recommended to create a competency matrix for the composition of the body, considering the specifics of the organization, such as industry, governance maturity stage, strategy, and market trends in the segment. The practice aims to support the shareholders in choosing and electing the new board.

### 3.5.3 Attentes et méthodes concernant le choix des administrateurs

## CANADA

### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 96 – Qualité – Expérience – Compétence – Diversité d'opinion – Considération des parties prenantes

- Les Canadiens s'attendent depuis longtemps à ce que les conseils d'administration soient composés de personnes de grande qualité possédant l'expérience et les compétences nécessaires pour aider l'entreprise à atteindre ses objectifs à long terme. Mais aujourd'hui, les conseils d'administration doivent également veiller à ce que leurs membres présentent la diversité d'opinion, d'expérience et de perspective requise dans un contexte aux multiples parties prenantes.

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### Lambay, 2020, p. 30, 32, 35 – Aller au-delà de la grille de compétence – Création de valeur

- "Nothing in the board's job has changed," says Hydro One's Hodgson. "But the reality of what skills you need in the boardroom may have changed. So, the board really has to ask itself if it has the right skill sets to deal with those change curves and does it have the right skill sets to coach, mentor, encourage and hold management accountable. And does a traditional skills matrix capture that?" Adds Stevenson: "Over the last five to 10 years, boards have been very focused on the skills matrix and in building a skills-based board based on that matrix. But the trend today is to look more for lateral business thinkers, well-rounded business leaders who bring deep experience to the table across many skill sets. The skills matrix still informs composition in important ways, but it's less of a unilateral driver." **p.30**
- "We want directors that understand the capital cycle, who have some really good insight as to what destroys capital and how you create value," he says. "There's a much better complement with management when you've got that." **p.32**
- RBC's Taylor says she derived her framework for what makes a good director from a template called the "Three Cs,": (1) "Competence means a person has to bring a level of expertise and depth and breadth of experience to the role that is a fundamentally good match for the needs of the board at that time," Taylor explains. (2) Curiosity ensures that the board is "always composed of people who actually love learning and love the exploration and the work of learning, so that they have the ability to continuously adapt to the organization's changing landscape." (3) Courage "speaks to a director's willingness to speak up, particularly in challenging circumstances." **p.32**
- "There are very few tough issues that get to a board that are black and white. They're all shades of grey. So, the best board member is one who can think about an issue from multiple perspectives," says Hodgson. "If everyone just brings a singular perspective, the chair is going to have a hell of a job integrating those views and the board's not going to function very well." Cherry recommends a two-step approach when assessing potential directors, first for essential competencies, such as accounting or legal or sector-specific expertise, and then for the breadth of their capabilities. **p.35**

## GRANDE-BRETAGNE

### Purplebricks Group PLC, 2021, p. 5 – **Évolution de l'entreprise, évolution des attentes**

- The board must have an appropriate balance of sector, financial and public markets skills and experience, as well as an appropriate balance of personal qualities and capabilities.
- As companies evolve, the mix of skills and experience required on the board will change, and board composition will need to evolve to reflect this change.

### 3.5.4 Considération des technologies émergentes dans la sélection des administrateurs

#### CANADA

### Lambay, 2020, p. 8, 10, 35 – **Retenir la candidature d'administrateurs ne nécessitant pas de mise à niveau en matière technologique**

- Every business is a technology business now, regardless of what their end product is. **p. 8**
- Many boards need to look at adding new members who don't need any extra training on tech to be able to work with management [...] you need people on boards who are abreast of these things [...] They aren't necessarily technology experts, but they know when to call in experts and they know when to hold management accountable to make sure they're calling in the experts." **p. 10**
- there are also important issues for directors in looking at technology through a data lens. It's a topic that spans security, smart use of data as an asset, limitations on its use due to privacy and regulatory constraints, as well as challenges raised by the growing use of artificial intelligence to manage systems and make decisions around it **p.10**
- In the world of health care, where disruption is widespread, information technology is an essential skill set, according to Bob Bell, former deputy minister of health in Ontario **p.35**

### 3.5.5 Généralités

#### CANADA

### Lambay, 2020, p. 38 – **Approche stratégique – réduction de la durée totale des mandats**

- Beyond formal director education and board renewal, several of the directors and chairs we interviewed stress that there are other ways to build knowledge, add expertise and improve the board's decision-making capabilities. [...] Stevenson tabled the idea that boards may benefit from a more targeted strategy, suggesting that they consider, on an opportunistic basis, creating tactical appointments for shorter-term directors "to capture a certain skillset for a certain period of time." That period of time doesn't have to be 10, 12 or 15 years. It could be three to five, potentially, depending on the need of the corporation

#### ÉTATS-UNIS

### Commonsense Principles, 2018, p. 3 – **Répondre à la dynamique commerciales en constante évolution**

- Board refreshment should always be considered in order to ensure that the board's skill set and perspectives remain sufficiently current and broad in dealing with fast- changing business dynamics. But the importance of fresh thinking and new perspectives should be tempered with the understanding that age and experience often bring wisdom, judgment and knowledge.

#### AUSTRALIE

**Directors' Toolkit, 2022, p. 120 – Compétences générales – Caractéristiques comportementales**

- The board should collectively possess a sufficient range of competencies to effectively deal with the issues and opportunities the company faces. It should be comprised of individuals who bring to the boardroom a range of skills and know-how in relevant areas. Their individual strengths should complement each other.
- The competencies required for any particular board will vary considerably, depending on its industry, strategy, the company's development stage and the environment in which it operates. The types of generic technical skills and competencies required on a board might include (1) accounting and finance (2) business judgement (3) industry knowledge (4) government knowledge (5) legal knowledge (6) employment/industrial relations knowledge (6) environment/sustainability knowledge (7) leadership (8) strategy/vision (9) risk management.
- [...] behavioural attributes include: (1) emotional intelligence (2) curiosity (3) an appreciation for diversity of thought, backgrounds, expertise and experience authenticity (4) transparency in decision-making and communication self-awareness and accountability (5) willingness to reflect, learn and adapt (6) ability to challenge and question in a constructive manner sense of rigor and ability to enforce accountability in an appropriate manner (7) humility to know that they will not have all the answers.

**BRÉSIL**

**IBGC 2023, p. 34, 35 – Caractéristiques comportementales – Compétences fonctionnelles**

- Respecting the particularities of each organization, in general, board members should possess at least the following competencies: (i) Behavioral: active listening; empathy; willingness to defend points of view based on their own judgment; adaptability; communication and teamwork skills; commitment to the organization's purpose and code of conduct; ability to think strategically. (ii) Technical-functional: knowledge of best practices in corporate governance; ability to interpret managerial, accounting, financial, and non-financial reports; knowledge of corporate legislation, regulation, risk management, internal controls, and compliance.

## 3.6 Traitement des candidatures

### 3.6.1 Plan de succession

#### CANADA

##### CCGC, 2022, p. 16, 19, 33 – Plan de succession pour tous les postes d'importance de la société – éléments à considérer

- Boards should have a plan in place for the orderly succession of directors and should maintain an evergreen list of potential candidates. To facilitate this, boards should identify the key skills that are required of directors and use a skills matrix to ensure that these skills are accounted for among current and prospective directors. **p. 16**
- A board skills matrix denotes the areas of expertise that are prioritized on a company's board. To aid in renewal planning and assessments of board effectiveness, skills matrices also reveal any existing or potential gaps in the collective skillset of directors. In some cases, issuers have limited each director's skill set, as identified in their skills matrices, to a director's top 3 or 4 skills and competencies. In other cases, issuers have differentiated between directors who are experts and those with general or limited experience in each area. In addition to the example of TELUS cited above, the following excerpt taken from the director skills matrix of Enerflex Ltd. demonstrates this best practice. Both TELUS and Enerflex also provide a definition as to the type of experience that is included under each area of competency such that readers may better understand the relevance of each skillset to the particular business. **p.19**
- Notably, both TELUS and Enerflex's skills matrices also track skills and experiences related to E&S matters. E&S-focused capabilities should be captured in the board skills matrix when such matters are material to the corporation's business and pertinent to the board's role in risk management and strategic planning oversight. Furthermore, issuers should clearly define the skills and experience that this type of expertise entails given the unique context and circumstances of their business to ensure that they are recruiting directors with the relevant knowledge to provide guidance in these areas. **p.19**
- An engaged board is aware of and monitors succession planning efforts (including a plan in the event of an emergency) for all critical roles within the organization. Succession plans should consider various time horizons and seek to build capacity throughout the organization by providing opportunities for high-potential individuals to develop their skills and leadership capabilities. Intact Financial's disclosure clearly notes that the board, and the Human Resources Committee, ensure that a succession plan is in place for the CEO and that the plan addresses an emergency replacement scenario. **p.33**

##### BlackRock, 2023, p. 7 – Mise à jour du plan de succession – Rôle au conseil du PDG sortant

- Companies should have a robust CEO and senior management succession plan in place at the board level that is reviewed and updated on a regular basis. Succession planning should cover scenarios over both the long-term, consistent with the strategic direction of the company and identified leadership needs over time, as well as the short-term, in the event of an unanticipated executive departure. We encourage the company to explain their executive succession planning process, including where accountability lies within the boardroom for this task, without prematurely divulging sensitive information commonly associated with this exercise.
- During a CEO transition, companies may elect for the departing CEO to maintain a role in the boardroom. We ask for disclosures to understand the timeframe and responsibilities of this role. In such instances, we typically look for the board to have appropriate independent leadership structures in place.

##### Davies 2022, p. 40 – Plan de succession d'urgence – Établir un comité – Long terme et court terme – Considération des parties prenantes – Maintien d'une liste de candidats potentiels

- The key to an effective CEO succession plan is ensuring that it remains an ongoing process. Given the significant consequences that can accompany a leadership change, the best succession plans include both a long-term plan and an emergency plan to manage the risks and legal obligations associated with a sudden and unexpected departure. Here are some tips to keep top of mind: **(1) Set up a committee.** Establish a board committee charged with oversight of CEO and C-suite succession planning, and ensure the board's mandate and the committee's charter accurately reflect their respective responsibilities. This will help to ensure that the issue receives the requisite attention and does not fall through the cracks. **(2) Create a working plan.** Determine what the succession planning process will look like in both the short and long terms, including the search process that will

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be implemented (i.e., whether internal or external), the competencies required of a successor CEO, whether external advisers will be retained to provide an unbiased review of potential successors, and other procedures and milestones. Regularly review and update the plan in the context of the company's evolving strategy and goals.

**(3) Listen to stakeholders and consider leaders' perspectives.** Discuss CEO succession plans, changes and developments on a regular basis both with board members and with the current CEO. Address the issue at quarterly board meetings rather than merely at an annual strategy session. Regularly solicit feedback from a variety of stakeholders, many of whom likely have their own expectations for the company and its leadership.

**(4) Maintain and update evergreen lists of internal and external candidates in real time.** Whether the company plans to groom internal candidates or search externally, it is necessary to ensure there are people responsible for tracking candidates' performance and progress and for monitoring market events that may influence these candidates' willingness or availability to be considered in the future. Have contingency plans if the most logical successors are uninterested or become unavailable.

**(5) Groom internal candidates.** If the company intends to groom its next successor internally, it is necessary to invest in training and ensure potential internal successors are given real-world opportunities to showcase that they have what it takes to lead the company. They should also interact regularly with directors in order to cultivate a rapport that will assist the board in making an informed decision about their viability.

**(6) Plan for events that may affect succession.** Consider conducting annual scenario analyses at either the board or standing committee level, to simulate possible unexpected developments that may affect CEO succession (e.g., misconduct, financial performance or activism). Remember that companies that underperform are more likely to see higher CEO turnover. Consider whether the potential successors are the right people to lead the company today and into the future, and update the criteria to respond to shifts in the corporate environment (e.g., COVID-19, changes in strategy and/or rising prominence of ESG-related issues).

**(7) Develop and refresh internal and external communications strategies for CEO succession planning.** Providing clarity and transparency to the market, employees, regulators, customers and suppliers is critical. The goal should always be to inspire confidence in the company's management over time, despite significant changes in leadership.

**(8) Ease the transition process.** Consider creating a role in the management committee (e.g., president or deputy CEO) to simplify and facilitate the successor's eventual appointment. Retaining the current CEO as a strategic adviser or as a member of the board can also help smooth the transition.

## ÉTATS-UNIS

### CII, 2023, point 2.8 a et 2.9, p. 5 – Considération des actionnaires de longue date – Divulgence du plan de succession

- Board Refreshment and Succession Planning: The board should implement and disclose a board succession plan that involves preparing for future board refreshment, board leadership, committee assignment rotations, committee chair nominations, overall implementation of the company's long-term business plan and any changes in strategy. Nominating committees should monitor board composition for the distribution of skillsets, backgrounds and tenure on the board, and heed the results of board evaluations to ensure the board equips itself with competencies and experiences that will further the company's strategic goals. Boards should establish clear procedures to encourage and consider board nomination suggestions from long-term shareowners. The board should respond positively to shareowner requests seeking to discuss incumbent and potential directors. **Point 2.8 a**
- CEO and Management Succession Planning: The board should approve and maintain a detailed CEO succession plan and publicly disclose the essential features, including but not limited to: the roles of the board as a whole, various board committees and the incumbent CEO in the succession process; capabilities in the next CEO that would align with the company's long-term strategy; measures undertaken to identify candidates from both internal and external candidate pools; and processes to identify and include diverse candidates. An integral facet of management succession planning involves collaboration between the board and the current chief executive to develop and/or recruit the next generation of leaders. Boards should: (1) make sure that robust leadership recruitment and development programs are in place; (2) ensure that those programs source and develop leaders not exclusively from within their own ranks, but also from a broad and diverse candidate pool; and (3) carefully identify multiple candidates for the CEO role specifically, well before the position needs to be filled. To that end, the plan should address both short and long-term succession scenarios. **Point 2.9**

**NACD, 2022, p.42 – Interaction avec des talents en dehors de la haute direction**

- Ongoing board attention to senior management succession planning positions the board to more effectively execute on one of its most important responsibilities—selecting and replacing the CEO. Directors should also have opportunities to interact with talent at levels below the C-suite to help the board understand the leadership pipeline within the company and to provide input into development opportunities for future leaders. Opportunities to interact with employees at levels below the C-suite also provide insights into the CEO’s leadership style and corporate culture while helping to broaden the board’s understanding of the capabilities within the organization.

**Commonsense Principles, 2018, p. 9 – Plan de succession d’urgence – Divulgence du plan de succession**

- Senior management bench strength can be evaluated by the board and shareholders through an assessment of key company employees; direct exposure to those employees is helpful in making that assessment.
- Companies should inform shareholders of the process the board has for succession planning and also should have an appropriate plan if an unexpected, emergency succession is necessary.

**GRANDE-BRETAGNE**

**UK Code, 2018, p. 9 – Rôle du comité de nomination dans l’établissement du plan de succession**

- The board should establish a nomination committee to lead the process for appointments, ensure plans are in place for orderly succession to both the board and senior management positions, and oversee the development of a diverse pipeline for succession. A majority of members of the committee should be independent non-executive directors. The chair of the board should not chair the committee when it is dealing with the appointment of their successor.
- The chairs should not remain in post beyond nine years from the date of their first appointment to the board. To facilitate effective succession planning and the development of a diverse board, this period can be extended for a limited time, particularly in those cases where the chair was an existing non-executive director on appointment. A clear explanation should be provided.

**AUSTRALIE**

**ASX Council, 2019, p. 10 – Considération de la diversité de genre dans le plan de succession**

- The board of a listed entity should also include gender diversity as a relevant consideration in its succession planning.

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**ACSI, governance guidelines, 2021, p. 14 – Considération ESG – Facteurs à considérer au niveau de la succession**

- The board should disclose its processes for renewal and composition, including its skills matrix. We encourage entities to provide meaningful information on the mix of skills and experience the board has, and is looking to achieve, along with how the board’s composition aligns to the company’s strategy and key risks, including material ESG risks.
- Boards should ensure that the following factors are considered in director appointment, succession and nomination processes: (1) Any skill gaps and the experience of current directors relevant to the company and its strategy (2) The size of the board should be sufficient to ensure that there is an adequate number of skilled and independent non-executive directors (3) Directors should disclose their involvement in any legal proceedings (past, present or anticipated) (4) The board should not limit the ability of shareholders to nominate and elect additional directors. (5) There should be sufficient overlap in director succession so that gaps in skills, experience, subject matter expertise or corporate memory do not occur.

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## BRÉSIL

### **IBGC 2023, p. 44 – Responsabilité du président / de la présidente du conseil dans la planification de la succession**

- The board of directors should periodically reassess the desired profile for the main leadership roles, taking into account the challenges listed in its strategic plan. It could rely on assistance from the human resources committee, if there is one, or an external consulting.
- The board of directors must have an up-to-date succession plan for the chief executive officer. Leadership of the succession planning is responsibility of the chairman or chairwoman of the board, who should also ensure that the chief executive officer has an up-to-date succession plan for all the key people within the organization.
- The chief executive officer should work to develop a close relationship between the board of directors and the organization's executives, so that possible candidates for his/her succession can be assessed. They should also present the board with plans for possible candidates' individual development, in such a way as to make their possible gaps known, as well as the way they are being handled.

## FRANCE

### **Middlenext, 2021, p. 37 – Discussion régulière du Conseil sur la planification de la succession**

- Il est recommandé que le sujet de la succession soit régulièrement inscrit à l'ordre du jour du Conseil ou d'un comité spécialisé afin de vérifier que la problématique a été abordée ou que son suivi a été effectué annuellement. Selon les situations, notamment en cas de succession dans une entreprise familiale, il peut être opportun de changer de structure de gouvernance et de passer soit d'une structure moniste à une structure duale, et réciproquement, soit de revoir la répartition des fonctions entre président et directeur général

### **AMF, recommandation 2012-02, p. 27 – Divulgence du plan de succession – RSE**

- L'AMF recommande aux sociétés d'exposer chaque année dans leur rapport sur le gouvernement d'entreprise, non seulement quel est le processus décisionnel prévu pour l'élaboration du plan de succession de leurs principaux dirigeants mandataires sociaux (notamment le rôle du comité compétent, l'horizon de temps, sa fréquence de revue et les modalités d'implication éventuelle du dirigeant concerné), mais également si un plan de succession a effectivement été établi, à quelle date il a été revu pour la dernière fois et quelle a été la nature des travaux au cours de l'exercice précédent.
- L'AMF recommande que chaque année, le comité des nominations s'interroge sur les besoins du conseil en termes de compétences, y compris s'agissant des différents sujets relevant de la RSE, et en tire les conséquences sur le processus de sélection des administrateurs mis en place. Ce sujet devrait ensuite être débattu au sein du conseil.

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## INTERNATIONAL

### **ICGN, 2021, p. 13 – Rôle potentiel au conseil du PDG sortant**

- CEO succession to Chair: The practice of a company's retiring CEO remaining on the board as a director should be discouraged, regardless of any cooling off period, or in the event this practice does take place, the retiring CEO should not serve on board committees that require independent representation. If, exceptionally, the board decides that a retiring CEO should succeed to become chair, the board should consult with shareholders in advance setting out a convincing rationale and provide detailed explanation in the annual report. Unless there are extraordinary circumstances, there should be a break in service between the roles (e.g., a period of two years).

### **BlackRock Global, 2023, p. 7 – Intégration de nouveaux administrateurs pour favoriser une planification appropriée de la succession**

- Regular director elections also give boards the opportunity to adjust their composition in an orderly way to reflect the evolution of the company's strategy and the market environment. In our view, it is beneficial for new directors to be brought onto the board periodically to refresh the group's thinking and in a manner that supports both continuity and appropriate succession planning. We consider the average overall tenure of the board, where we are seeking a balance between the knowledge and experience of longer-serving members and the fresh perspectives of newer members. We encourage companies to keep under regular review the effectiveness of their



board (including its size), and assess directors nominated for election or re-election in the context of the composition of the board as a whole.

### 3.6.2 Élections des administrateurs

#### CANADA

##### Dey et Kaplan, 2021, p. 21 – Considération ESG dans la sélection des administrateurs

- The duty of loyalty will be increasingly interpreted to require boards to address issues such as climate change that affect the long term sustainability of the corporation. Leading Canadian companies are putting increased emphasis on director skills in environmental, social and other stakeholder issues [...] These increased expectations demand a new set of skills for directors, which should be the subject of director education as well as included in the skills matrix used to identify new and assess current directors.

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##### CCGC, 2018, p. 18 – Considération ESG dans la sélection des administrateurs

- In recruiting new directors, the evaluation of career experience and expertise should include consideration of E&S capabilities as they relate to the company's industry, financial responsibilities, and risk profile. It should also consider the qualities that will enable open, constructive dialogue on new and evolving topics.
- If the board does not have the requisite knowledge (existing or acquired) to provide oversight on a topic [E&S related], it should be prioritized in director education and/or recruitment.
- E&S-focused capabilities should be captured in the board skills matrix within the proxy circular. Investors require sufficient detail to be assured that material business drivers have the proper oversight. Where appropriate, director biographies should provide specific detail on relevant E&S experience and capabilities.

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##### Teachers, 2023, p. 18, 21 – Divulgence du processus de nomination – Scrutin majoritaire

- Processus de Nomination et évaluation des administrateurs : Dans les situations où le conseil ne divulgue pas publiquement ses processus de nomination et d'évaluation, nous envisagerons de ne pas appuyer le président du comité des mises en candidature et de gouvernance, selon divers facteurs, notamment notre évaluation de la composition globale du conseil, et si nous estimons que l'absence d'une telle divulgation a eu une incidence négative sur la transparence du conseil à l'égard de son engagement envers la planification de la relève des administrateurs et l'évaluation. **p. 18**
- Norme sur le scrutin majoritaire : Nous appuyons la mise en place d'une norme selon laquelle les administrateurs sont élus au scrutin majoritaire. En l'absence d'une telle norme, nous nous attendons à ce que les émetteurs adoptent une politique en matière de scrutin majoritaire. Nous tenons habituellement la présidence du comité des mises en candidature (ou son équivalent) responsable de veiller à ce que la politique de scrutin majoritaire soit mise en œuvre conformément à son objectif de tenir les administrateurs responsables. **p. 21**

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##### Vanguard, 2022, p.15 – Scrutin majoritaire

- Majority voting. If the company has plurality voting, a fund will typically vote for shareholder proposals that require a majority vote for election of directors. A fund may also vote for management proposals to implement majority voting for election of directors. A fund will generally vote against shareholder proposals that require a majority vote for election of directors if the company has a director resignation policy under which a nominee who fails to get a majority of votes is required to resign.

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##### CCGC, 2022, p. 7 et 8 – Scrutin majoritaire

- Majority Voting Policy (Boralex): Shareholders can vote for, or withhold their vote from, each nominee. In an uncontested election, if a nominee standing for election as a director receives a greater number of abstentions than votes in favour of his or her election, he or she will be deemed not to have received the support of shareholders, even if legally elected, and will be required to tender his or her resignation without delay. The Nominating and Corporate Governance Committee will review the circumstances surrounding the resignation and report to the board. The board will accept the resignation except in exceptional circumstances. The board has 90 days following

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the meeting to issue a press release announcing its decision or to state the reasons why the resignation has not been accepted. The director who has tendered his or her resignation will not participate in these deliberations. The board may or may not (until the next annual meeting of shareholders) fill the vacancy on the board resulting from the resignation.

- Majority voting (Celestica): The Board has adopted a policy that requires, in an uncontested election of directors, that shareholders be able to vote in favour of, or to withhold from voting, separately for each director nominee. If, with respect to any particular nominee, other than the controlling shareholder or a representative of the controlling shareholder, the number of shares withheld from voting by shareholders other than the controlling shareholder and its associates exceeds the number of shares that are voted in favour of the nominee, by shareholders other than the controlling shareholder and its associates, then the Board shall determine, and in so doing shall give due weight to the rights of the controlling shareholder, whether to require the nominee to resign from the Board and, if so required, any such nominee shall immediately tender his or her resignation. A director who tenders a resignation pursuant to this policy will not participate in any meeting of the Board at which the resignation is considered. The Board shall determine whether to accept the resignation, which, if accepted, shall be effective immediately upon such acceptance. The Board shall accept such resignation absent exceptional circumstances. Such a determination by the Board shall be made, and promptly announced by press release (a copy of which will be provided to the Toronto Stock Exchange (“TSX”)), within 90 days after the applicable shareholders’ meeting. If the Board determines not to accept a resignation, the press release will fully state the reasons for such decision [...]

#### **ISS, 2023, p. 21 – Scrutin majoritaire**

- Majority voting: General Recommendation: Vote for resolutions requesting that: (i) the board adopt a majority voting director resignation policy for director elections or (ii) the company amend its bylaws to provide for majority voting, whereby director nominees are elected by the affirmative vote of the majority of votes cast, unless: (1) A majority voting director resignation policy is codified in the company's bylaws, corporate governance guidelines, or other governing documents prior to an election to be considered; and (2) The company has adopted formal corporate governance principles that provide an adequate response to both new nominees as well as "holdover" nominees (i.e. incumbent nominees who fail to receive 50 percent of votes cast).

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#### **BlackRock, 2023, p. 11 – Scrutin majoritaire**

- Directors should generally be elected by a majority of the shares voted, as mandated by the TSX or the Canada Business Corporations Act (the “Majority Voting Requirements”). We will normally support proposals seeking to introduce bylaws requiring a majority vote standard for director elections. Majority vote standards generally assist in ensuring that directors who are not broadly supported by shareholders are not elected to serve as their representatives. As a best practice, companies with either a majority vote standard or a plurality vote standard should adopt a resignation policy for directors who do not receive support from at least a majority of votes cast.
- We note that majority voting may not be appropriate in all circumstances, for example, in the context of a contested election, or for majority-controlled companies or those with concentrated ownership structures.
- Since 2014, TSX issuers have been required to have majority voting policies under which directors who do not receive support from at least a majority of the votes cast are required to submit a resignation for consideration by the remaining board members. If a director receives less than a majority of votes for their election, we expect the board to accept the requisite resignation from such director, absent circumstances which we deem to be exceptional in our assessment of the board’s disclosure of its rationale for not accepting the resignation

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#### **Share, 2022, p. 9 – Scrutin majoritaire – Remise de démission lorsqu’un administrateur n’a pas obtenu une majorité des votes des actionnaires**

- Dans la plupart des sociétés canadiennes, les actionnaires n’ont pas l’option de voter contre un administrateur. Dans le vote par procuration, ils ne peuvent que voter pour ou voter abstention. Par conséquent, à moins qu’ils ne reçoivent aucun vote, les administrateurs sélectionnés sont élus indépendamment du nombre d’abstentions.
- La Bourse de Toronto (TSX) demande aux sociétés cotées d’adopter le scrutin majoritaire pour les élections d’administrateur. Les scrutins majoritaires requièrent un plus grand nombre de votes pour être élus au conseil d’administration. Ce mode d’élection transforme les votes d’abstention en votes contre et permet aux actionnaires

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de révoquer un administrateur du conseil. [Le fonds] est en faveur des scrutins majoritaires pour l'élection des administrateurs.

- Une variante du scrutin majoritaire des administrateurs est la remise de démission du candidat lorsqu'il n'a pas obtenu une majorité des votes des actionnaires. Le conseil décide d'accepter ou non cette démission. Les politiques de démissions des administrateurs marquent un progrès par rapport aux élections uninominales, mais elles permettent toujours aux administrateurs de déterminer qui siège au conseil même si une majorité des actionnaires a voté pour leur démission. Si une majorité d'actionnaires vote pour une proposition visant à mettre en place un système de scrutin majoritaire, [le fonds] ne verra pas l'adoption d'une procédure de démission de l'administrateur comme une alternative satisfaisante.

**CDPO, 2020, p. 5, 6 – Scrutin majoritaire – Remise de démission lorsqu'un administrateur n'a pas obtenu une majorité des votes des actionnaires**

- We encourage companies to adopt a majority voting policy to elect board members. Under this policy, board members who do not receive a majority of votes in favour must submit their resignation to the board, which must decide within 90 days whether or not to accept the resignation. Refusal of a resignation would only be conceivable under exceptional circumstances. In cases where a cumulative vote is in effect, each situation will be evaluated on its own merit.

**Autre source**

- Davies 2022, p. 47 et ss

## ÉTATS-UNIS

**Commonsense Principles, 2018, p. 2 – Délai minimum du mandat – Élection annuelle**

- No matter how frequently a company chooses to elect directors, a director ordinarily should refrain from joining a board on which he or she is not committed to serving for at least three years.
- Requiring all directors to stand for election on an annual basis may help promote board accountability to shareholders. If a company chooses to hold elections on a staggered basis or otherwise elect directors less frequently than annually, the board should explain clearly (ordinarily in the company's proxy statement) its rationale for doing so.

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**NACD, 2022, p.22 – Considération des actionnaires – Recommendation de candidat – Scrutin majoritaire**

- Boards should respect shareholder rights, setting policies that facilitate (rather than negate) them. This includes providing shareholders with meaningful opportunities to recommend candidates for nomination to the board, and to elect—and decline to elect—directors. At public companies, such procedures include majority voting in uncontested director elections and the ability to have director candidates nominated by shareholders included in the proxy statement (via universal proxy or proxy access for shareholders holding a reasonable minimum amount of outstanding shares for a reasonable minimum period of time). While in private companies, shareholder rights are influenced by and vary with the degree of control and contractual arrangements, for both public and private companies, the annual meeting is an opportunity for boards to communicate with shareholders about the company's performance and for shareholders to communicate with the board and management.

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**AUTRES SOURCES**

- Nasdaq, 5600, IM-5605-6 et IM-5605-6 (p. 7 et 8 du pdf)

## GRANDE-BRETAGNE

**UK Code, 2018, p. 8 – Élection annuelle**

- All directors should be subject to annual re-election. The board should set out in the papers accompanying the resolutions to elect each director the specific reasons why their contribution is, and continues to be, important to the company's long-term sustainable success.

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## AUSTRALIE

### [ASX Council, 2019](#), p. 7 – Vérification en amont de l'élection d'un administrateur

- A listed entity should: (a) undertake appropriate checks before appointing a director or senior executive or putting someone forward for election as a director; and (b) provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director.
- For these purposes, appropriate checks would usually include checks as to the person's character, experience, education, criminal record and bankruptcy history. [...] The following information about a candidate standing for election or re-election as a director should be provided to security holders to enable them to make an informed decision on whether or not to elect or re-elect the candidate: [...] in the case of a candidate standing for election as a director for the first time: (1) confirmation that the entity has conducted appropriate checks into the candidate's background and experience; (2) if those checks have revealed any information of concern, that information; (3) details of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other party; and (4) if the board considers that the candidate will, if elected, qualify as an independent director, a statement to that effect;

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### [ACSI, governance guidelines, 2021](#), p. 9 – Éléments à considérer

- When we formulate recommendations on director election or re-election proposals, we consider factors relating to the performance and accountability of the individual candidate and the performance of the company.
- In relation to the individual, we consider: (1) skills, qualifications and experience (2) performance of the director on the company's board or other boards (as evidence of their skills and experience) (3) engagement with shareholders and responsiveness to material issues (4) evidence of the exercise of independent judgement (5) the director's attendance at board and committee meetings (6) capacity and workload (7) the length of the director's tenure on the company's board, in light of average overall board tenure and company performance (8) progress on the board's diversity (9) progress on the company's management of material climate-related risk; and (10) any relevant, publicly-known conduct of the director.
- In relation to board composition, we consider: (1) performance of the company under the incumbent board and its committees, including management of material risks (2) oversight of management process and remuneration arrangements (3) how the director fits within the board's skills matrix and diversity considerations (for example, gender) (4) the proportion of independent non-executive directors; and (5) how the board undertook the process to identify and select new board members.

## AUTRES SOURCES

- [Directors' Toolkit, 2022](#), p. 124 à 126

## ALLEMAGNE

### [German Corporate Governance Code, 2022](#), p. 10 – Divulgence de conflits d'intérêt – Éléments à considérer – Élection individuelle

- In its election proposals to the General Meeting, the Supervisory Board shall disclose the personal and business relationships of every candidate with the enterprise, the governing bodies of the company, and any shareholders with a material interest in the company. The disclosure recommendation is limited to information and circumstances that, in the opinion of the Supervisory Board, an objectively judging shareholder would consider decisive for their election decision. A material interest in the meaning of this recommendation refers to shareholders who directly or indirectly hold more than 10% of the voting shares of the company.
- The proposal for a candidate shall be accompanied by a curriculum vitae, providing information on the candidate's relevant knowledge, skills and professional experience; it shall be supplemented by an overview of the candidate's

material activities in addition to the Supervisory Board mandate, and shall be updated annually for all Supervisory Board members and published on the entity's website.

- Shareholder representatives shall be elected individually. Where an application is made for the appointment of a Supervisory Board member – representing shareholders – by the Court, the term of that member shall be limited until the next General Meeting.

## INTERNATIONAL

### ICGN, 2021, p. 17 – Élection annuelle

- Directors should be elected to the board preferably on an annual basis, or stand for election once every three years, and be accountable to shareholders by approval of a majority of shares voted in favour on each resolution. Boards should disclose the process for director election / re-election along with information about board candidates which includes: (1) board member identities and rationale for appointment; (2) core competencies, qualifications, and professional background; (3) recent and current board and management mandates at other companies, as well as significant roles on non-profit/charitable organisations; (4) factors affecting independence, including relationship/s with controlling shareholders; (5) length of tenure; (6) board and committee meeting attendance; and (7) any shareholdings in the company.

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### BlackRock Global, 2023, p. 7 – Élection annuelle

- It is our view that directors should stand for re-election on a regular basis, ideally annually. In our experience, annual re-elections allow shareholders to reaffirm their support for board members or hold them accountable for their decisions in a timely manner. When board members are not re-elected annually, in our experience, it is good practice for boards to have a rotation policy to ensure that, through a board cycle, all directors have had their appointment re-confirmed, with a proportion of directors being put forward for re-election at each annual general meeting.

**B&M**

## 3.7 Traitement de la rémunération

### 3.7.1 Alignement avec les objectifs à long terme de l'entreprise

#### CANADA

##### Dey et Kaplan, 2021, p. 32

- The board should ensure that management compensation is aligned with achieving the purpose and long-term sustainability of the corporation. This can be accomplished by adopting metrics and targets in compensation plans that are aligned with the purpose of the corporation. The plans should provide that the achievement of these targets makes up a meaningful component of management's bonus and other forms of compensation. **p. 32**
- Integrating stakeholder considerations into executive compensation is essential to the company achieving its purpose. **p. 32**
- Academic research in finance and strategic management suggests that compensation schemes that include social responsibility metrics lead to an increase in firm value along with an increase in long-term orientation, while at the same time promoting an increase in social and environmental initiatives, a reduction in emissions and an increase in green innovations. **p. 32**

SH

##### Teachers, 2023, p. 28

- Rémunération des cadres : Nous appuierons probablement les régimes de rémunération qui comportent [...]une rémunération au rendement harmonisée aux objectifs à court et à long terme de la société qui, à notre avis, sera stable et n'exigera pas de modification au cours du cycle d'affaires de la société

SH

##### BlackRock, 2023, p. 15

- A company's board of directors should put in place a compensation structure that balances incentivizing, rewarding, and retaining executives appropriately across a wide range of business outcomes. This structure should be aligned with shareholder interests, particularly the generation of sustainable, long-term value.

SH

##### BMO, 2021, p. 12

- Levels of compensation and other incentives should be designed to promote the long-term success of the company and reflect the work carried out and the executives' contribution to the company. No director should be involved in setting their own compensation.

SH

##### Share, 2022, p. 31

- [Le fonds] s'attend à ce que la majorité de la rémunération des dirigeants soit basée sur le rendement. Les objectifs de rendement devraient être compatibles avec la valeur durable de la société. Cela exclut les objectifs tels que le cours des actions qui peuvent ne pas refléter la performance de la société. Cela comprend les objectifs qui favorisent l'innovation et les objectifs qualitatifs qui contribuent à la valeur à long terme comme la satisfaction de la clientèle, la durabilité environnementale ainsi que la santé et la sécurité des employés.

SH

#### ÉTATS-UNIS

##### Dey et Kaplan, 2021, p. 32

- The board should ensure that management compensation is aligned with achieving the purpose and long-term sustainability of the corporation. This can be accomplished by adopting metrics and targets [...] Leading companies are already doing it. Shareholders are demanding it. A study of 2019 proxy filings in the US showed that 18 S&P 1500 companies received shareholder proposals demanding a link between executive pay and ESG metrics— Apple, Inc. being prominent among them—which was a 50% increase from the year before.

SH

##### CII, 2023, point 5.1, p. 10

SH

- Executive compensation should be designed to attract, retain and incentivize executive talent for the purpose of building long-term shareholder value and promoting long-term strategic thinking. CII considers “the long-term” to be at least five years. Executive rewards should be generally commensurate with long-term return to the company’s owners. Rewarding executives based on broad measures of performance may be appropriate in cases where doing so logically contributes to the company’s long-term shareholder return.

**NACD, 2022, p.42**

- As corporate strategies shift to address a broader range of stakeholder and environmental interests, boards should reconsider their approach to compensation. Compensation programs should support the measures the board has identified as important in assessing the company’s performance along financial, human capital, compliance, organizational culture, social, and environmental dimensions as appropriate to the company and its industry. The board should consider CEO pay in relation to the compensation of the CEO’s direct reports and the general workforce, and ensure that compensation at all levels is rational and equitable.

SH

**ISG, 2017, principle 6**

- 6.1 As part of their oversight responsibility, the board or its compensation committee should identify short- and long-term performance goals that underpin the company’s long-term strategy. These goals should be incorporated into the management incentive plans and serve as significant drivers of incentive awards. Boards should clearly communicate these drivers to shareholders and demonstrate how they establish a clear link to the company’s long-term strategy and sustainable economic value creation. All extraordinary pay decisions for the named executive officers should be explained to shareholders.

SH

**GRANDE-BRETAGNE**

**UK Code, 2018, p. 13**

- Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success. Executive remuneration should be aligned to company purpose and values, and be clearly linked to the successful delivery of the company’s long-term strategy.

SH

**Wates, 2018, p. 19**

- The board should establish clear policies on remuneration structures and practices which should enable effective accountability to shareholders. This should take account of the broader operating context, including the pay and conditions of the wider workforce and the company’s response to matters such as any gender pay gap.
- Such accountability can be supported by clear remuneration structures that are aligned with the company’s purpose, values and culture, and the delivery of strategy to support long-term sustainable success. Policies may include robust consideration of the reputational and behavioural risks to the company that can result from inappropriate incentives and excessive rewards.
- Boards should consider the benefits of greater transparency of remuneration structures and policies which will build trust from wider stakeholders. Additional transparency could extend to commenting on how executive remuneration reflects general practice within the sector or voluntary disclosure of pay ratios.

SH

**AUSTRALIE**

**ACSI, governance guidelines, 2021, p. 16**

- Executive remuneration should be aligned to the delivery of company strategy, company values, the desired company culture and the company’s risk appetite. Executive remuneration should be designed to promote sustainable long-term performance and shareholder value creation.
- In setting remuneration structures, the board should identify the long-term value drivers for the company and how these can be best reflected in the remuneration structure and performance hurdles.

SH

## BRÉSIL

### IBGC 2023, p. 46

- If the organization adopts variable compensation or compensation based on shares for board members, it should be bound to long-term results and goals. This compensation should be linked with medium- and long-term strategic goals and value generation, and the board should take the appropriate care to avoid encouraging conflicts of interest.

SH

### 3.7.2 Mise en place d'un vote consultatif sur la rémunération

## CANADA

### Taskforce, 2021, p. 69 – **Le vote consultatif permet un meilleur engagement actionnarial – Vote annuel**

- There is a growing recognition in Canada and globally that periodic advisory votes on executive compensation provide critical input to boards and facilitate shareholder engagement. Many stakeholders have indicated that they support the implementation of a mandatory vote on a board's approach to executive compensation for issuers.
- The Taskforce recommends the adoption of mandatory annual advisory votes on executive compensation practices for all publicly listed issuers. However, the annual votes should be non-binding votes to preserve the board of directors' decision-making authority and avoid the risk that shareholder proposal campaigns become too burdensome on issuers

B&M

### CCGC, 2018, p. 68 – **Le vote consultatif est la norme pour plus de 70% des émetteurs S&P/TSX**

- Offering shareholders a 'Say on Pay' vote is a meaningful tool that is used by boards to assess shareholders' acceptance of the corporation's approach to executive compensation. More than 70% of the issuers in the S&P/TSX composite index now offer their shareholders a 'Say on Pay' vote.

B&M

### GL, 2023, p. 20, 36, 37 – **Position de GL en cas d'opposition à un vote consultatif – Éléments à considérer dans l'évaluation de la structure du vote consultatif – Rejet potentiel d'un vote consultatif**

- We may recommend withholding votes from the following compensation committee members under the following circumstances: (1) All members of a compensation committee during whose tenure the committee failed to address shareholder concerns following majority shareholder opposition to a say-on-pay proposal in the previous year. Where the proposal was approved but there was a significant shareholder vote (i.e., greater than 20% of votes cast) against the say-on-pay proposal in the prior year, if the board did not respond sufficiently to the vote including actively engaging shareholders on this issue, we will also consider recommending voting against the compensation committee chair or all members of the compensation committee, depending on the severity and history of the compensation problems and the level of shareholder opposition. **p. 20**
- Glass Lewis reviews say-on-pay proposals on both a qualitative basis and a quantitative basis, with a focus on several main areas: (1) The overall design and structure of the company's executive compensation program, including selection and challenging nature of performance metrics. (2) The implementation and effectiveness of the company's executive compensation programs including pay mix and use of performance metrics in determining pay levels. (3) The quality and content of the company's disclosure. (4) The quantum paid to executives. (5) The link between compensation and performance as indicated by the company's pay-for-performance practices. [...] **p. 36**
- Although not an exhaustive list, we believe the following practices are indications of problematic pay practices which may cause Glass Lewis to recommend against a say on pay vote: (1) Inappropriate or oversized self-selected peer group and/or benchmarking issues, such as compensation targets set well above the median without adequate justification. (2) Egregious or excessive bonuses, equity awards or severance payments, including golden handshakes and golden parachutes. (3) Discretionary bonuses paid when short or long-term incentive plan targets were not met. (4) Insufficient response to low shareholder support. (5) Insufficiently challenging performance



targets and/or high potential payout opportunities. (6) Performance targets lowered without justification. (7) Problematic contractual payments, such as guaranteed bonuses. (8) High executive pay relative to peers that is not justified by outstanding company performance The terms of the long-term incentive plans are inappropriate (please see "Long-Term Incentives"). **p. 36**

**ISS, 2023, p. 34**

- General recommendation : Vote case-by-case on management proposals for an advisory shareholder vote on executive compensation (Management Say-on-Pay proposals or MSOPs).
- Vote against MSOP proposals, withhold for compensation committee members (or, in rare cases where the full board is deemed responsible, all directors including the CEO), and/or against an equity-based incentive plan proposal if: (1) There is a significant misalignment between CEO pay and company performance (pay for performance); (2) The company maintains significant problematic pay practices; or (3) The board exhibits a significant level of poor communication and responsiveness to shareholders.

**Teachers, 2023, p. 27 – Vote consultatif annuel**

- Nous attendons des conseils qu'ils respectent le processus démocratique des actionnaires en matière de résolutions sur la rémunération. Si une résolution sur la rémunération fait l'objet d'un vote d'opposition important de la part des actionnaires lors d'une année donnée, nous tiendrons généralement le président du comité de la rémunération responsable de s'assurer que des améliorations significatives sont apportées au régime de rémunération. [...]Nous appuyons les votes consultatifs annuels sur la rémunération.

**B&M**

**BlackRock, 2023, p. 16 – Vote consultatif annuel**

- "Say on Pay" advisory resolutions: In cases where there is a "Say on Pay" vote, BIS will respond to the proposal as informed by our evaluation of compensation practices at that particular company and in a manner that appropriately addresses the specific question posed to shareholders. Where we conclude that a company has failed to align pay with performance, we will vote against the management compensation proposal and relevant compensation committee members.
- Frequency of "Say on Pay" advisory resolutions: BIS will generally support annual advisory votes on executive compensation. It is our view that shareholders should have the opportunity to express feedback on annual incentive programs and changes to long-term compensation before multiple cycles are issued.

**B&M**

**State Street, 2023, p. 13**

- State Street Global Advisors believes executive compensation plays a critical role in aligning executives' interest with shareholders', attracting, retaining and incentivizing key talent, and ensuring positive correlation between the performance achieved by management and the benefits derived by shareholders. We support management proposals on executive compensation where there is a strong relationship between executive pay and performance over a five-year period. We seek adequate disclosure of various compensation elements, absolute and relative pay levels, peer selection and benchmarking, the mix of long-term and short-term incentives, alignment of pay structures with shareholder interests as well as with corporate strategy, and performance. Further shareholders should have the opportunity to assess whether pay structures and levels are aligned with business performance on an annual basis.
- In Canada, where advisory votes on executive compensation are not commonplace, we will rely primarily upon engagement to evaluate compensation plans.

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**ÉTATS-UNIS**

**HLS Roundtable, 2022, p.27 et 28 – Position des fonds en cas d'opposition à un vote consultatif**

- A fund will generally vote against compensation committee members when it votes against the company's Say on Pay proposal in consecutive years unless meaningful improvements have been made to executive compensation practices since the prior year.

**B&M**

- If egregious pay practices are identified, a fund will generally vote against the compensation committee chair and, if the issues persist, a fund may vote against the full compensation committee in subsequent years if Say on Pay is not on the ballot.

## GRANDE-BRETAGNE

### [LSE, 2012](#), p. 42 – Vote contraignant vs non contraignant

- Since 2003, shareholders in the UK have had the right to cast a non-binding vote each year on the company’s remuneration report; the UK government is now proposing a binding remuneration vote as well as a shareholder vote on exit payments above one year’s salary. These proposals are still pending, but in the meantime shareholders have used the current, non-binding vote to signal their views to their boards, with majority votes against remuneration packages sometimes revealing broader concerns about the board and executives.
- The remuneration vote has encouraged greater dialogue between companies and shareholders about what shareholders expect in terms of compensation design and practice. The vote has also resulted in more direct dialogue between shareholders and directors since shareholders prefer to speak directly to the remuneration committee regarding executive remuneration. If they are not satisfied with the compensation programmes even after these meetings, shareholders will vote against the remuneration report; if their concerns remain unaddressed, they may also vote against members of the remuneration committee.

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## AUSTRALIE

### [ACSI, governance guidelines, 2021](#), p. 16 – Vote contraignant vs non contraignant – Two strikes rule

- We believe that the vote on the remuneration report and the two strikes rule should be supplemented with a binding vote on pay policy every three years. We recognise the importance of the board retaining discretion (and the accompanying accountability) to formulate a pay policy that is appropriate to their company. Nonetheless a company’s pay policy should describe certain components so that investors have appropriate information to form a view on how the policy might work in practice, and potential outcomes. The current vote on remuneration outcomes remains important to provide feedback to a company’s board on how the pay policy is implemented and we would continue undertaking a careful review to assess implementation and outcomes.
- The ‘two strikes’ rule has been successful in increasing engagement between Australian boards and their shareholders on issues of executive remuneration. We support the ‘two strikes’ rule as a mechanism to assist shareholders in holding the board and/or individual directors accountable for remuneration decisions and general company performance where a company has received substantial ‘against’ votes on remuneration reports in consecutive years.
- We expect all companies that have received a first strike, or a high vote against (but falling short of a strike), to respond to investor concerns by engaging with investors to address material remuneration issues. We will assess remuneration reports independently of board spill resolutions at companies which have received a first strike.

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### [Directors’ Toolkit, 2022](#), p. 86 – Two strikes rule

- The two-strikes rule functions as a vehicle for shareholders to express their disapproval of directors’ remuneration via the introduction of a ‘spill meeting’. More broadly, it is a mechanism that activist shareholders can draw upon to indicate general discontent with the board and its performance. As part of the aftermath of the Royal Commission into the Misconduct in the Banking, Superannuation and Financial Services Industry, several Australian financial services firms received a ‘first strike’ against their remuneration report.

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## INTERNATIONAL

### [ICGN, 2021](#), p. 22 – Vote contraignant vs non contraignant

- Shareholders should have an opportunity, where a jurisdiction allows, to a binding vote on remuneration policies at least every four years or where significant change to remuneration structure is proposed.

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### 3.7.3 Inclusions et exclusions

#### CANADA

##### CCGC, 2022, p. 24, 26, 52

- Director compensation should not include retirement benefits, change of control or severance provisions, health care coverage, charitable donations, vehicles, club memberships, pensions, or other such perquisites. p.24
- Director compensation plans can facilitate the achievement of minimum director shareholding requirements and encourage directors to continue to invest in the company beyond the minimum share ownership level. In instances where there is an equity-based component of compensation, the amount should not be determined based on corporate performance, as that may compromise the objectivity of directors as stewards of the company on behalf of shareholders. The equity-based component of director compensation should consist of full value awards such as common shares or deferred share units (DSUs) rather than stock options. p.24
- Some ARC board members, including the Board Chair, despite having met their share ownership requirement (60%), chose to receive 100% of their 2021 compensation in the form of DSUs. This practice not only demonstrates the Chair's commitment to the company's future but also sets an expectation of members of senior management to build an equity interest in the company beyond the minimum requirements. As CCGG recommends, stock options are not part of ARC's director compensation mix. **p.26**
- To the extent that issuers use options and/or other share-based incentives that vest based on time only, CCGG encourages issuers to consider long-term vesting restrictions. Stock options often start vesting one year following the date of grant and fully vest after three years. Kinaxis, however, grants stock options that vest over four years. Restricted shares or restricted stock units also often start vesting one year after award date and fully vest after three years. Imperial Oil, however, grants restricted shares to the CEO that vest equally on the fifth and tenth anniversaries of grant, which are long-term vesting restrictions. p.52
- In the interest of improving the alignment between pay and performance, many public company boards across all industry sectors in Canada have introduced Performance Share Unit (PSU) plans into their executive compensation programs. In some cases, PSU plans are being used in place of stock option plans which have not achieved the originally intended outcome of linking pay with performance. CCGG is supportive of improving this link and believes that an appropriately structured PSU plan may be helpful in that regard. True performance-vesting, in CCGG's view, should contemplate the possibility of a zero-vesting outcome that is not dependent upon a board exercising discretion. Awards that partially vest based on time alone and for which a zero-vesting outcome is possible only if a board exercises discretion should not be classified as PSUs. p.52

##### GL, 2023, p. 35, 39, 40

- Glass Lewis strongly believes executive compensation should be linked directly with the performance of the business the executive is charged with managing. (voir p. 38 et 39) We typically look for compensation arrangements that provide for a mix of performance-based short- and long-term incentives in addition to fixed pay elements. (voir p. 39 à 41) **p. 35**
- **Short term incentives:** A short-term bonus or incentive (STI) should be demonstrably tied to performance. Whenever possible, we believe a mix of corporate and individual performance measures is appropriate. We would normally expect performance measures for STIs to be based on company-wide or divisional financial measures as well as non-financial, qualitative or non-formulaic factors such as those related to employee turnover, safety, environmental issues, and customer satisfaction. **p. 39**
- **Long term incentives:** Glass Lewis recognizes the value of equity-based incentive programs, which are often the primary long-term incentive (LTI) for executives. When used appropriately, they can provide a vehicle for linking executive pay to company performance, thereby aligning their interests with those of shareholders. In addition, equity-based compensation can be an effective way to attract, retain and motivate key employees.
- We feel that executives should be compensated with equity when their performance and that of the company warrants such rewards. While we do not believe that equity-based compensation plans for all employees need to be based on overall company performance, we do support such performance limitations for grants to senior executives (although even some equity-based compensation of senior executives without performance criteria is acceptable, such as in the case of moderate incentive grants included in an initial offer of employment). In evaluating long-term incentive grants, Glass Lewis generally believes that at least half of the grant should consist

of performance-based awards, putting a material portion of executive compensation at-risk and demonstrably linked to the performance of the company. While we will consistently raise concern with programs that do not meet this criterion, we may refrain from a negative recommendation in the absence of other significant issues with the program's design or operation. However, in cases where performance-based awards are significantly rolled back or eliminated from a company's long-term incentive plan, such decisions will generally be viewed negatively outside of exceptional circumstances, and may lead to a recommendation against the proposal. **p.41** [...]

- **Stock options:** We evaluate option plans based on the following overarching principles: (1) Companies should seek more shares only when needed. (2) In the case of rolling equity plans, generally, the maximum percentage of shares available for issuance should not exceed 10%. (3) Fixed plans should be small enough that companies should seek approval every three to four years. (4) Annual net share count and voting power dilution should be limited. (5) The annual cost of the plan (especially if not shown on the income statement) should be reasonable as a percentage of financial results and in line with the peer group(s). (6) The expected annual cost of the plan should be proportional to the value of the business. (7) The intrinsic value received by option financial results of the business. (8) The plan should deliver value on a per-employee basis when compared with programs at peer companies. (9) Plans should not permit the repricing of stock options without shareholder approval. (10) Plans should not contain excessively liberal administrative or payment terms. (11) Plans should be administered by independent directors. (12) Plans should not contain provisions allowing for excessive payouts in the event of a change of control. **p.43**
- Full value award: p. 43
- Grants of Front Loaded Awards: p.44

#### **ISS, 2023, p. 46, 47**

- Vote for broadly based (preferably all employees of the company with the exclusion of individuals with 5 percent or more beneficial ownership of the company) employee stock purchase plans where the following apply: (1) Reasonable limit on employee contribution (may be expressed as a fixed dollar amount or as a percentage of base salary excluding bonus, commissions and special compensation); (2) Employer contribution of up to 25 percent of employee contribution and no purchase price discount or employer contribution of more than 25 percent of employee contribution and SVT cost of the company's equity plans is within the allowable cap for the company; (3) Purchase price is at least 80 percent of fair market value with no employer contribution; (4) Potential dilution together with all other equity-based plans is 10 percent of outstanding common shares or less; and (5) The Plan Amendment Provision requires shareholder approval for amendments to: (i) The number of shares reserved for the plan; (ii) The allowable purchase price discount; (iii) The employer matching contribution amount.
- Treasury funded ESPPs, as well as market purchase funded ESPPs requesting shareholder approval, will be considered to be incentive-based compensation if the employer match is greater than 25 percent of the employee contribution. In this case, the plan will be run through the ISS compensation model to assess the Shareholder Value Transfer (SVT) cost of the plan together with the company's other equity-based compensation plans. **p. 46**
- General Recommendation: Vote for a NED deferred compensation plan if DSUs may ONLY be granted in lieu of cash fees on a value for value basis (no discretionary or other grants are permitted).
- General Recommendation: Vote for NED deferred compensation plans that permit discretionary grants (not ONLY in lieu of cash fees) if: (1) Potential dilution together with all other equity-based compensation is 10 percent of the outstanding common shares or less; or if the plan includes a company matching or top-up provision, the SVT cost of the plan does not exceed the company's allowable cap; (2) NED participation is acceptably limited (please refer to Overriding Negative Factors/NED Participation above); (3) The plan amendment provisions require shareholder approval for any amendment to: (4) Increase the number of shares reserved for issuance under the plan; (5) Change the eligible participants that may permit the introduction or reintroduction of non-employee directors on a discretionary basis or amendments that increase limits previously imposed on NED participation; (6) Amend the plan amendment provisions.
- In addition, ISS will consider other elements to assess whether a DSU plan is deemed to be overall beneficial to shareholders' interests when determining vote recommendations. Other elements of director compensation evaluated in conjunction with DSU plan proposals may include but are not limited to: (1) Director stock ownership guidelines of a minimum of three times annual cash retainer; (2) Vesting schedule or mandatory deferral period which requires that shares in payment of deferred units may not be paid out until the end of board service; (3)

The mix of remuneration between cash and equity; and (4) Other forms of equity-based compensation, i.e. stock options, restricted stock.

#### Teachers, 2023, p. 23

- Règle sur l'émission, l'acquisition et l'exercice p. 23 à 25

- [Régimes de remuneration à base d'actions – Autres] :

Pouvoir discrétionnaire du conseil d'administration

Nous n'appuierons pas les régimes qui confèrent au conseil d'administration un pouvoir discrétionnaire étendu ou illimité pour fixer les modalités afférentes. Ces régimes doivent être accompagnés, lors de leur présentation aux actionnaires aux fins d'approbation, de renseignements suffisamment détaillés sur leurs coûts, leur portée, leur périodicité et leurs barèmes de levée de la rémunération à base d'actions.

Divulgateion

Nous sommes fortement en faveur de la divulgation de tous les aspects importants du régime de rémunération à base d'actions et de la transparence complète par rapport aux objectifs de rendement et aux conditions d'acquisition.

B&M

#### Teachers, 2023, p. 28

- En règle générale, nous *appuierons* les propositions qui prévoient le versement d'un certain pourcentage de la rémunération des administrateurs sous forme d'actions ordinaires (y compris sous forme d'actions différées ou subalternes).

#### BlackRock, 2023, p. 16

- Employee stock purchase plans : Employee stock purchase plans ("ESPP") are an important part of a company's overall human capital management strategy and can provide performance incentives to help align employees' interests with those of shareholders. The most common form of ESPP qualifies for favorable tax treatment under Section 423 of the Internal Revenue Code. We will typically support qualified ESPP proposals.
- Equity compensation plans : BIS supports equity plans that align the economic interests of directors, managers, and other employees with those of shareholders. Boards should establish policies prohibiting the use of equity awards in a manner that could disrupt the intended alignment with shareholder interests, such as the excessive pledging or hedging of stock. We may support shareholder proposals requesting the establishment of such policies. Our evaluation of equity compensation plans is based on a company's executive pay and performance relative to peers and whether the plan plays a significant role in a pay-for-performance disconnect. We generally oppose plans that contain "evergreen" provisions, which allow for automatic annual increases of shares available for grant without requiring further shareholder approval; we note that the aggregate impacts of such increases are difficult to predict and may lead to significant dilution. We also generally oppose plans that allow for repricing without shareholder approval. We may oppose plans that provide for the acceleration of vesting of equity awards even in situations where an actual change of control may not occur. We encourage companies to structure their change of control provisions to require the termination of the covered employee before acceleration or special payments are triggered (commonly referred to as "double trigger" change of control provisions).

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#### Share, 2022, p. 14

- La rémunération en actions des administrateurs peut être favorable à leur détention d'actions, mais elle doit mettre en phase les intérêts des administrateurs avec ceux des autres actionnaires. Ces régimes sont soumis aux mêmes lignes directrices relatives à l'expiration, la dilution, etc., que celles des régimes de rémunération des dirigeants. Les administrateurs ne devraient pas recevoir des options d'achat d'actions (stock-options). Les options d'achat d'actions ne prennent de la valeur que lorsque le prix d'exercice excède le prix d'acquisition, ce qui conduit souvent les détenteurs des options d'achat d'actions à focaliser sur les fluctuations des prix de l'action à court terme. Au contraire, les administrateurs doivent se concentrer sur les intérêts à long terme des actionnaires. D'autre part, les options d'achat d'actions n'exigent pas que les administrateurs aient un capital à risque. **p. 14**
- Généralement, **l'inclusion d'une rémunération en actions** dans le régime de rémunération des dirigeants bénéficie aux actionnaires de la société puisqu'ils mettent en phase leurs intérêts avec ceux des actionnaires. Toutefois, la rémunération en actions peut conduire les dirigeants à se concentrer sur la valeur de l'action au lieu de la performance de la société qui inclut entre autres, la productivité, les bénéfices, ou la satisfaction des clients,

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ou d'autres aspects de sa performance. Les régimes de rémunération en actions sont souvent responsables des rémunérations excessives des dirigeants et requièrent donc une attention particulière de la part. des actionnaires. Cela s'applique à toutes les formes de rémunération à base d'actions, y compris la rémunération en argent comptant plutôt qu'en actions. Les formes les plus courantes de rémunération à base d'actions seront abordées dans les sections suivantes. [...] Les **options d'achat d'actions** ne prennent de la valeur que lorsque le cours de l'action de la société est supérieur au cours de l'action en vigueur lors de l'attribution des options. Les options d'achat d'actions encouragent donc les dirigeants à se concentrer sur le cours de l'action au lieu de focaliser sur d'autres mesures de performance de la société et des intérêts à long terme. Il est possible de manipuler la valeur des options d'achat d'actions en modifiant la date des options pour maximiser la différence entre la valeur de l'action à la date d'attribution et celle à la date d'exercice. [Le fonds] n'approuve pas l'utilisation des options d'achat d'actions comme moyen de rémunération et privilégie les régimes à base d'actions.

[CDPO, 2020](#), p. 11, 12

- We support proposals that pay a certain percentage of the compensation in the form of shares or deferred share units. However, we are generally opposed to the participation of external directors in a stock option plan or a performance-related securities plan. We feel that this type of compensation is less aligned with the long-term interests of shareholders and may result in a conflict of interest for the directors with respect to management of such plans. We favour a compensation plan separate from that offered to executives and employees.

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## ÉTATS-UNIS

[CII, 2023](#), point 5.5, 6.1, 6.4 et 6.5, p. 12, 15, 16 et 17

- Most U.S. companies provide salary, an annual bonus and a long-term incentive. However, this approach need not be written in stone. It could simplify and sharpen compensation at certain companies to focus pay on salary and a single incentive plan, for example to make an annual award of long-vesting restricted shares or restricted share units. We would expect such an approach to focus on a long-term incentive and alignment, although there may be circumstances for which sharper focus on relatively short-term incentives makes sense (e.g., in some turnaround situations with highly challenging near-term requirements). [5.5a Fixed pay, 5.5b Time-vesting restricted stock, 5.5c Performance-based compensation, 5.5d Stock options] **Point 5.5**
- [Non-employee] director[s] compensation should consist solely of a combination of cash retainer and equity-based compensation. The cornerstone of director compensation programs should be alignment of interests through the attainment of significant equity holdings in the company meaningful to each individual director. CII believes that equity obtained with an individual's own capital provides the best alignment of interests with other shareowners. However, compensation plans can provide supplemental means of obtaining long-term equity holdings through equity compensation, long-term holding requirements and ownership requirements. **Point 6.1**
- Equity-based Compensation: Equity-based compensation can be an important component of director compensation. These tools are perhaps best suited to instill optimal long-term perspective and alignment of interests with shareowners. To accomplish this objective, director compensation should contain an ownership requirement or incentive and minimum holding period requirements. **Point 6.4**
- Performance-based Compensation: While CII is a strong advocate of performance-based concepts in executive compensation, we do not support performance measures in director compensation. Performance-based compensation for directors creates potential conflicts with the director's primary role as an independent representative of shareowners. **Point 6.5**

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[NACD, 2022](#), p.42

- Performance goals should be based on an appropriate mix of financial goals and nonfinancial goals (for example, goals related to employee retention, emissions, and/or safety), and they should be complemented with qualitative goals relevant to the company and its operations (for example, bearing on leadership, culture, and ethics/compliance). Compensation metrics should be clearly linked to strategy and agreed benchmarks for success, and be keyed to performance that the CEO and the senior executive team have the potential to impact directly. Equity-based compensation (or, in private companies, phantom stock or similar) should be reasonable and should not provide excessive returns based on overall stock market gains or stock buyback decisions.

Consideration should also be given to limiting the degree of executive influence in determining compensation metrics and targets used to measure success, and to whether (and if so to what degree) to rely on total shareholder return (TSR). The time frame for measuring performance should track the company's strategy and will therefore vary depending on the company. For many companies, a five-year time frame is appropriate; for others, the period may be shorter (such as technology companies) or longer (such as companies with long R&D lead times on new products or services).

**Commonsense Principles, 2018, p. 3, 9**

- Companies should consider paying a substantial portion (e.g., for some companies, as much as 50% or more) of director compensation in stock or similar equity-like instruments. **p. 3**
- Companies should consider paying a substantial portion (e.g., for some companies, as much as 50% or more) of compensation for senior management in the form of stock, performance stock units or similar equity-like instruments **p. 9**
- Benchmarks and performance measurements (financial and otherwise) ordinarily should be disclosed to enable shareholders to evaluate the rigor of the company's goals and the goal- setting process. That said, compensation should not be entirely formula based, and companies should retain discretion (appropriately disclosed) to consider factors that may not be easily measured, such as integrity, work ethic, effectiveness, openness, etc. Those matters are essential to a company's long-term health and ordinarily should be part of how compensation is determined. **p. 9**

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**AUSTRALIE**

**ASX Council, 2019, p. 30, 31**

- Allowing participants in an equity-based remuneration scheme to hedge or otherwise limit the economic risk of participating in the scheme may act counter to the aims of the scheme and blur the relationship between remuneration and performance. A listed entity which has an equity-based remuneration scheme should establish a policy on whether participants can enter into these sorts of transactions and disclose that policy to investors. This applies whether the participants in the scheme are directors, senior executives or other employees. **p. 30**
- Suggested guidelines for EXECUTIVE REMUNERATION: (1) Composition: remuneration packages for executive directors and other senior executives should include an appropriate balance of fixed remuneration and performance-based remuneration. (2) Fixed remuneration: should be reasonable and fair, taking into account the entity's obligations at law and labour market conditions, and should be relative to the scale of the entity's business. It should reflect core performance requirements and expectations. (3) Performance-based remuneration: should be linked to clearly specified performance targets. These targets should be aligned to the entity's short, medium and longer term performance objectives and should be consistent with its circumstances, purpose, strategic goals, values and risk appetite. Discretion should be retained, where appropriate, to prevent performance-based remuneration rewarding conduct that is contrary to the entity's values or risk appetite.(4) Equity-based remuneration: well-designed equity-based remuneration, including options or performance rights, can be an effective form of remuneration, especially when linked to hurdles that are aligned to the entity's short, medium and longer-term performance objectives. Care needs to be taken in the design of equity-based remuneration schemes, however, to ensure that they do not lead to "short-termism" on the part of senior executives or the taking of undue risks. **p. 31**
- Suggested guidelines for NON-EXECUTIVE DIRECTOR REMUNERATION: (1) Composition: non-executive directors should be remunerated by way of cash fees, superannuation contributions and non-cash benefits in lieu of fees (such as salary sacrifice into superannuation or equity). (2) Fixed remuneration: levels of fixed remuneration for non-executive directors should reflect the time commitment and responsibilities of the role. (3) Performance-based remuneration: non- executive directors should not receive performance-based remuneration as it may lead to bias in their decision-making and compromise their objectivity. (4) Equity-based remuneration: it is generally acceptable for non-executive directors to receive securities as part of their remuneration to align their interests with the interests of other security holders.<sup>80</sup> However, non- executive directors generally should

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not receive options with performance hurdles attached or performance rights as part of their remuneration as it may lead to bias in their decision-making and compromise their objectivity. **p. 31**

**[ACSI, governance guidelines, 2021, p. 17, 18, 19](#)**

- **Fixed remuneration:** Once the amount is set, fixed remuneration is paid without a direct link to individual or company performance. Companies should explain why fixed remuneration amounts are appropriate. Increases in fixed remuneration have the potential to significantly inflate total remuneration, particularly where other components of pay are determined as a ratio to fixed remuneration. For example, a fixed pay increase may also increase respective variable remuneration sizes, termination entitlements and superannuation contributions. Companies should avoid creating perverse incentives for executives by linking fixed pay to company size or simply following benchmarks provided by external advisers. A clear rationale should be provided for any material increase in fixed remuneration. **p. 17**
- **Variable remuneration:** Variable remuneration may include short-term incentives (such as an annual payment in cash, deferred equity or a combination of both) and long-term incentives (such as share options or share-based incentives).
- When using variable remuneration, companies need to clearly explain: (1) the purpose of the variable component(s) (2) the relevant performance indicators or hurdles, including the use of gateways where applicable (3) the rationale and expectations for payment at the relevant levels of performance (such as threshold, target, and exceptional performance or their equivalent measures) (4) the proportion of the variable component that is genuinely at risk (for example where ‘at target’ performance achieves an 80 per cent pay out of maximum variable opportunity, that would suggest that only the remainder of the opportunity is a true ‘bonus’ component for outperformance and only that ‘bonus’ component is genuinely at risk) (5) the minimum and maximum payment amounts; and (6) how the variable pay component(s) align with the company’s strategy and values and the interests of long-term investors.
- While we recognise that different models can be appropriate in different circumstances for different companies, they must be reasonable and accurately disclosed.
- We expect companies to explain the rationale for their choice of remuneration practice and explain how the short-term incentive is at risk. We expect to see fluctuation in pay out from year to year, in particular in respect of payment for true outperformance. There should also be genuine potential for zero outcomes, (including for the ‘at target’ component) where performance indicates that this is appropriate. **p. 17**
- **Long-term incentives (LTIs):** Grants of long-term incentive instruments should incorporate stretch performance hurdles that are appropriate to the company and its strategy. Hurdles should minimise the potential for perverse incentives for executives and incorporate a performance measurement period that is aligned with business strategy and cycle with a minimum of at least three years. Longer performance periods are encouraged. **p. 18**
- **Cash and equity mix:** Companies should minimise cash payments and seek to deliver the bulk of executive pay in equity that vests over time, based on the achievement of demanding performance targets. Deferred equity should also be considered for the delivery of annual variable remuneration. **p. 19**
- **Shareholder approval for equity grants:** Any use of equity in senior executive or director remuneration should only occur with prior approval from shareholders. This includes shares purchased on market for the remuneration of directors (outside of salary sacrifice). Equity grants should be put to shareholders for consideration on an annual basis. Companies should respect the views of the majority of their shareholders’ wishes and avoid settling awards (in cash or via on-market purchase of securities) if a grant has not been approved. We will consider recommending against the election of relevant directors where a company circumvents the views of the majority of its shareholders in this way. **p. 19**

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**FRANCE**

**[AFEP & MDEDF, 2022, p. 23, 24, 25](#)**

- **Rémunération fixe des dirigeants mandataires sociaux exécutifs :** La rémunération fixe ne doit en principe être revue qu’à intervalle de temps relativement long. Si toutefois l’entreprise fait le choix d’une évolution annuelle de la rémunération fixe, cette évolution doit être modérée et respecter le principe de cohérence [la



rémunération du dirigeant mandataire social doit être déterminée en cohérence avec celle des autres dirigeants et des salariés de l'entreprise;] En cas d'augmentation significative de la rémunération, les raisons de cette augmentation sont explicitées. **p.23**

- **Rémunération variable annuelle des dirigeants mandataires sociaux exécutifs** : Le conseil peut décider d'attribuer une rémunération variable annuelle dont le paiement peut, le cas échéant, être différé. Les règles de fixation de cette rémunération doivent être cohérentes avec l'évaluation faite annuellement des performances des dirigeants mandataires sociaux exécutifs et avec la stratégie de l'entreprise. Elles dépendent de la performance du dirigeant et du progrès réalisé par l'entreprise. Les modalités de la rémunération variable annuelle doivent être intelligibles pour l'actionnaire et donner lieu chaque année à une information claire et exhaustive dans le rapport sur le gouvernement d'entreprise. Le conseil définit les critères permettant de déterminer la rémunération variable annuelle ainsi que les objectifs à atteindre. Ceux-ci doivent être précis et bien entendu préétablis. Il doit être procédé à un réexamen régulier de ces critères dont il faut éviter les révisions trop fréquentes. Les critères **quantifiables**, qui ne sont pas nécessairement financiers, doivent être simples, pertinents et adaptés à la stratégie de l'entreprise. Ils doivent être prépondérants. S'il est retenu, le cours de bourse ne doit pas constituer le seul critère quantifiable et peut être apprécié de manière relative (comparaison avec des pairs ou des indices). Les critères **qualitatifs** doivent être définis de manière précise. Au sein de la rémunération variable annuelle, lorsque des critères qualitatifs sont utilisés, une limite doit être fixée à la part qualitative. Le maximum de la rémunération variable annuelle doit être déterminé sous forme d'un pourcentage de la rémunération fixe et être d'un ordre de grandeur proportionné à cette partie fixe. Sauf exception motivée, l'attribution d'une rémunération variable annuelle ne doit pas être réservée aux seuls dirigeants mandataires sociaux exécutifs. **p.23, 24**
- **Rémunérations de long terme des dirigeants mandataires sociaux exécutifs** : Les mécanismes de rémunération de long terme ont non seulement pour objectif d'inciter les dirigeants à inscrire leur action dans le long terme mais aussi de les fidéliser et de favoriser l'alignement de leurs intérêts avec l'intérêt social de l'entreprise et l'intérêt des actionnaires. Ces mécanismes peuvent consister en l'attribution d'instruments tels que les options d'actions ou les actions de performance ou encore faire l'objet d'une attribution de titres ou d'un versement en espèces, dans le cadre de plans de rémunérations variables pluriannuelles. De tels plans ne sont pas réservés aux seuls dirigeants mandataires sociaux exécutifs et peuvent bénéficier à tout ou partie des salariés de l'entreprise. Ils doivent être simples et compréhensibles aussi bien pour les intéressés eux-mêmes que pour les actionnaires. Le conseil peut prévoir lors de leur attribution une stipulation l'autorisant à statuer sur le maintien ou non des plans de rémunérations de long terme non encore acquis, des options non encore levées ou des actions non encore acquises au moment du départ du bénéficiaire. Ces plans, dont l'attribution doit être proportionnée à la partie fixe et variable annuelle, doivent prévoir des conditions de performance exigeantes à satisfaire sur une période de plusieurs années consécutives. Ces conditions peuvent être des conditions de performance internes à l'entreprise ou relatives, c'est-à-dire liées à la performance d'autres entreprises, d'un secteur de référence... S'il est retenu, le cours de bourse peut être apprécié de manière relative (comparaison avec des pairs ou des indices). Lorsque cela est possible et pertinent, ces conditions de performance internes et relatives sont combinées.
- Seules des circonstances exceptionnelles (modification substantielle du périmètre, évolution imprévue du contexte concurrentiel, perte de la pertinence d'un indice de référence ou d'un groupe de comparaison...) justifient que les conditions de performance puissent être modifiées au cours de la période considérée. Dans ce cas, ces modifications sont rendues publiques après la réunion du conseil les ayant arrêtées. La modification des conditions de performance doit maintenir l'alignement des intérêts des actionnaires et des bénéficiaire **p.24, 25**
- **Dispositions spécifiques aux options d'actions et actions de performance** : L'attribution d'options ou d'actions de performance doit correspondre à une politique d'association au capital, c'est-à-dire d'alignement des intérêts des bénéficiaires avec ceux des actionnaires, avec la part d'aléa qui s'y attache. Le conseil doit veiller à procéder à des attributions aux mêmes périodes calendaires, par exemple après la publication des comptes de l'exercice précédent et de préférence chaque année. Des périodes précédant la publication des comptes annuels et intermédiaires doivent être fixées, pendant lesquelles l'exercice des options d'actions n'est pas possible. Il appartient au conseil d'administration ou de surveillance de fixer ces périodes et, le cas échéant, de déterminer la procédure que doivent suivre les bénéficiaires avant d'exercer des options d'actions, pour s'assurer qu'ils ne disposent pas d'informations susceptibles d'empêcher cet exercice. S'agissant des dirigeants mandataires sociaux exécutifs, il convient : (1) de veiller à ce que les options d'actions et les actions de performance valorisées selon la méthode retenue pour les comptes consolidés représentent un pourcentage proportionné de l'ensemble des rémunérations, options et actions qui leur sont attribuées. Les conseils doivent fixer le pourcentage de

rémunération que ne doivent pas dépasser ces attributions ; (2) d'éviter qu'ils bénéficient d'une trop forte concentration de l'attribution. Il appartiendra aux conseils, en fonction de la situation de chaque société (taille de la société, secteur d'activité, champ d'attribution plus ou moins large, nombre de dirigeants...), de définir le pourcentage maximum d'options et d'actions de performance pouvant être attribuées aux dirigeants mandataires sociaux par rapport à l'enveloppe globale votée par les actionnaires. La résolution d'autorisation du plan d'attribution proposée au vote de l'assemblée générale doit mentionner ce pourcentage maximum sous forme d'un sous-plafond d'attribution pour les dirigeants mandataires sociaux ; (3) d'être cohérent avec les pratiques antérieures de l'entreprise pour la valorisation des options et des actions de performance attribuées. Aucune décote ne doit être appliquée lors de l'attribution des options d'actions aux dirigeants mandataires sociaux.

- Les dirigeants mandataires sociaux qui sont bénéficiaires d'options d'actions et/ou d'actions de performance doivent prendre l'engagement formel de ne pas recourir à des opérations de couverture de leur risque tant sur les options que sur les actions issues des levées d'options ou sur les actions de performance et ce, jusqu'à la fin de la période de conservation des actions fixée par le conseil d'administration.

#### Middlenext, 2021, p. 35, 38, 39

- [Dans] Les sept principes fondant le niveau et les modalités de rémunération des dirigeants : **Exhaustivité** : chaque entreprise est libre de déterminer les composantes de la rémunération des dirigeants mandataires sociaux. La communication aux actionnaires des rémunérations des dirigeants mandataires sociaux doit être exhaustive : partie fixe, partie variable<sup>26</sup> (bonus), stock-options, actions gratuites, rémunérations au titre du mandat de « membre du Conseil », rémunérations exceptionnelles, conditions de retraite et avantages particuliers, autres... En cas de rémunération variable, l'appréciation de l'atteinte de la performance prend en compte des critères quantitatifs – financiers et extra-financiers – ainsi que des critères qualitatifs. **p. 35**
- L'attribution de stock-options et/ou d'actions gratuites est souvent nécessaire pour attirer des compétences fortes et des « dirigeants » de qualité. La politique de la société en ce domaine doit être adaptée à sa situation et intégrée dans une approche globale raisonnable, qui tienne compte à la fois de l'intérêt de l'entreprise, des pratiques du marché et des performances des « dirigeants ». Il est important de fixer des règles claires de performance et, par ailleurs, de ne pas trop concentrer sur les « dirigeants » l'attribution de stock-options et/ou d'actions gratuites car la performance est toujours le résultat d'un effort collectif. **Conditions d'attribution** : Il est recommandé de ne pas concentrer à l'excès sur les dirigeants l'attribution de stock-options ou d'actions gratuites. Il est également recommandé de ne pas attribuer de stock-options ou d'actions gratuites à des dirigeants mandataires sociaux à l'occasion de leur départ. **Conditions d'exercice et d'attribution définitive** : Il est recommandé que l'exercice de tout ou partie des stock-options ou l'attribution définitive de tout ou partie des actions gratuites au bénéfice des dirigeants soient soumis à des conditions de performance pertinentes traduisant l'intérêt à moyen long terme de l'entreprise appréciées sur une période d'au moins 3 ans. **p. 38, 39**

## INTERNATIONAL

#### ICGN, 2021, p. 20

- Salary levels should be balanced appropriately with the level of benefits such as bonuses, deferred stock options or long-term incentive plans (LTIPS). The use of restricted stock with long-term vesting and holding periods brings the benefit of simplicity compared with metric-based performance awards (such as LTIPS). But caution should be exercised to ensure the tenet of payment-for-performance is upheld and holding periods should extend beyond the active period of tenure of the executive in support of the long-term orientation of company leadership. Remuneration Committees are encouraged to consider whether restricted stock could be introduced alongside, or as an alternative to LTIPS, as long as their use is consistent with the company's capital allocation model, and provided that award size is reduced materially to take account of the greater certainty of vesting due to absence of performance hurdles. The awarding of pension benefits should be consistent across the company so that the CEO and executive pension contributions are aligned across the workforce.

### 3.7.4 Gestion de risque

#### CANADA

##### CCGC, 2022, p. 51

- A company should disclose details of its executive compensation structure and comment on its effectiveness when viewed through a risk oversight lens. The disclosure should explain how the company's policies and practices discourage risk-taking beyond the company's acceptable risk appetite
- Several issuers also manage compensation risk through clawback policies, but these policies are often triggered only if there is a financial restatement and an executive is found at fault. CCGG has urged companies to adopt broader clawback policies as exemplified by the clawback policy of TransAlta set out above. Anti-hedging policies are another useful tool to manage compensation-related risk.

##### BlackRock, 2023, p. 15

- We encourage companies to ensure that their compensation plans incorporate appropriate and rigorous performance metrics, consistent with corporate strategy and market practice. Performance-based compensation should include metrics that are relevant to the business and stated strategy and/or risk mitigation efforts. Goals, and the processes used to set these goals, should be clearly articulated and appropriately rigorous.

##### BMO, 2021, p. 12

- We expect companies to demonstrate the alignment of their remuneration policy with their overall business strategy and planning. Performance metrics should relate to the company's articulated strategy and risk tolerance. Targets should be constructed to align executive incentives to the interests of long-term shareholders, and should not create incentives for executives to undertake short-term risks that might imperil longer-term performance. We advocate the introduction of risk-related underpins—or preconditions—to bonus awards, to ensure that in appropriate incentive payments are not awarded in the event the company's financial strength or credit quality might deteriorate.

#### INTERNATIONAL

##### ICGN, 2021, p. 21, 22

- Performance measures in incentive based plans should integrate risk considerations so that there are no rewards for taking inappropriate risks at the expense of the company, shareholders and relevant stakeholders. **p. 21**
- The board should ensure that remuneration structures for workforce reinforce, and do not undermine, sustained value creation. Performance-based remuneration should incorporate risk, including other intangible factors related to value creation and the measurement of risk-adjusted returns, to help ensure that no inappropriate or unintended risks are being incentivised. While a major component of most employee incentive remuneration is likely to be cash-based, these programmes should be designed and implemented in a manner consistent with the company's long-term performance drivers. Adherence to codes of conduct and compliance protocols should serve as preconditions to incentive awards. **p. 22**

### 3.7.5 Méthode comptable

#### CANADA

##### CCGC, 2022, p. 54 à 58

- Proxy circular disclosure should contain an overview of the board's role in scrutinizing non-GAAP performance measures and any proposed adjustments. Such a discussion should also include an explanation of the parameters that are used by the board to determine the appropriateness of individual adjustments, as well as the rationale for any material adjustments made in the previous year. In addition to acknowledging that the board reviews proposed adjustments, the Emera circular provides a description of the principles that are applied by the company to ensure that adjustments made to financial measures for purposes of determining compensation are appropriate.  
**p. 58**

#### ÉTATS-UNIS

##### CII, 2023, point 5.5 c, p. 13

- Performance-based compensation plans are a major source of today's complexity and confusion in executive pay. Metrics for performance and performance goals can be numerous and wide-ranging. They often are based on non-GAAP "adjusted" measures without reconciliation to GAAP. Investors need sufficient information to understand how the plan works. Performance-based award programs typically are more difficult to understand, more difficult to value and more vulnerable to obfuscation than time-vesting restricted stock.

##### Commonsense Principles, 2018, p. 8

- Companies are required to report their results in accordance with Generally Accepted Accounting Principles ("GAAP"). While it is acceptable in certain instances to use non-GAAP measures to explain and clarify results for shareholders, such measures should be sensible, and companies should provide a bridge from non-GAAP items to the most comparable GAAP items, so as not to obscure GAAP results. In this regard, it is important to note that all compensation, including equity compensation, is plainly a cost of doing business and should be reflected in any non-GAAP measurement of earnings in precisely the same manner it is reflected in GAAP earnings.

### 3.7.6 Exigences en matière d'actionnariat

#### CANADA

##### CCGC, 2022, p. 59

- Companies should consider adopting share ownership requirements for their NEOs (Name executive officers) to enhance alignment of interests with the company's shareholders. Additionally, disclosure should answer the following questions: (1) What are the minimum share ownership requirements that each NO must meet? (2) Are NEOs required to maintain minimum share ownership levels for any period of time after leaving the company? (3) Beyond direct common shareholdings, do vested or unvested equity-linked forms of compensation (for example, in-the-money option grants, unvested RSU or PSU grants, etc.) count towards an NEO's minimum ownership requirements? (4) What are each NEO's current shareholdings, including the makeup of these holdings between common shares and other forms of equity awards, relative to the required holdings level?

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##### BlackRock, 2023, p. 15

- There should be a clear link between variable pay and company performance that drives sustained value creation for our clients as shareholders. Where compensation structures provide for a front-loaded<sup>11</sup> award, we look for appropriate structures (including vesting and/or holding periods) that motivate sustained performance for

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shareholders over a number of years. We generally do not favor programs focused on awards that require performance levels to be met and maintained for a relatively short time period for payouts to be earned, unless there are extended vesting and/or holding requirements.

[Share, 2022](#), p. 14

- Le conseil d'administration représentant les actionnaires de la société devrait être titulaires d'actions et les conserver pendant une longue période. L'obligation de posséder des actions pour les administrateurs pose néanmoins certains inconvénients. Les conseils pourraient perdre l'expérience et la perspective intéressantes d'administrateurs potentiels qui n'ont pas les ressources nécessaires pour acquérir des actions ou de différer leurs rémunérations pour acheter une participation. Les administrateurs ne devraient pas avoir à posséder des actions avant leur nomination au conseil et les nouveaux administrateurs devraient disposer d'un délai raisonnable pour acquérir ces actions sans subir de la pression pour investir des sommes importantes dans la société.

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[CDPO, 2020](#), p. 11, 13

- Executives should be required to hold a minimum number of the company's shares, in accordance with applicable best practices, in order to better align their interests with the long-term interests of shareholders. Executives should hold shares equivalent to a multiple of their base salary as long as they are employed by the company and for a reasonable time after their departure. We encourage companies to disclose a summary of the terms of their minimum shareholding policy for directors and executives in their circular. **p. 11**
- We believe that a minimum shareholding requirement for directors helps align their interests with the long-term interests of shareholders. Directors should be given sufficient time to meet these requirements. We encourage companies to disclose a summary of the terms of their minimum shareholding policy for directors and executives. **p. 13**

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## ÉTATS-UNIS

[CII, 2023](#), point 5.6 et 6.4b, p. 13 et 16

- Stock ownership policies help align the interests of executives and shareholders. Companies should require executives to reach and maintain a minimum level of full-value company stock holdings—often stated as a multiple of their salary, more meaningfully expressed as a percentage of shares obtained—and should bar executives and directors from hedging activity that reduces alignment. **Point 5.6**
- The ownership guideline should apply until at least one year following the executive's departure from the company. Those not in compliance should be barred from liquidating stock-based awards (beyond tax obligations) until satisfaction of the guideline. **Point 5.6**
- Some boards may determine that a hold-to-departure requirement or hold-beyond-departure requirement for all stock-based awards held by the highest-level executives is an appropriate and workable commitment to long-termism. Other boards may consider such restrictions unnecessary to the extent that awards include extended vesting periods. **Point 5.6**
- Ownership Requirements: Ownership requirements should be at least three to five times annual compensation. However, some qualified director candidates may not have financial means to meet immediate ownership thresholds. For this reason, companies may set either a minimum threshold for ownership or offer an incentive to build ownership. This concept should be an integral component of the committee's disclosure related to the philosophy of director pay. It is appropriate to provide a reasonable period of time for directors to meet ownership requirements or guidelines. **Point 6.4b**

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[Commonsense Principles, 2018](#), p. 3

- Companies also should consider requiring directors to retain a significant portion of their equity compensation for the duration of their tenure to further directors' economic alignment with the long-term performance of the company.

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## GRANDE-BRETAGNE

### [UK Code, 2018, p.14](#)

- Remuneration schemes should promote long-term share holdings by executive directors that support alignment with long-term shareholder interests. Share awards granted for this purpose should be released for sale on a phased basis and be subject to a total vesting and holding period of five years or more. The remuneration committee should develop a formal policy for post-employment shareholding requirements encompassing both unvested and vested shares.

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## AUSTRALIE

### [ACSI, governance guidelines, 2021, p. 19](#)

- **Minimum shareholding requirements:** We support minimum shareholding requirements for executives that are meaningful and proportionate to remuneration received.

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## FRANCE

### [AFEP & MDEDF, 2022, p. 20](#)

- Le conseil d'administration fixe une quantité minimum d'actions que les dirigeants mandataires sociaux doivent conserver au nominatif, jusqu'à la fin de leurs fonctions. Cette décision est réexaminée au moins à chaque renouvellement de leur mandat. Le conseil peut retenir différentes références, par exemple : (1) – la rémunération annuelle ; (2) un nombre d'actions déterminé ; (3) un pourcentage de la plus-value nette des prélèvements sociaux et fiscaux et des frais relatifs à la transaction, s'il s'agit d'actions issues de levées d'options ou d'actions de performance ; (4) une combinaison de ces références. Tant que cet objectif de détention d'actions n'est pas atteint, les dirigeants mandataires sociaux consacrent à cette fin une part des levées d'options ou des attributions d'actions de performance telle que déterminée par le conseil. Cette information figure dans le rapport sur le gouvernement d'entreprise de la société.

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## INTERNATIONAL

### [ICGN, 2021, p. 21](#)

- The board should disclose the company policy concerning ownership of shares by the CEO, non-executive directors and executives. This should include the company policy as to how share ownership requirements are to be achieved and for how long they are to be retained. While CEO and executive share ownership is encouraged, the use of derivatives or other structures that enable the hedging of an individual's exposure to the company's shares should be prohibited.

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### 3.7.7 Groupe de référence / comparaison

## CANADA

### [CCGC, 2022, p. 68](#)

- Boards commonly benchmark compensation against peers to ensure the company pays in a manner that is competitive. We caution that the practice of benchmarking against peers should not be overly relied upon at the expense of a robust, independent analysis. Absent extenuating circumstances, the quantum of compensation

awarded should be determined within the context of the organization as a whole and should be justified primarily by performance.

- When external consultants are retained by the board, the board, as a governance best practice, should ensure that the consultant is independent of management. In any event, while the input received from independent compensation consultants may provide valuable assistance to the board, following a consultant's recommendation does not reduce a board's responsibility to ensure that compensation decisions are appropriate.

**ISS, 2023, p. 35**

- On a case-by-case basis, ISS will evaluate the alignment of the CEO's total compensation with company performance over time, focusing particularly on companies that have underperformed their peers over a sustained period. From a shareholder's perspective, performance is predominantly gauged by the company's share price performance over time. Even when financial or operational measures are used as the basis for incentive awards, the achievement related to these measures should ultimately translate into superior shareholder returns in the long term

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**BlackRock, 2023, p. 15**

- We acknowledge that the use of peer group evaluation by compensation committees can help calibrate competitive pay; however, we are concerned when the rationale for increases in total compensation is solely based on peer benchmarking.

**State Street, 2023, p. 8**

- Generally, we will support directors' compensation, provided the amounts are not excessive relative to other issuers in the market or industry. In making our determination, we review whether the compensation is overly dilutive to existing shareholders.

**Vanguard, 2022, p. 12**

- The following situations are among those that raise warning signs, or "yellow flags": (1) The peer group used to benchmark pay is not comparably aligned with the company in size or strategy. [...]

## ÉTATS-UNIS

**CII, 2023, point 5.4, p. 12**

- A committee should design a pay program that is appropriate for that company. Overreliance on benchmarking to peer practices can escalate executive compensation and lead compensation committees to adopt pay practices that may not be optimal for their companies. It makes sense for a compensation committee to understand what peers are doing, but not necessarily to imitate peers. In making reference to peers, it is imperative that compensation committees have a clear-eyed understanding of how peers performed relative to the company.
- Compensation committee members have an important responsibility to guard against opportunistic peer group selection. Compensation committees should disclose to investors the basis for the particular peers selected, and should aim for consistency over time with the peer companies they select. If companies use multiple peer groups, the reasons for such an approach should be made clear to investors.

**NACD, 2022, p.43**

- Peer benchmarking can provide a useful market check, but should not drive compensation decisions. The tendency of many companies to pay above the average for peer companies unduly ratchets up compensation for all.

**Commonsense Principles, 2018, p. 3**

- Companies should clearly articulate their compensation plans to shareholders. While companies should not, in the design of their compensation plans, feel constrained by the preferences of their competitors or the models of proxy advisors, they should be prepared to articulate how their approach links compensation to performance and aligns the interests of management and shareholders over the long term.

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## AUSTRALIE

### [ACSI, governance guidelines, 2021, p. 18](#)

- Quantum: The fixed pay, expected pay for 'at target' performance and the maximum total pay (both actual and potential) should be reasonable. Beyond benchmarking, pay quantum should be set with consideration to the company's sector, performance against peer group, industrial obligations, the ratio to the company's median Australian worker, employee engagement, community expectations and reputational implications. There should also be evidence of arm's-length negotiation and pay should reflect the degree of complexity of the company's operations.

## ALLEMAGNE

### [German Corporate Governance Code, 2022, p. 19](#)

- In order to assess whether the specific total remuneration of Management Board members is in line with usual levels compared to other enterprises, the Supervisory Board shall use an appropriate peer group of other third-party entities, and shall disclose the composition of such group. The peer-group comparison shall be applied with a sense of perspective, in order to prevent an automatic upward trend.
- In order to determine whether remuneration is in line with usual levels within the enterprise itself, the Supervisory Board shall take into account the relationship between Management Board remuneration and the remuneration of senior managers and the workforce as a whole, and how remuneration has developed over time.
- If the Supervisory Board calls upon an external remuneration expert to develop the remuneration system, and to evaluate whether the remuneration is appropriate, it shall ensure that the expert is independent from the Management Board and the enterprise.

## FRANCE

### [AFEP & MDEDE, 2022, p. 22](#)

- Dans la détermination des rémunérations des dirigeants mandataires sociaux exécutifs, les conseils et comités prennent en compte et appliquent avec rigueur les principes suivants : **comparabilité** : cette rémunération doit être appréciée dans le contexte d'un métier et du marché de référence. Si le marché est une référence, il ne peut être la seule car la rémunération d'un dirigeant mandataire social est fonction de la responsabilité assumée, des résultats obtenus et du travail effectué. Elle peut aussi dépendre de la nature des missions qui lui sont confiées ou des situations particulières (par exemple redressement d'une entreprise en difficulté) ;

### 3.7.8 Généralités

## CANADA

### [ISS, 2023, p. 44](#)

- Vote against a management equity compensation plan that permits discretionary NED participation. (Non-Employee Director)
- Vote against an equity compensation plan proposal where: (1) The NED aggregate share reserve under the plan exceeds 1 percent of the outstanding common shares; or (2) The equity plan document does not specify an annual individual NED grant limit with a maximum value of (i) \$100,000 worth of stock options, or (ii) \$150,000 worth of shares.
- The maximum annual individual NED limit should not exceed \$150,000 across all equity compensation plans in aggregate, of which no more than \$100,000 of value may comprise stock options.



[State Street, 2023](#), p. 8

- We may vote against the re-election of members of the compensation committee if we have serious concerns about remuneration practices and if the company has not been responsive to shareholder pressure to review its approach. In addition, if the level of dissent against a management proposal on executive pay is consistently high, and we have determined that a vote against a pay-related proposal is warranted in the third consecutive year, we may vote against the Chair of the compensation committee.

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[Share, 2022](#), p. 30, 31

- Pour les sociétés aux États-Unis ou au Canada, [le fonds] compare la rémunération totale versée en un an à un seul dirigeant à la rémunération annuelle moyenne de tous les travailleurs dans le pays où la société est constituée. Pour nous, un salaire de dirigeants devient préoccupant lorsqu'il est supérieur à 150 fois le salaire annuel moyen de tous les travailleurs du pays en question. [...] On peut demander ou obliger les entreprises à divulguer des comparaisons salariales « verticales » entre la rémunération de leurs cadres supérieurs et de leurs non-cadres. On pourrait également demander aux entreprises de fixer une gamme ou un ratio maximal entre la rémunération de ces deux groupes d'employés. **p. 30**
- [Le fonds] s'attend à ce que la majorité de la rémunération des dirigeants soit basée sur le rendement. [...] Les objectifs et cibles relatifs à la rémunération liée au rendement des dirigeants doivent être fixés au début de la période d'évaluation et ne devraient pas être revus à la baisse, sauf dans des circonstances très exceptionnelles et en donnant une explication complète aux actionnaires. Les objectifs et cibles de performance qui sont comparés avec les résultats d'autres sociétés doivent indiquer le nom de ces sociétés et expliquer les raisons pour lesquelles elles ont été sélectionnées. Les sociétés qui mesurent les résultats financiers en fonction d'un résultat par action, comme le bénéfice par action, peuvent améliorer leur performance de façon artificielle en rachetant des actions, et par conséquent donner une récompense aux dirigeants qui n'est pas méritée. **p. 31**

**AUTRE SOURCE**

- [GL, 2023](#), p. 21, 45

**GRANDE-BRETAGNE**

[UK Code, 2018](#), p.13

- The remuneration of non-executive directors should be determined in accordance with the Articles of Association or, alternatively, by the board. Levels of remuneration for the chair and all non-executive directors should reflect the time commitment and responsibilities of the role. Remuneration for all non-executive directors should not include share options or other performance-related elements.

[LSE, 2012](#), p. 42

- On a basic level, shareholders expect that remuneration will be tied to performance and that the design, structure and implementation of the compensation programmes, particularly for senior executives, will be clearly linked to the long-term strategy of the company. This means shareholders want clear disclosure of the performance metrics selected by the company so that investors may understand not only how the programmes work but also how that remuneration is earned. **p. 42**

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**AUSTRALIE**

[ASX Council, 2019](#), p. 29, 30

- A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders and with the entity's values and risk appetite. **p. 29**
- The board of a listed entity should: (a) have a remuneration committee which: (1) has at least three members, a majority of whom are independent directors; and (2) is chaired by an independent director, and disclose: (3) the charter of the committee; (4) the members of the committee; and (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or (b) if it does not have a remuneration committee, disclose that fact and the processes it employs for

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setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive. **p. 29**

- Regardless of whether there is a remuneration committee, no individual director or senior executive should be involved in deciding his or her own remuneration. **p. 30**

## FRANCE

### [AFEP & MEDEF, 2022, p. 19](#)

- Le montant des rémunérations doit être adapté au niveau des responsabilités encourues par les administrateurs et au temps qu'ils doivent consacrer à leurs fonctions. Chaque conseil examine la pertinence du niveau des rémunérations au regard des charges et responsabilités incombant aux administrateurs. Les règles de répartition de ces rémunérations et les montants individuels des versements effectués à ce titre aux administrateurs sont exposés dans le rapport sur le gouvernement d'entreprise. **p. 19**

### [AMF, recommandation 2012-02, p. 35](#)

- Dans le cadre de la présentation de leur politique de rémunération, l'AMF recommande aux sociétés de présenter les augmentations de la rémunération fixe de leurs dirigeants, en indiquant le pourcentage d'augmentation par rapport à l'exercice précédent. n application de l'article 26.3.1 du code AFEP-MEDEF, « la rémunération fixe ne doit en principe être revue qu'à intervalle de temps relativement long ». L'AMF recommande qu'en cas d'augmentation significative de la rémunération, les raisons de cette augmentation soient explicitées. Lorsqu'une société justifie l'augmentation de la rémunération fixe (ou la rémunération totale) par des études comparatives, l'AMF recommande que la société apporte des explications circonstanciées, par exemple en donnant les caractéristiques du panel de sociétés comparables retenu. Elle recommande aussi aux sociétés de distinguer précisément les raisons de l'octroi de la rémunération fixe ou variable et celles de l'octroi d'une rémunération exceptionnelle.

### 3.7.9 Critique de la littérature / le manque d'efficacité de la divulgation comme moyen d'atténuer l'augmentation de la rémunération des cadres/administrateurs

## GRANDE-BRETAGNE

### [Executive remuneration and the limits of disclosure, Charles Harvey et al., 2020, p. 2,4,6,7,11,14, 15, 16](#)

- The Greenbury Report (Greenbury, 1995) represents one of the earliest regulatory initiatives in the UK to address public concern over 'excessive' levels of executive remuneration. Greenbury explicitly recognized that his study group was established in response to the backlash against those 'remuneration packages [that] have attracted most public attention' (Greenbury, 1995, s. 1.4), especially the criticisms levelled against the chief executive officers (CEOs) of public utilities, whose remuneration had escalated following privatization (Conyon, 1995; Maclean, 1999). **p. 2**
- This article is focused on the efficacy of information disclosure as an instrument of corporate governance. Experience post-Greenbury suggests that disclosing the details of executive remuneration has not achieved the goal of moderating increases in executive pay relative to average earnings (CIPD, 2018; Clarke, Jarvis, & Gholamshahi, 2019). Rather, disclosure, far from shaming those responsible for devising remuneration packages into limiting executive pay, has been implicated in ratcheting up levels of remuneration across the corporate sector. The demand for ever more disclosure of information by corporate governance reformers might in this respect have lent impetus to the tendency for executive pay to outstrip that of other employees. **p. 2**
- The 'theory of change' (Rogers, 2014) implicit in Greenbury is that remuneration committees with access to robust pay and performance data and policed by shareholders, to whom vital information should be disclosed, should enshrine in management contracts financial incentives and sanctions that reward good performance and punish poor performance, so improving both the performance and accountability of UK firms. The committee looked to practice in the United States (US), where remuneration committees and LTIPs had been in use for more

than two decades (Westphal & Zajac, 1994). Committee members testified to the influence wielded by John Carney, the committee's expert adviser on remuneration and director of the transatlantic remuneration consultancy, Towers Perrin, in what may be described as a classic case of transatlantic mimetic isomorphism (DiMaggio & Powell, 1983). **p. 4**

- The third of the Greenbury assumptions – that remuneration disclosure, by placing shareholders in a better position to sanction executives, might have a moderating effect on pay – finds little support in the literature. The weak empirical relationship between executive pay and corporate performance suggests the existence of forces more powerful than shareholder pressure in determining executive rewards. **p. 6**
- The fourth assumption underpinning the Greenbury recommendations – that disclosing information on executive remuneration would license institutional investors to exert more control over executive pay – stemmed from the belief that intermediaries like pension funds and asset managers were willing and able to challenge proposals made by corporate boards.[...] First, institutional investors – hedge funds, mutual funds, pension funds and asset managers – typically hold shares in hundreds and even thousands of companies, which makes monitoring difficult and costly. Many employ proxy advisors to offer guidance and vote at annual general meetings rather than engaging directly with portfolio firms. Second, institutional investors are under pressure to maximize financial returns and routinely engage in buying and selling blocks of shares, with the result that average holding times in the US and UK are now measured in months, not years (Sikka & Stittle, 2019). Third, there has been a lengthening of the share ownership chain with more intermediaries coming between owners and managers, as for example when a pension fund delegates 'pension fund investment management to a chain of external relationships involving actuaries, investment consultants, and fund managers' (Tilba & McNulty, 2013, p. 165). The upshot is that the incentives for institutional investors to serve as stewards within the corporate governance system have diminished, leaving managers, according to Bebchuk and Fried (2004), in a more commanding position. **p. 6, 7**
- Research on executive remuneration and pay disclosure exposes the flaws in the theory of change animating the Greenbury study group recommendations. It is not the case that remuneration committees, however independent of management, have found it easy to increase the sensitivity of pay to performance. Nor have institutional investors armed with information on pay stepped in regularly to monitor performance and challenge the recommendations of incumbent boards. Disclosing the details of remuneration packages has not moderated the escalation in executive pay and income inequality. In sum, disclosure, the activities of pay consultants, normative pressures, the passivity of shareholders and competition between firms to pay executives at above the going rate have conspired systematically to incite the ratcheting up of executive pay, fueling disparities in income and wealth (Clarke et al., 2019). **p. 7**
- The stance we adopt here is that powerful market forces, already unleashed at the time of Greenbury, have transformed the position of most institutional investors, with notable exceptions such as CalPERS and Hermes that actively manage their own money, making them less willing to play a stewardship role in matters of corporate governance. There is pressure for institutional investors to act as responsible owners, but for the most part they do not (Sikka & Stittle, 2019). Accountability is conflicted because institutional investors increasingly act as self-interested agents rather than owners. It is thus not so much that executives have become powerful versus investors, as Bebchuk and Fried (2004) contend, but that the institutional investors are incentivized to act as self-interested agents, increasing portfolio turnover to improve fund performance. Short termism in effect produces disengaged investors, undermining the agency theory assumption of robust negotiations between owners and managers. Greenbury, in buying into this assumption, in framing the problem of executive pay as one of pay-for-performance rather than the absolute level of pay, applied agency thinking to justify and perpetuate high and rising pay. The main effect of disclosure was then to feed the ratcheting up of incentives rather than help foster a culture of fairness and restraint, as Kay (2017) has recently observed. In what follows, we explore through a micro-historical study of the discourse, recommendations and reflections of Greenbury committee members and advisers, the social, political and institutional underpinnings of inflated levels of executive remuneration in countries like the UK. We are concerned, more specifically, to understand why so much faith has been placed in disclosure as a means of justifying and controlling executive remuneration, what has gone wrong, and what might be done to help remedy the situation.. **p. 7**
- Recommending disclosure, being more transparent about pay, served the vital discursive function of appealing to principles of openness, fairness and best practice, lending a singular rhetorical advantage to the proponents of self-regulation. Beyond disclosure, in normalizing assumptions about shareholder primacy and the critical role of CEOs in determining corporate performance, the study group confirmed its commitment to the idea that

potentially conflicting interests of agents and principals might be reconciled through optimal contracting. Under this rationale, the problem of high pay evaporates when executive pay is sensitive to corporate performance, again appealing to principle. **p. 11**

- More shareholder engagement is often perceived as ‘an end in and of itself’ (Sheehan, 2012, p. 8), yet as committee member G emphasized, ‘the mythical image of the engaged shareholder is a useful one to have, but in truth it just doesn’t apply. We still have this Victorian notion of the chap in his mansion overseeing the mills that he and his father built’. Committee member H agreed, adding that: ‘You think that disclosing information about remuneration would have shamed people into not being too greedy. . . but all it does is actually encourage people to want more. I remember the case in the 1990s of two non-executive chairmen. One of them was paid about £20,000 and he saw a direct competitor who was paid £250,000. . . he just didn’t believe it. He said, ‘‘He’s useless, I should have that [same amount of money].’’ So, there is this unintended consequence, but I think there was a belief that by exposing things people would behave more correctly, and, actually, it seems to have had the reverse effect’ (committee member H). Likewise, committee member G concluded that ‘if you look back over history and you look at the figures, what has [the Greenbury] regulation done? Board remuneration has increased’. Committee member D concurred, pointing out that ‘the general hope that this would lead to moderation and that [disclosure] would have a restraining effect has proven ill-founded’. Another concluded that the committee had been a failure: ‘One of the great disappointments I have is that I think the committee failed. The average top twenty chief exec now earns four and a half million [pounds] a year, and I know several that are earning two or three million a year and are running businesses that make considerably less money [profit] than they did twenty years ago. It’s nonsense. So, we didn’t achieve anything’ (committee member E). **p. 14**
- Committee member D remarked that ‘shareholders weren’t very good at playing their part’ in the accountability relationship because top executive pay ‘doesn’t have that much effect on the profits or the dividends of investors, so they don’t put a lot of effort into it’. Committee member G agreed that the quiescence of shareholders was problematic: ‘If a shareholder thinks that it’s the wrong thing to do and doesn’t stand up and say so, then the whole system falls by the wayside’. Similarly, professional adviser B concluded that ‘the vast majority [of shareholders] don’t give a damn nor do the hedge funds give a damn about this sort of stuff’. Committee member F was more circumspect in remarking that some shareholders do ‘give a damn, but they don’t give enough of a damn’. Committee member B felt that it was a case of ‘people in glass houses shouldn’t throw stones’ because fund managers, when confronted with evidence of excessive executive rewards, lacked the moral authority to intervene as they are often ‘paid just as much as those on whom they sit in judgement’. Another reason for a lack of interest on the part of shareholders, Committee member B proposed, was the sheer volume of information contained in annual reports. He felt that ‘too much regulation results in too much disclosure and can lead to loss of interest on the part of all but the most assiduous of shareholders’. It seems that the foundations of the accountability relationship are much weaker than assumed by Greenbury. Disclosure may be a necessary condition for more effective accountability, but it is not sufficient; it is a complement not a substitute for real engagement by owners with the processes and obligations of corporate governance. **p. 15**
- We have shown that in the case of executive remuneration, the idea that disclosure alone is an effective instrument of corporate governance is flawed. Disclosure, in our view, is a necessary but not sufficient condition for effective accountability. **p. 16**

## 3.8 Représentation féminine

### 3.8.1 Cibles

#### CANADA

##### [Taskforce, 2021](#), p. 63, 64

- In accordance with National Instrument 58-101 Disclosure of Corporate Governance Practices, since 2014, TSX-listed companies have been required to disclose their approach to gender diversity, including data regarding the representation of women on boards of directors and in executive officer positions. The disclosure follows a “comply or explain” model and does not require TSX-listed companies to adopt any gender diversity policies and practices, including targets. Progress has been slow, with the OSC reporting that the total board seats occupied by women in their review samples only increased from 11 per cent in 2015 to 17 per cent in 2019.41 Based on the CSA’s 2019 review, only 22 per cent of companies in their review sample had adopted targets regarding the representation of women on boards. **p. 63**
- A recent study by Catalyst and the 30% Club Canada found that in 2019, women only represented 19.4 per cent of boards and 17.0 per cent of executive teams in companies that disclosed themselves as TSX-listed issuers. **p. 63**
- The Taskforce recommends (re: regulatory framework): [to] Amend Ontario securities legislation to require publicly listed issuers in Canada to set their own board and executive management diversity targets (aggregated across both groups) and implementation timelines, and annually provide data in relation to the representation of those who self-identify as women [...] on boards and executive management. For greater clarity, this would apply to directors and executive management, the latter of which is defined as those who are executive officers or Named Executive Officers of publicly listed issuers. **p. 64**
- The Taskforce recommends that publicly listed issuers set an aggregated target of 50 per cent for women [...]. Implementation of these targets should be completed within five years to meet the target for women. **p. 64**

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##### [CCGC, 2022](#), p. 17 et 18

- While the quality of individual directors is paramount, CCGG expects boards to be diverse. Pursuant to TransAlta’s board diversity policy (below), the Corporate Governance Committee must set measurable objectives for enhancing diversity and recommend them to the Board for adoption on an annual basis. TransAlta has also reinforced its commitment to achieving diversity objectives by advancing initiatives aimed at supporting and maintaining a pipeline of diverse candidates that may ultimately advance into increasingly senior roles. TransAlta also demonstrates its commitment to diversity throughout the organization by showing transparency around diversity metrics and collecting data to support decision-making and demonstrate progress against diversity objectives.
- The Company also announced industry-leading Board and company-wide gender targets. On January 16, 2020, the Board approved a target of 50% female membership on the Board by 2030 and achieving gender diversity of at least 40% of female employment for all employees by 2030. Although the Company does not have a target specific to executive officers, the workforce target of 40% is expected to continue to result in women being well represented at the executive level. The Board considers these gender targets to demonstrate the Company’s commitment to diversity and inclusiveness and are expected to benefit the Company not only by expanding our pool of qualified employees and senior leaders, but also by incorporating different perspectives and ways of thinking to drive innovation and successfully execute on our strategy. In 2021, the Company established a Sustainability-Linked Loan that will align the cost of borrowing to TransAlta’s gender diversity targets.

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##### [GL, 2023](#), p. 31

- At companies listed on the TSX, we generally recommend voting against the nominating committee chair of a board that has fewer than two gender diverse directors, or the entire nominating committee of a board with no

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gender diverse directors. For companies outside the TSX, and all boards with six or fewer total directors, we require a minimum of one gender diverse director.

- As noted last year, for shareholder meetings held after January 1, 2023, we will transition from a fixed numerical approach to a percentage-based approach and will generally recommend against the chair of the nominating committee of a board that is not at least 30 percent gender diverse, or the entire nominating committee of a board with no gender diverse directors, at companies on the TSX. For boards of issuers on junior exchanges, our minimum threshold remains one gender diverse director on the board.

#### ISS, 2023, p. 16

- For S&P/TSX Composite Index companies, generally vote withhold for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where women comprise less than 30% of the board of directors. (voir exceptions p. 16) [...]

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#### Teachers, 2023, p. 11 19

- Des données récentes indiquent que les conseils d'administration des principaux indices des marchés publics en développement atteignent, en moyenne, une diversité des genres qui dépasse 30 % de femmes. Un conseil affichant une diversité des genres à 30 % n'a jamais été considéré comme un aboutissement, mais plutôt comme un pas vers une plus grande parité au sein d'un conseil. Compte tenu de la volonté de poursuivre les progrès en matière de diversité des genres, nous recherchons des émetteurs publics à forte capitalisation sur les indices de marchés développés pour continuer d'améliorer la diversité des genres au sein de leur conseil jusqu'à ce qu'un minimum de 40 % d'hommes et de femmes soient représentés.
- Diversité des sexes dans les conseils d'administration : Nous envisagerons de ne pas appuyer le président du comité de gouvernance et des mises en candidature ou les autres membres du comité lorsque moins de trois ou 30 %<sup>11</sup> des administrateurs s'identifient comme étant des femmes<sup>12</sup> ou que le conseil ne décrit pas son approche quant à la réalisation de l'objectif de 3 ou 30 % ou quant au maintien de sa diversité de genre. Dans le cas des conseils qui n'atteignent pas l'objectif de 3 ou 30 %, nous pouvons décider d'interagir avec une société concernant le problème ou d'intensifier les mesures de vote pour inclure le président du conseil (ou l'équivalent), ou l'ensemble du conseil, lorsqu'aucun progrès n'est visible. **p. 19**

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#### BlackRock, 2023, p. 9

- We believe that boards should aspire to at least 30% diversity of membership,<sup>7</sup> and we encourage large companies, such as those in the S&P/TSX Composite Index, to lead in achieving this standard. In our view, an informative indicator of diversity for such companies is having at least two women and a director who identifies as a member of an underrepresented group.

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#### Share, 2022, p. 12

- L'objectif de diversité des sexes au conseil d'administration devrait atteindre au moins 30 % de gestionnaires femmes. Lorsqu'un conseil d'administration est composé d'un seul genre ou n'inclut pas de membres de groupes sous-représentés, y compris les autochtones, une politique de diversité acceptable devrait reconnaître le besoin d'une plus grande diversité et expliquer les étapes précises pour aider le conseil à y parvenir. Sont exclues les politiques qui déclarent que le conseil base la sélection des nominations seulement sur des critères de mérite sans prendre en compte le facteur de diversité et les politiques contraires à une plus grande diversité dans les conseils d'entreprise

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#### CDPQ, 2020, p. 5

- Starting in 2022, with respect to gender diversity specifically, CDPQ will generally, in the absence of extenuating circumstances, abstain or vote against the chair of the nominating committee (or the chair of the board, in the absence of such a committee) when women represent less than 30% of the board of directors and the company has not disclosed a firm commitment to remedy the situation in the near term. [...] We will engage the chair of the board and/or members of the nominating committee in discussions on progress made on diversity in their organization. With respect to the representation of women, we could potentially abstain or vote against all members of the nominating committee responsible if, in the year following a process of commitment to address

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the lack of diversity on the board of directors, no progress has been made. We encourage companies to adopt policies and targets for the representation of women on the board of directors and to consider the level of diversity when they recruit candidates. In addition to disclosing statistics on the composition of the board and senior management, we encourage companies to provide information on their policies, targets and processes for increasing the level of diversity throughout the organization. We attach great importance to putting in place appropriate mechanisms for board renewal, particularly since they can lead to more diversity.

[Osler 2021](#), p. 53

- Pratiques exemplaires pour augmenter la diversité : **Banque Nationale du Canada** - Le conseil d'administration s'est engagé à atteindre la parité hommes-femmes parmi ses membres et à ce que la représentation féminine au conseil soit d'au moins un tiers. En conséquence, la moitié des personnes sélectionnées pour combler des sièges vacants au conseil d'administration doivent être des femmes. Au cours de l'exercice 2019, le comité de révision et de gouvernance du conseil d'administration a engagé des conseillers en recrutement externes pour l'aider à repérer des candidats s'inscrivant dans les objectifs de diversité fixés par le conseil. En s'appuyant sur leurs recommandations, le conseil a élargi la liste des candidats potentiels à des postes d'administrateur pour l'exercice 2020, afin de mieux prendre en compte les critères de diversité non liés au sexe. Il peut ainsi puiser dans cette liste de candidats potentiels lorsqu'un siège d'administrateur devient vacant.

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## ÉTATS-UNIS

[HLS Roundtable, 2022](#), p.30

- ISS has an existing policy to generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at S&P 1500 or Russell 3000 companies where the company lacks women directors on its board. Against the backdrop of investors increased diversity expectations and NASDAQ's board diversity rules, ISS is expanding its current policy requiring at least one female director to all companies, not just those in the S&P 1500 or Russell 3000 indicies, starting with meetings on or after Feb. 1, 2023.

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[State Street, 2023](#), p. 5

- We expect boards of all listed companies to have at least one female board member and the boards of Russell 3000 companies to be composed of at least 30 percent women directors. If a company does not meet the applicable expectation, State Street Global Advisors may vote against the Chair of the board's nominating committee or the board leader in the absence of a nominating committee. Additionally, if a company does not meet the applicable expectation for three consecutive years, State Street Global Advisors may vote against all incumbent members of the nominating committee or those persons deemed responsible for the nomination process.
- We may waive this voting guideline if a company engages with State Street Global Advisors and provides a specific, timebound plan for either reaching the 30-percent threshold (Russell 3000) or for adding a woman director (non-Russell 3000).

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## AUSTRALIE

[ASX Council, 2019](#), p. 9

- A listed entity should: (a) have and disclose a diversity policy; (b) through its board or a committee of the board set measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally (c) disclose in relation to each reporting period: (1) the measurable objectives set for that period to achieve gender diversity (2) the entity's progress towards achieving those objectives; and (3) either A) the respective proportions of men and women on the board, in senior executive positions and across the whole workforce (including how the entity has defined "senior executive" for these purposes); or B) if the entity is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act.
- If the entity was in the S&P/ASX 300 Index at the commencement of the reporting period, the measurable objective for achieving gender diversity in the composition of its board should be to have not less than 30% of its directors of each gender within a specified period.

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- The diversity objectives the board or a committee of the board sets should include appropriate and meaningful benchmarks that are able to be, and are, monitored and measured. These could involve, for example: (1) achieving specific numerical targets for the proportion of women on its board, in senior executive roles and in its workforce generally within a specified timeframe; (3) achieving specific numerical targets for female representation in key operational roles within a specified timeframe with the view to developing a diverse pipeline of talent that can be considered for future succession to senior executive roles; or (3) achieving specific targets for the “Gender Equality Indicators” in the Workplace Gender Equality Act.
- Non-numerical objectives such as “introducing a diversity policy” or “establishing a diversity council”, and aspirational objectives such as “achieving a culture of inclusion”, while individually worthwhile, are unlikely to be effective in improving gender diversity unless they are backed up with appropriate numerical targets.

**ACSI, governance guidelines, 2021, p. 14**

- We expect that no gender occupies more than 70 per cent of board positions in an ASX-listed company. In addition, companies should set a timeframe within which they will achieve gender balance (40:40:20)<sup>5</sup> on their boards.
- ACSI encourages companies to advance gender diversity at executive level and to disclose the actions that they are taking to achieve this, by: (1) Pledging to achieve gender balance (40:40:20) in executive leadership by 2030. (2) Declaring measurable medium and long-term gender targets for 2023 and 2027. (3) Making the plan public. (4) Reporting annually on performance against targets.

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**FRANCE**

**Directive 2381, 2022, art. 5**

- Les États membres veillent à ce que les sociétés cotées soient soumises à l’un ou l’autre des objectifs suivants, à atteindre au plus tard le 30 juin 2026:
- a) les membres du sexe sous-représenté occupent au moins 40% des postes d’administrateurs non exécutifs; b) les membres du sexe sous-représenté occupent au moins 33 % de tous les postes d’administrateurs, tant exécutifs que non exécutifs.
- Les États membres veillent à ce que les sociétés cotées qui ne sont pas soumises à l’objectif prévu au paragraphe 1, point b), fixent des objectifs quantitatifs individuels en vue d’améliorer l’équilibre entre les femmes et les hommes parmi les administrateurs exécutifs. Les États membres veillent à ce que ces sociétés cotées visent à atteindre ces objectifs quantitatifs individuels au plus tard le 30 juin 2026.
- Le nombre de postes d’administrateurs non exécutifs jugé nécessaire pour atteindre l’objectif prévu au paragraphe 1, point a), est le nombre le plus proche de la proportion de 40 %, sans dépasser 49 %. Le nombre de tous les postes d’administrateurs jugé nécessaire pour atteindre l’objectif prévu au paragraphe 1, point b), est le nombre le plus proche de la proportion de 33 %, sans dépasser 49 %. Ces chiffres figurent dans l’annexe.

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**INTERNATIONAL**

**ICGN, 2021, p. 15**

- Boards should strive towards achieving appropriate gender diversity with, preferably, at least one-third of board positions held by women. This approach should be promoted throughout the company to encourage women to be appointed to senior leadership positions. Boards should disclose clear gender diversity goals and regularly report progress towards achievement over a defined timeframe.

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### 3.8.2 Processus de nomination des administrateurs

#### CANADA

##### Taskforce, 2021, p. 64

- The Taskforce recommends (re: regulatory framework): [to] Amend Ontario securities legislation to require publicly listed issuers to adopt a written policy respecting the director nomination process that expressly addresses the identification of candidates who self-identify as women

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##### Osler 2021, p.54

- Pratiques exemplaires pour augmenter la diversité : **Novagold Resources Inc.** Pour tout siège d'administrateur ouvert, et conformément à l'objectif d'instaurer la parité hommes-femmes, au moins la moitié des candidats recommandés au conseil par le comité des mises en candidature et de gouvernance pour examen doivent être des femmes.
- **Spin Master Corp.** Le processus de sélection des candidats ou des personnes nommées au conseil d'administration par la société doit inclure la préparation d'une courte liste présentant les candidats potentiels, dont au moins une femme, pour chaque siège ouvert pour lequel il incombe à la société de choisir les candidats administrateurs; si, à la fin du processus de sélection, aucune candidate féminine n'est retenue, cette décision doit être justifiée par des motifs objectifs et convaincants pour le conseil.

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#### FRANCE

##### Directive 2381, 2022, art. 6

- Les États membres veillent à ce que les sociétés cotées qui n'atteignent pas les objectifs visés à l'article 5, paragraphe 1, point a) ou b), selon le cas, adaptent le processus de sélection des candidats en vue d'une nomination ou d'une élection à des postes d'administrateurs. Ces candidats sont sélectionnés sur la base d'une appréciation comparative des qualifications de chaque candidat. À cette fin, des critères clairs, formulés en termes neutres et dépourvus d'ambiguïté, sont appliqués de manière non discriminatoire tout au long du processus de sélection, y compris lors de la préparation des avis de vacance, de la phase de présélection, de la constitution des listes restreintes de candidats et de l'établissement des réserves de candidats sélectionnés. Ces critères sont établis préalablement au processus de sélection.
- En ce qui concerne la sélection des candidats en vue d'une nomination ou d'une élection à des postes d'administrateurs, les États membres veillent à ce que, pour choisir entre des candidats qui possèdent des qualifications égales quant à leur aptitude, à leur compétence et à leurs prestations professionnelles, la priorité soit accordée au candidat du sexe sous-représenté, à moins que, dans des cas exceptionnels, des motifs ayant, sur le plan juridique, une importance supérieure, tels que la poursuite d'autres politiques en matière de diversité, invoqués dans le cadre d'une appréciation objective qui tient compte de la situation particulière d'un candidat de l'autre sexe et qui est fondée sur des critères non discriminatoires, ne fassent pencher la balance en faveur du candidat de l'autre sexe.
- Les États membres veillent à ce que, à la demande d'un candidat qui a été pris en considération lors de la sélection des candidats en vue d'une nomination ou d'une élection à un poste d'administrateur, les sociétés cotées soient obligées d'informer ledit candidat: a) des critères relatifs aux qualifications sur lesquels la sélection a été fondée; b) de l'appréciation comparative objective des candidats en fonction de ces critères ; et c) le cas échéant, des considérations particulières ayant fait exceptionnellement pencher la balance en faveur d'un candidat qui n'appartient pas au sexe sous-représenté.
- Les États membres prennent les mesures nécessaires, conformément à leur système judiciaire, pour veiller à ce que, lorsqu'un candidat non retenu du sexe sous-représenté établit, devant une juridiction ou une autre instance compétente, des faits qui permettent de présumer que ce candidat possédait des qualifications égales à celles du candidat de l'autre sexe qui a été sélectionné en vue d'une nomination ou d'une élection à un poste d'administrateur, il incombe à la société cotée de prouver l'absence de violation de l'article 6, paragraphe 2. Le présent paragraphe ne fait pas obstacle à l'adoption par les États membres de règles en matière de preuve plus favorables aux plaignants.

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- Lorsque le processus de sélection des candidats en vue d'une nomination ou d'une élection à un poste d'administrateur se fait par un vote des actionnaires ou des travailleurs, les États membres exigent des sociétés cotées qu'elles veillent à ce que les votants soient correctement informés des mesures prévues par la présente directive, y compris des sanctions auxquelles la société cotée s'expose en cas de non-respect de ses obligations.

### 3.8.3 Généralités

#### CANADA

##### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 29, 97 à 99

- Tout conseil d'administration doit refléter la diversité des parties prenantes de l'entreprise et des collectivités dans lesquelles elle exerce ses activités. Pour atteindre la diversité voulue dans un délai raisonnable, établir des objectifs pour que la composition du conseil d'administration compte au moins 40 % de personnes s'identifiant comme femme et au moins 40 % de personnes s'identifiant comme homme, ce qui permet de faire une place aux personnes de la communauté 2ELGBTQI+. [...]
- Environ un quart des 38 pays de l'OCDE (Organisation de coopération et de développement économiques) imposent désormais une certaine forme de quota. L'Union européenne a désormais approuvé son tout premier objectif de quota pour le nombre de femmes au sein des conseils d'administration des entreprises. Aux États-Unis, le Nasdaq a proposé en décembre 2020 une nouvelle règle en matière d'inscription à la cote qui oblige chaque conseil d'administration à compter au moins une personne qui s'identifie comme femme et au moins une personne issue de certaines minorités sous-représentées.
- Toute discussion sur la diversité au sein des conseils d'administration doit aborder la question de la durée du mandat des administrateurs. Si les postes d'administrateur ouverts à des candidats issus de la diversité sont peu nombreux, le changement continuera d'être lent.
- Nous recommandons de limiter à 12 ans le mandat de chaque membre, en prévoyant une certaine souplesse pour des prolongations appropriées. De fait, toute limite de la durée du mandat d'un administrateur est arbitraire, comme l'est le principe de la retraite à 65 ans.

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##### CDPO, rapport annuel, 2022, p. 108

- La diversité constitue un aspect important d'une saine gouvernance. C'est pourquoi les membres du conseil et du comité de direction portent une attention soutenue à la progression des femmes au sein de l'organisation, ainsi qu'à leur représentation dans ses sociétés en portefeuille et chez ses partenaires d'investissement.
- Le nombre de femmes au conseil doit représenter au moins 40 % du nombre total de membres. Au 31 décembre 2022, le conseil comptait 46 % de femmes.

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##### Share, 2022, p. 12

- Bien que les exigences juridiques et réglementaires relatives à la diversité des conseils d'administration et du personnel varient selon la juridiction en question, [le fonds] s'attend à ce que les entreprises élaborent et divulguent au moins une politique appropriée en matière de diversité ou expliquent pourquoi une telle politique ne peut pas être mise en place. Il existe plusieurs types de politiques de diversité, mais elles ne sont pas toutes acceptables. Une bonne politique est celle qui, une fois mise en place, donne lieu à une plus grande diversité au sein du conseil en une période raisonnable et définie.

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##### Osler 2021, p.55

- Pratiques exemplaires pour augmenter la diversité : **New Gold Inc.** - La société participe au programme de mentorat International Women in Mining, qui offre des occasions de mentorat au personnel féminin dans l'ensemble de l'entreprise, et offre à ses employées une adhésion à Women in Mining Toronto.
- **Groupe SNC-Lavalin inc.** - En 2020, la société a entrepris plusieurs actions pour promouvoir la diversité et l'inclusion. En octobre, elle a ainsi lancé le Programme de mentorat des femmes 2020 par l'intermédiaire de son réseau d'ED&I de l'Asie-Pacifique, une « initiative ayant pour objectif principal de soutenir le perfectionnement professionnel des femmes et la rétention de leurs compétences dans notre secteur ». De plus, le réseau d'ED&I

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de l'entreprise aux États-Unis a animé deux webinaires nationaux « Women Inspiring Leadership » ayant pour thèmes respectifs les femmes dans la gestion de projets et comment inspirer le leadership en périodes difficiles.

### 3.8.4 Critique de la littérature / proposition d'un cadre pour établir les contours du « gender washing »

#### GRANDE-BRETAGNE

##### Gender wash, Rosie Walters, 2021, abstract

- Adapting Lyon and Montgomery's summary of the greenwashing literature, I present seven varieties of gender wash – selective disclosure, empty gender claims and policies, dubious certifications and labels, co-opted NGO endorsements and partnerships, ineffective public voluntary programs, misleading narrative and discourse, and misleading branding. [...] In doing so, I aim to put forward a useful tool for critiquing contradictory claims made by corporations whose products, business model or employment practices are inherently damaging to women and girls. **Abstract**
- For its critics, CSR has taken activists' calls for greater regulation of supply chains, environmental impact and employment practices, and absorbed them into voluntary schemes in which there is seemingly 'no distinction between ethical practice and the self-interested pursuit of profit' (Cross & Street, 2009, p. 5). In order to reap the benefits of this 'investment,' corporations must publicize their CSR activities. Indeed, corporations are seen as engaging far more readily in so-called 'promotional CSR,' aimed at communicating ethical values, than they do in 'institutionalised CSR,' which is 'a comprehensive program that integrates socially responsible actions into the operations across a company' (Sternbank et al., 2021, pp. 2–3). **p. 1581**
- Among the many critical reflections on CSR, there is the feminist critique of the recent upsurge in activities aimed at women and girls, many of them with a focus on economic empowerment. These initiatives are the product of, and reproduce, discourses in the aftermath of the 2008 financial crash that see women as a safe investment and antidote to masculinist, risk-prone forms of financial management (Chant, 2016a; Roberts, 2012, p. 90; Roberts, 2015, p. 212). These discourses themselves resonate with earlier, 'smart economics' discourses (also labelled 'womenomics') promoted by institutions such as the World Bank, corporations and NGOs for decades, making an instrumentalist case for investing in women on the basis that doing so will minimize risk and increase corporate profits (Eisenstein, 2017). This so-called 'win-win' case for investing in women, and more recently girls too (Chant, 2016b), unproblematically links women's interests with economic outcomes and corporate profitability (Calkin, 2015b, p. 3; Chant, 2016b; Roberts, 2012, p. 92). In gender CSR programs, women are a target for investment not because it is the right thing to do, but because of the returns that they will produce on that investment. In short, many powerful interests are coming together to 'cheerlead the business case for gender equality' (Pruett & True, 2014, p. 1130). **p. 1582**
- **Selective disclosure:** Definition - Communications by corporations that emphasize only the areas where they are improving performance on gender issues, and which do not disclose areas where there is no improvement or even a worsening performance. Example - A corporation's communications team nominating the firm for a shortlist of best practice employers of women, even while the corporation faces lawsuits for alleged gender and maternity discrimination. **p. 1585, 1586**
- **Empty Gender Claims and Policies:** Definition - Claims by corporations to be implementing policies that will radically transform gender relations, when in reality there is little power to implement them or they do little to challenge the status quo. Example - The creation of 'women's networks,' which place the onus on women themselves to challenge sexism and discrimination in the workplace, and often go ignored. **p. 1586, 1587**
- **Dubious Certifications and Labels:** Definition - The use of third-party labels and certification to imply a product is beneficial to women and girls. Example - The placement of the pink Breast Cancer Awareness Month ribbon on products known to contain carcinogens, to indicate a donation to the campaign. **p. 1587, 1588**
- **Co-opted NGO Endorsements and Partnerships:** Definition - Association with girls' and women's rights organisations to lend credibility to corporate claims to be striving towards gender equality. Example - A corporation sponsoring a high-profile women's rights NGO, gaining publicity and brand recognition on NGO materials as a result, while doing nothing to address harmful practices towards women and girls in the corporation's own products, supply chains or employment practices. **p. 1588, 1589**

- **Ineffective Public Voluntary Programs:** Definition - The creation or signing of voluntary commitments, programs and codes of conduct on gender equality in the workplace, with weak enforcement mechanisms. Example - The voluntary adoption of a code of conduct on sexual harassment in the workplace, with internal reporting and investigation mechanisms, in order to help assuage activist, public and worker demands for greater legal regulation and accountability. **p. 1590, 1591**
- **Misleading Narrative and Discourse:** Definition - Marketing campaigns aimed at positioning a corporation as a leading actor or expert in girls' and women's empowerment, regardless of its track record in this area. Example - A corporation branding itself as having expertise in the empowerment of women in the Global South, despite accusations of sexual harassment and child labour in its supply chains. **p. 1591, 1592**
- **Misleading Branding:** Definition - The use of female logos, avatars and voices to imply that a brand is women- or girl-friendly. Example - The use of a woman's voice, image or avatar as the public face of a corporation whose employees, and senior management, are overwhelmingly male to make the corporation appear more 'feminine,' approachable or woman-friendly to consumers. **p. 1593**
- The third contribution of this article is in drawing on, and speaking back to, the literature on greenwashing in making the case for identifying the intent to green/ gender wash. This need not be attributed to individuals, executive boards or communications teams but rather can, I argue, be attributed to the corporation as a whole, which is structured in such a way that contradictory and misleading claims can emerge. This matters because greenwashing and gender washing suggest a will- ful neglect by corporations of important social and environmental issues, motivated by an attempt to increase profits, reach new markets and expand their production, all of which risk exacerbating the harmful practices their communications practices conceal. While CSR activities may lead to some positive outcomes for women, if they come from a corporation that is failing to address institutionalized sexism, and they succeed in presenting a woman-friendly image to publics, they may also serve to perpetuate gendered harms. **p. 1594**

## 3.9 Gestion de crises et communication publique

### 3.9.1 Prises de positions sociales et politiques

#### CANADA

##### Dey et Kaplan, 2021, p. 41

- Corporations may from time to time be pressured to state their position on an issue with social or political implications. The corporation may also decide, of its own volition, to make such a statement. The CEO should lead the process to decide whether to make a statement and what the content should be. Before making that decision, the CEO should consult the board to obtain the board's input and approval on whether, when and how to take a stand. **The disclosure of the position of the corporation should be prepared in the same manner and with the same degree of care as any other release by the corporation.** Because the nature of the issue may attract substantial attention from investors and other stakeholders, the board should ensure that the corporation has in place a process which will enable the CEO and the board, if necessary, to respond to public inquiries.
- It is important that the corporation have in place a process that the CEO can invoke to decide whether or not to issue a statement, when to take a stand, how to do it and how to address any negative consequences that may follow. The board should also consider what level of discretion the CEO should be afforded in speaking out on these types of issues. The process will provide a forum in which the board can decide if such a statement would be in the best interest of the corporation.

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#### ÉTATS-UNIS

##### NACD, 2022, p.52

- Governance structures and practices should be transparent and designed to encourage communication and engagement with shareholders and other key stakeholders on matters of importance. **p.52**
- Public and private corporations are under increasing pressure to speak out on matters of political and social importance, and often receive considerable criticism for speaking out and for failing to speak out. The board's oversight responsibilities for corporate speech in the political and social sphere are related to issues of risk management, internal controls, and corporate ethics. Boards need to determine with management whether and in what circumstances to engage in or refrain from taking public positions or otherwise engaging in public discourse on matters of importance to key consumers, employee segments, and/or investors. **p.52**
- **The company should have in place a process for determining in what circumstances to speak out on political and social issues.** In addition to detailing who should be involved in that decision and the circumstances in which the board should be involved prior to any statement, the decision-making process should be designed to consider the degree of relationship of the issue to the company's business, purpose, and values; the degree of likely controversy; the impact of the issue on stakeholder interests; the degree of authenticity the company would have in speaking; and the financial impact and risks of speech versus silence, including the risk of retaliatory action in the form of boycott and/or legislative or regulatory action. **p.53**

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##### Commonsense Principles, 2018, p. 4

- Directors should speak about the company with the media only if authorized by the board and in accordance with company policy.

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#### INTERNATIONAL

##### ICGN, 2021, p. 18

- Political lobbying: **The board should have a policy on political engagement, covering lobbying and donations to political causes or candidates to the extent permitted by law,** and ensure that the benefits and risks of the approach taken are understood, monitored, transparent and regularly reviewed. Boards should address instances where there are significant inconsistencies between a company's publicly stated policy positions and potentially conflicting views of trade associations of which the company may be a member.

## 4 ÉLÉMENTS À CONSIDÉRER EN AJOUT DES PRINCIPES GÉNÉRAUX PRÉVUS À 58-101

### 4.1 Traitement de la relation avec les actionnaires

#### 4.1.1 Double structure d'actionariat

##### CANADA

###### CCGC, 2022, p. 44, 45

- On an ongoing basis, the board of a Dual Class Share (DCS) company should consider the reasons why a DCS structure was established and whether those reasons remain valid and **should explain to shareholders annually in the DCS company's proxy circular the reasons why the continued existence of the DCS structure is appropriate.** p. 44
- CCGG's board of directors and a majority of CCGG's members also expect the board of a DCS company which undertakes an initial public offering in Canada after September 2013 (i.e. the date CCGG's DCS policy was published) and which does not comply with any or all of CCGG's DCS principles to explain to shareholders annually in the DCS company's proxy circular (or if the DCS company does not issue a proxy circular because the public owns non-voting common shares, then in another public document which is filed with the securities regulatory authorities) the reasons why it is not appropriate for such principles to apply to the DCS company. p. 45

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###### GL, 2023, p. 15, 55

- Board responsiveness [...]: With regards to companies where voting control is held through a multi-class share structure with disproportionate voting and economic rights, we will carefully examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted. Where vote results indicate that a majority of unaffiliated shareholders supported a shareholder proposal or opposed a management proposal, we believe the board should demonstrate an appropriate level of responsiveness. p. 15
- **Glass Lewis believes multi-class voting structures are typically not in the best interests of common shareholders.** Allowing one vote per share generally operates as a safeguard for common shareholders by ensuring that those who hold a significant minority of shares are able to weigh in on issues set forth by the board. Furthermore, we believe that the economic stake of each shareholder should match their voting power and that no small group of shareholders, family or otherwise, should have voting rights different from those of other shareholders. On matters of governance and shareholder rights, we believe shareholders should have the power to speak and the opportunity to effect change. **That power should not be concentrated in the hands of a few for reasons other than economic stake. We generally consider a multi-class share structure to reflect negatively on a company's overall corporate governance.** Because we believe that companies should have share capital structures that protect the interests of non-controlling shareholders as well as any controlling entity, we will generally recommend against proposals to adopt a new class of common stock. Similarly, we typically recommend that shareholders vote in favor of recapitalization proposals to eliminate multi-class share structures. However, as part of our review of proposals to unwind multi-class share structures, we will analyze any financial compensation being offered to holders of shares with superior rights. p. 55

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###### ISS, 2023, p. 12, 13, 33

- Policy Considerations for Majority Owned Companies : **ISS policies support a one-share, one-vote principle.** [...] Against this legal backdrop, Canadian institutions have taken steps to acknowledge and support the premise that a shareholder who has an equity stake in the common shares of a reporting issuer under a single class common share structure has a significant interest in protecting the value of that equity stake in the company and is therefore deemed to have significant alignment of interests with minority shareholders. This policy firmly supports the one-

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share, one-vote principle and is intended to recognize the commonality of interests between certain shareholders having a majority equity stake under a single class share structure and minority shareholders in protecting the value of their investment. **p. 12**

- The policy is designed to exempt only non-management director nominees who are or who represent a controlling shareholder of a majority owned company, and not to circumvent ISS' benchmark voting guidelines otherwise applicable to management director nominees. For example, in accordance with benchmark policy, ISS will not support director nominees who are executives, regardless of whether or not they also are or represent a controlling shareholder, and are members of the audit committee. **p. 13**
- Dual-class Stock: **General Recommendation: Vote against proposals to create a new class of common stock that will create a class of common shareholders with diminished voting rights. The following is an exceptional set of circumstances under which ISS would generally support a dual class capital structure.** Such a structure must meet all of the following criteria: (1) It is required due to foreign ownership restrictions and financing is required to be done out of country; (2) It is not designed to preserve the voting power of an insider or significant shareholder; (3) The subordinate class may elect some board nominees; (4) There is a sunset provision; and (5) There is a coattail provision that places a prohibition on any change in control transaction without approval of the subordinate class shareholders. **p. 33**

#### Teachers, 2023, p. 34

- Nous ne favorisons pas les structures à deux catégories d'actions, mais nous reconnaissons que ces structures existent dans certaines sociétés. Dans ce cas, **il faut que les dispositions à ce sujet prévoient un traitement juste et équitable pour les deux catégories d'actionnaires.** [...] Nous appuyons la pratique d'une seule catégorie d'actions. En règle générale, nous n'appuierons pas la création ni l'expansion des structures à deux catégories d'actions.

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#### BlackRock, 2023, p. 12

- **In our view, shareholders should be entitled to voting rights in proportion to their economic interests.** In addition, companies that have implemented dual or multiple class share structures should review these structures on a regular basis, or as company circumstances change. Companies with multiple share classes should receive shareholder approval of their capital structure on a periodic basis via a management proposal on the company's proxy. **The proposal should give unaffiliated shareholders the opportunity to affirm the current structure or establish mechanisms to end or phase out controlling structures at the appropriate time, while minimizing costs to shareholders.** Where companies are unwilling to voluntarily implement "one share, one vote" within a specified timeframe, or are unresponsive to shareholder feedback for change over time, we generally support shareholder proposals to recapitalize stock into a single voting class.

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#### State Street, 2023, p. 10

- **We will not support proposals authorizing the creation of new classes of common stock with superior voting rights and may vote against new classes of preferred stock** with unspecified voting, conversion, dividend distribution, and other rights. In addition, we will not support capitalization changes that add "blank check" classes of stock (i.e. classes of stock with undefined voting rights) or classes that dilute the voting interests of existing shareholders.
- However, we will support capitalization changes that eliminate other classes of stock and/ or unequal voting rights

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#### Vanguard, 2022, p. 15

- The Vanguard Investment Stewardship approach to this issue is principled yet practical. It remains philosophically aligned to "one-share, one-vote" but mindful of the need not to hinder public capital formation in the equity markets. Alignment of voting and economic interests is a foundation of good governance. **Vanguard supports the idea of a newly public, dual-share- class company adopting a sunset provision that would move the company toward a one-share, one-vote structure over time.**

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[Share, 2022](#), p. 22

- Une bonne gouvernance de société implique en général **un vote par action**. Les sociétés avec une structure à deux catégories d'actions ont une ou plusieurs catégories d'actions qui confèrent plus d'un vote par action. Les structures à deux catégories d'actions permettent à certains actionnaires de garder le contrôle de la société sans détenir le montant d'actions correspondant, rendant possible pour la société d'agir sans le soutien d'une véritable majorité d'actionnaires. **[Le fonds] votera contre la création, l'émission ou le maintien de la structure de capital avec des actions ordinaires à droit de vote inégal.** [Le fonds] votera pour des propositions visant à adopter une date raisonnable d'expiration de l'inégalité des droits de vote. [Le fonds] votera en faveur du remplacement des actions à droit de vote multiple par des actions à droit de vote unique à moins que les termes de conversion aient un impact plus néfaste sur les intérêts des détenteurs des actions à droit de vote subalterne que le maintien de la structure à deux catégories. Pour les sociétés ayant déjà une structure à deux catégories, [le fonds] votera en faveur des propositions de révision obligatoire de la structure du capital-actions et de la réapprobation régulière par les détenteurs des actions à droit de vote subalterne. [Le fonds] votera en faveur des propositions visant à se retirer des programmes de « fidélité » qui donnent plus d'un droit de vote par action aux actionnaires détenant des titres depuis un certain temps dans l'entreprise.

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[CDPQ, 2020](#), p. 13, 17

- CDPQ generally favours the issuance of single voting shares. However, **in certain circumstances, a capital structure with unequal voting shares may be justified.** It is sometimes in the interests of a majority of the shareholders that the holder of a large block of shares retain effective control of the company. An adequate framework to protect against the impacts of such a structure should be implemented. **p. 13**
- CDPQ notes [...] **that capital structures with subordinate voting shares are common in certain industries** and in certain countries, including Canada. CDPQ invests in such companies when they excel over the long term and when they treat holders of subordinate voting shares fairly. In all circumstances, long-term performance is what guides CDPQ's investment decisions and discussions with their management. [...] **CDPQ may consider it appropriate to allow an entrepreneur-founder to continue to manage the company during an expansion phase and to finance this growth through equity, even if the entrepreneur-founder's resources are insufficient to maintain a position of control.** CDPQ may therefore encourage a company with a worthwhile expansion project to access capital markets without the entrepreneur-founder being forced to lose their position of control over the short or medium term. In so doing, CDPQ is participating in the creation of economic leaders of national, even international scope. On the other hand, CDPQ is of the opinion that companies with subordinate voting rights must be overseen closely to provide subordinate shareholders with the assurance of sound governance. These companies must demonstrate best practices in corporate governance and transparency, particularly with regard to disclosure of information to subordinate shareholders. When a company that has subordinate voting rights discloses voting results at annual shareholders meetings, and discloses voting results on a consolidated basis, CDPQ supports the disclosure of voting results separately, by share class. **p. 17**

## ÉTATS-UNIS

[Commonsense Principles, 2018](#), p. 7

- **Dual class voting is not a best practice.** If a company has dual class voting, which sometimes is intended to protect the company from short-term behavior, the company ordinarily should have specific sunset provisions, based upon time or a triggering event, which would eliminate dual class voting. In addition, all shareholders should be treated equally in any corporate transaction.

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## BRÉSIL

[IBGC 2023](#), p. 23, 24

- **One share, one vote:** The practice of “one share, one vote” is that which most promotes the alignment of interests among all shareholders. Within these structures, the political power, represented by the right to vote, is always proportional to the economic rights arising from the ownership of shares. Structures that concentrate political power disproportionately to share ownership, such as preferred shares, plural voting, pyramid structures, voting

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caps, golden shares, and poison pills should be avoided. When members are evaluating whether these structures are appropriate, they should consider the potential benefit and possible risks of the presence of a member or group with political power that is disproportionate to the ownership interest for the performance and long-term vision of the organization. **It is essential that the bylaws or articles of incorporation provide for rules and conditions for the extinction of these asymmetries within a certain time horizon.** In addition, it is necessary to adopt measures that ensure the equitable treatment of all shareholders; include safeguards that mitigate or offset any misalignment; and ensure that governance principles are observed. **p. 23**

- **Practices:** a) Each share or quota must entitle its owner to one vote. b) When choosing to adopt structures that do not support this principle, all shareholders, including holders of non-voting shares or quotas, must: (i). assess whether such structures might impair the organization's performance or its access to capital; (ii) be transparent as to the reasons and possible impacts of this choice, thus allowing shareholders to evaluate the advantages and disadvantages of this structure, and to make an informed decision about it; (iii). disclose full and clear information concerning the political and economic rights associated with each type or class of shares or quotas, as well as the way in which control will be exercised in the organization; (iv). establish a term for these structures that depart from the "one share, one vote" principle; (v). recommend the creation of appropriate processes or mechanisms at the board of directors and general meeting level, throughout the duration of these special rights, ensuring that decisions in which there are conflicts of interest regarding the shareholder or group with disproportionate political power are made without its participation, only by independent directors or by the other shareholders; and (vi). Provide for possible mechanisms to mitigate the asymmetry of political and economic rights, especially in cases of transfer of control or corporate reorganizations. **p. 23**

## INTERNATIONAL

### [ICGN, 2021](#), p. 33

- Ordinary or common shares should feature one vote for each share. **Divergence from a 'one-share, one-vote' standard which gives certain shareholders power or control disproportionate to their economic interests should be avoided** or in the event of the existence of such classes, they should be disclosed and explained and sunset mechanisms should be put into place. Dual class share structures should be discouraged, and where they are in place kept under review and should be accompanied by commensurate extra protections for minority shareholders, particularly in the event of a takeover bid. The board should disclose sufficient information about the material attributes of all of the company's classes and series of shares on a timely basis.

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### [BlackRock Global, 2023](#), p. 10

- In principle, we disagree with the creation of a share class with equivalent economic exposure and preferential, differentiated voting rights. In our view, **this structure violates the fundamental corporate governance principle of proportionality and results in a concentration of power in the hands of a few shareholders, thus disenfranchising other shareholders and amplifying any potential conflicts of interest.** However, we recognize that **in certain markets, at least for a period of time, companies may have a valid argument for listing dual classes of shares with differentiated voting rights.** In our view, such companies should **review these share class structures on a regular basis** or as company circumstances change. Additionally, they should seek shareholder approval of their capital structure on a periodic basis via a management proposal at the company's shareholder meeting. The proposal should give unaffiliated shareholders the opportunity to affirm the current structure or establish mechanisms to end or phase out controlling structures at the appropriate time, while minimizing costs to shareholders.

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## 4.1.2 Généralités

### CANADA

#### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 23

- Déterminer si les activités de la direction en matière de relations avec les investisseurs tiennent compte de la composition et de la nature de l'actionnariat de la société. Ces activités devraient en outre être axées sur les actionnaires qui sont fondamentalement orientés vers la réussite à long terme de l'entreprise. p. 23
- **Exiger que la direction rende compte de la fréquence et de la nature de ses communications auprès des actionnaires [...] et détermine si les attentes de ceux-ci et les résultats réels concordent.** p. 23

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#### ISS, 2023, p.20

- **The ability of shareholders to put forward potential nominees for election to the board is a fundamental right and should not be amended by management or the board without shareholders' approval**, or, at a minimum, with the intention of receiving shareholder approval at the next annual or annual/special meeting of shareholders. As such, the board of directors, as elected representatives of shareholders' interests and as the individuals primarily responsible for corporate governance matters, should be held accountable for allowing such policies to become effective without further shareholder approval.
- Furthermore, disclosures regarding these policies should be made available to shareholders (similar to shareholder proposal deadline disclosures or majority voting policy disclosures) because they are substantive changes that may impact shareholders' ability to nominate director candidates. Failure to provide such disclosure is not in shareholders' best interests.

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#### Teachers, 2023, p. 17, 19

- Représentation proportionnelle à la participation: Lorsqu'un investisseur détient une participation importante dans une société, nous appuyons une **représentation au conseil d'administration qui est proportionnelle à son intérêt économique.** p. 17
- **Mise en œuvre des propositions d'actionnaires** : Nous attendons des conseils d'administration qu'ils respectent le processus démocratique des actionnaires. Nous tenons le président du comité de gouvernance (ou son équivalent) responsable de veiller à ce que toutes les propositions soumises à un vote des actionnaires et bénéficiant du soutien de la majorité soient mises en œuvre conformément aux modalités de la proposition des actionnaires ou qu'une raison convaincante soit fournie expliquant pourquoi il est dans le véritable intérêt de la société que le conseil décide de ne pas agir. Dans les cas où une proposition d'actionnaires reçoit un appui important<sup>13</sup>, mais non majoritaire, nous nous attendons à ce que l'entreprise réponde aux préoccupations des actionnaires. Si nous décidons que le manque de respect du processus démocratique des actionnaires est fréquent ou grave, nous envisagerons de ne pas appuyer les membres du comité de gouvernance ou l'ensemble du conseil. p. 19
- **Adoption de règlements** : Nous attendons des conseils d'administration qu'ils ne mettent pas en œuvre des règlements ou des politiques qui ont des conséquences sur les droits des actionnaires sans les avoir d'abord soumis au vote des actionnaires. Si un règlement ou une politique est mis en œuvre sans avoir été soumis au vote des actionnaires, nous en tiendrons le président ou les membres du comité de gouvernance d'entreprise (ou son équivalent) responsables et nous n'appuierons pas leur réélection au conseil. p. 19

#### Vanguard, 2022, p. 5

- **Limiting shareholder rights.** A fund will generally vote against the independent chair or lead director and members of a governance committee in response to unilateral board actions that meaningfully limit shareholder rights (including, but not limited to, the unilateral adoption of exclusive forum provisions). This vote is based on a holistic review of the company's governance structures and is applied only when there is concern that shareholders are unable to exercise their voice.
- **Non responsiveness to proposals.** A fund will generally vote against the independent chair or lead independent director and members of the relevant committee for failure to adequately respond to proposals (management or

shareholder) that received the support of a majority of shares, based on votes cast (including the fund's), at a prior year's shareholder meeting.

[BMO, 2021, p. 15](#)

- Companies should be ready, where practicable, to enter into dialogue with shareholders based on an understanding of shared objectives. They should be proactive in making sure important news is imparted, subject to appropriate inside information procedures, and should react helpfully to investor questions. In investment meetings with shareholders, companies should be prepared to address relevant corporate ESG issues.

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[Share, 2022, p. 18](#)

- Les sociétés ont la responsabilité de communiquer à leurs actionnaires les risques éventuels de leurs opérations, notamment les risques liés aux questions sociales et environnementales de leurs opérations. Cette information peut être adjointe à d'autres détails de performance sociale et environnementale dans les rapports de durabilité de la société. [Le fonds] recommande les lignes directrices du GRI (Global Initiative Reporting) pour l'élaboration des rapports de durabilité. Les sociétés peuvent également inclure l'information sur leur performance sociale et environnementale dans le rapport annuel. **p. 17**
- [Le fonds] s'oppose aux dispositions qui limitent les juridictions dans lesquelles les actionnaires peuvent engager une procédure contre la société. Les dispositions limitant la juridiction enlèvent le droit aux investisseurs de choisir le tribunal dans lequel poursuivre la société en justice sans démontrer la nécessité d'une telle restriction. **p. 18**
- Les recours collectifs des actionnaires peuvent être une méthode légitime de récupération des pertes résultant d'une négligence, d'une fausse déclaration ou d'une malversation de la part de la direction. Les entreprises ne doivent pas restreindre le recours des actionnaires aux recours collectifs ou autrement priver les investisseurs de ce moyen de tenir la direction responsable d'un comportement inacceptable. **p. 18**

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## ÉTATS-UNIS

[CII, 2023, point 2.6 b, p. 4](#)

- **Interaction with Shareowners:** Directors should respond to communications from shareowners and should seek shareowner views on important governance, management and performance matters. To accomplish this goal, all companies should establish board-shareowner communications policies. Such policies should disclose the ground rules by which directors will meet with shareowners. The policies should also include postal mail and email contact information for at least one independent director (but preferably for the independent board chair and/or the independent lead director and the independent chairs of the audit, compensation and nominating committees). **Companies should also establish mechanisms by which shareowners with non-trivial concerns can communicate directly with all directors.** Policies requiring that all director communication go through a member of the management team should be avoided unless they are for record-keeping purposes. In such cases, procedures documenting receipt and delivery of the request to the board and its response must be maintained and made available to shareowners upon request. Directors should have access to all communications. Boards should determine whether outside counsel should be present at meetings with shareowners to monitor compliance with disclosure rules. All directors should attend the annual shareowners' meetings and be available, when requested by the chair, to answer shareowner questions.

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[Commonsense Principles, 2018, p. 5](#)

- It is important that companies engage with shareholders and receive feedback about matters relevant to long-term shareholder value.
- **Shareholder proposals.** In the event that a company receives a shareholder proposal, it should consider engagement with the proposing shareholder (as well as other shareholders, to the extent appropriate) early in the process, preferably before the proposal appears in the proxy. Should the proposal receive majority shareholder support, the company should consider further engagement with shareholders and either implement the proposal (or a comparable alternative) or promptly explain why doing so would not be in the best long-term interests of the company. As a best practice, the company also should consider further engagement with shareholders to discuss shareholder proposals that receive significant but less than majority support and formulate an appropriate

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response. And while such response may include the adoption of the proposal (or a comparable alternative), the board should be mindful of the fact that a majority of the company's shareholders did not support the proposal.

- Management proposals. Similarly, in connection with a management proposal, the company should consider engagement with shareholders early in the process. Should the proposal be defeated or receive significant shareholder opposition, the company should consider further engagement with shareholders and formulate an appropriate response, again mindful of how a majority of the company's shareholders voted.

### ISG, 2017, principle 3

- **Boards should be responsive to shareholders and be proactive in order to understand their perspectives.**
- 3.1 Boards should respond to a shareholder proposal that receives significant shareholder support by implementing the proposed change(s) or by providing an explanation to shareholders why the actions they have taken or not taken are in the best long-term interests of the company.
- 3.2 Boards should seek to understand the reasons for and respond to significant shareholder opposition to management proposals.
- 3.3 The appropriate independent directors should be available to engage in dialogue with shareholders on matters of significance, in order to understand shareholders' views.
- 3.4 Shareholders expect responsive boards to work for their benefit and in the best interest of the company. It is reasonable for shareholders to oppose the re-election of directors when they have persistently failed to respond to feedback from their shareholders.

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## GRANDE-BRETAGNE

### UK Code, 2018, p. 4, 5, 6

- In addition to formal general meetings, the chair should seek regular engagement with major shareholders in order to understand their views on governance and performance against the strategy. Committee chairs should seek engagement with shareholders on significant matters related to their areas of responsibility. The chair should ensure that the board as a whole has a clear understanding of the views of shareholders. **p.5**
- **When 20 per cent or more of votes have been cast against the board recommendation for a resolution, the company should explain, when announcing voting results, what actions it intends to take to consult shareholders in order to understand the reasons behind the result.** An update on the views received from shareholders and actions taken should be published no later than six months after the shareholder meeting. The board should then provide a final summary in the annual report and, if applicable, in the explanatory notes to resolutions at the next shareholder meeting, on what impact the feedback has had on the decisions the board has taken and any actions or resolutions now proposed. **p.6**
- The roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company. If, exceptionally, this is proposed by the board, major shareholders should be consulted ahead of appointment. The board should set out its reasons to all shareholders at the time of the appointment and also publish these on the company website. **p.6**

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### Purplebricks Group PLC, 2021, p. 2

- QCA Code Guidance : **Directors must develop a good understanding of the needs and expectations of all elements of the company's shareholder base.** The board must manage shareholders' expectations and should seek to understand the motivations behind shareholder voting decisions.
- What we do: The Directors actively seek to build healthy relationships with our institutional shareholders and make presentations to this group, and to analysts, following the release of half year and full year results. In addition, the CEO, CFO and Investor Relations team regularly meet with these groups as well as potential investors to understand what they think, and to ensure they understand the business. The views of all these stakeholder groups are regularly reported to the board. The Chairman is also available to meet with major shareholders if required to discuss important company related issues with them. The Company's Nominated Adviser and Brokers also liaise with institutional investors to understand their views and share these with the board. Axel Springer, our largest shareholder, maintains one non-executive Director to the Board as part of their

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strategic investment. The Company responds promptly to ad hoc shareholder enquiries and views the AGM as an important opportunity to meet private shareholders and for them to ask questions.

## AUSTRALIE

### [ASX Council, 2019](#), p. 23, 24

- A fundamental underpinning of the corporate governance framework for listed entities is that security holders should be able to hold the board and, through the board, management to account for the entity's performance. **For this to occur, a listed entity needs to engage with its security holders and provide them with appropriate information and facilities to allow them to exercise their rights as security holders effectively.** [list p. 23]
- A listed entity should have an investor relations program that facilitates effective two-way communication with investors. [...] A primary aim of an investor relations program should be to allow investors and other financial market participants to gain a greater understanding of the entity's business, governance, financial performance and prospects. However, it should not just involve one way communication from the entity to the market but also provide an opportunity for investors and other financial market participants to express their views to the entity on matters of concern or interest to them. **p.24**

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### [ASX Council, 2019](#), p. 24

- While the focus of many investor relations programs will be on larger investors and financial market participants who service larger investors, **listed entities should also seek opportunities to engage with retail investors and the organisations that represent them, to understand the matters of concern or interest to smaller investors.**

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### [ACSI, governance guidelines, 2021](#), p. 15

- Where companies have controlling shareholders, **adequate safeguards for minority and non-controlling shareholders should be built into board structures and the company constitution** as follows: (1) There should be disclosure in the annual report and accounts of all connections and relationships (past and present) between directors and controlling shareholders. (2) The existence of any relationship agreements between a company and its controlling shareholder should be disclosed. (3) The chair should not have any connection to the controlling shareholder.
- Where the controlling shareholder owns or controls, singly or jointly, more than 50 per cent of the voting rights, the board should be sensitive to the votes and interests of the non-controlling shareholders, particularly where there is significant misalignment between the controlling shareholder and other shareholders.

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### [Directors' Toolkit, 2022](#), p. 86, 89

- Governance authorities suggest there are some key board roles in protecting shareholders rights. These include: (1) Maintaining a detailed understanding of shareholders' rights that are set out in the Corporations Act, the ASX Listing Rules and other relevant legislation, together with the company's constitution and board policies. (2) Maintaining up-to-date knowledge of the company's nominee shareholders and, to the extent possible, their underlying beneficial shareholders. (3) Ensuring shareholder communication is open and transparent. (4) Ensuring debate on contentious issues is embraced and prepared for. (5) Implementation of shareholder proposals approved by a majority of votes/proxies cast at a general meeting. **p.86**
- Boards are exposed to a number of risks if their organisation has inadequate investor relations expertise; regulatory risk (continuous disclosure and class actions), poor/lack of communication of strategy and performance to investors, and expectation for information to be publicly available in liquid markets for accuracy of share price valuation. Large companies operate in multiple dynamic, volatile markets and jurisdictions, with diverse investors with different goals requiring different communication strategies. Additionally, the risk of misleading and deceptive information being publicised on social media heightens companies' obligations to meticulously inspect their sources of information and make proper corrections. **Boards need to understand their shareholders and shareholder segments, communicate their strategy appropriately, its performance and ESG activities and ensure the strategy is aligned to the company's best interests (being the interests of their shareholders as a whole).** **p.89**

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## BRÉSIL

### IBGC 2023, p. 32

- **The board of directors should create relationship and engagement channels with shareholders and other stakeholders**, for example, by means of specific meetings with these audiences, with an adequate definition of the board's spokesperson and compliance with the need for secrecy on certain matters to avoid information asymmetries.

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## FRANCE

### AFEP & MDEDF, 2022, p. 5

- Les relations des actionnaires avec le conseil d'administration notamment sur les sujets de gouvernement d'entreprise peuvent être confiées au président du conseil d'administration ou, le cas échéant, à l'administrateur référent. Celui-ci rend compte au conseil d'administration de cette mission.
- **Chaque société cotée dispose en son sein de procédures fiables d'identification, de contrôle et d'évaluation de ses engagements et risques, et assure aux actionnaires et investisseurs une information pertinente en ce domaine.**

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### Middlenext, 2021, p. 13, 16, 30, 31

- Les « actionnaires » sont-ils clairement informés des risques majeurs et prévisibles qui peuvent menacer la pérennité de l'entreprise ? Indépendamment des obligations légales d'information sur les risques, le système de gouvernance doit permettre aux « actionnaires » d'obtenir une information claire sur les risques majeurs et prévisibles, ceux inhérents à l'entreprise et ceux qui pourraient menacer sa pérennité : les risques liés aux choix stratégiques et les risques liés aux dysfonctionnements du système de gouvernance lui-même. p.13
- La majorité des entreprises a un « actionnariat » de référence important et/ou un « dirigeant » dont l'influence est prépondérante, à plus forte raison lorsqu'il est à l'origine de l'entreprise. Il faut en conséquence, souligner le fait que les « actionnaires » de référence peuvent être les premières victimes d'une mauvaise gestion. En revanche, certaines décisions de gestion peuvent porter atteinte aux intérêts des « actionnaires » minoritaires et les « membres du Conseil » doivent veiller à un juste équilibre des pouvoirs. **Leur rôle consiste donc essentiellement à s'assurer qu'il n'y a pas de dérives, qu'un trop fort alignement entre le pouvoir exécutif et les « actionnaires » de référence ne nuise pas à la qualité de la gouvernance ni à celle des décisions stratégiques ou encore que le « dirigeant » ne gère pas l'entreprise sans tenir compte des intérêts des « actionnaires », dans le cas où le capital est dilué. p.16**
- Au-delà des dispositions légales, le Conseil porte une attention toute particulière aux votes négatifs en analysant, entre autres, comment s'est exprimée la majorité des minoritaires. Le Conseil s'interroge sur l'opportunité de faire évoluer, en vue de l'assemblée générale suivante, ce qui a pu susciter des votes négatifs et sur l'éventualité d'une communication à ce sujet. Le rapport sur le gouvernement d'entreprise précise que cet examen a eu lieu. Il est recommandé que, hors assemblée générale, des moments d'échange avec les actionnaires significatifs soient organisés de façon à instaurer les conditions d'un dialogue fécond. En préalable à l'assemblée générale le « dirigeant »<sup>23</sup> veille à rencontrer les actionnaires significatifs qui le souhaitent tout en veillant au respect de l'égalité d'information des actionnaires. **p. 30, 31**

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### AMF, recommandation 2012-02, p. 9

- L'AMF recommande aux émetteurs d'instaurer un **dialogue** entre le conseil et les actionnaires, le cas échéant par le truchement d'un administrateur référent, **sur les principaux sujets d'attention des actionnaires, notamment les questions relatives à la stratégie et la performance en matière sociale, environnementale et de gouvernance (ESG)**
- Elle recommande par ailleurs aux sociétés ayant désigné un administrateur référent de publier chaque année un bilan de son activité, afin que puissent être appréciés, d'une part, la nature des diligences et missions conduites dans ce cadre, et d'autre part, l'usage qu'il a pu faire des prérogatives qui lui ont été reconnues

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- L'AMF recommande aux sociétés qui ont décidé de l'unicité des fonctions ainsi que celles qui ont un président du conseil non indépendant de réfléchir à l'opportunité de désigner un administrateur référent, notamment pour la gestion des conflits d'intérêts
- L'AMF recommande que les supports de présentation établis à l'occasion des « roadshows gouvernance » soient mis en ligne sur le site internet de la société
- L'AMF recommande aux sociétés, en cas de vote contesté en assemblée générale, de s'interroger sur l'opportunité d'une communication sur les mesures prises par le conseil à la suite de ce vote

## INTERNATIONAL

### ICGN, 2021, p. 34

- The board should ensure that policies and procedures on conflicts of interest are established, understood and implemented by directors, management, workers and other relevant parties, including members of related business groups. If a director has an interest in a matter under consideration by the board, then the director should promptly declare such an interest and be precluded from voting on the subject or exerting influence. The use of relationship agreements with controlling shareholders are encouraged to ensure that real or potential conflicts of interest are avoided or mitigated and should confirm that transactions involving conflicted parties will be based on customary market terms.

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## 4.2 Suivi des facteurs ESG (incluant les changements climatiques)

### 4.2.1 Considération, évaluation et intégration des facteurs ESG dans la stratégie et la planification de la société

#### CANADA

[Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022](#), p. 24, 25, 44, 63

- Déterminer si la direction a clairement établi les enjeux ESG à prendre en considération, compte tenu de la finalité de la société, de sa situation financière et de son positionnement concurrentiel ainsi que de l'importance de ces enjeux pour ses parties prenantes. Il s'agit notamment de vérifier si la stratégie d'entreprise tient compte de ces enjeux et de déterminer la façon dont les résultats sont évalués et si ces résultats correspondent aux attentes des parties prenantes **p.24** (voir aussi [CCGC, 2018](#), p. 17)
- Évaluer l'efficacité des plans d'action et la qualité des outils d'évaluation conçus pour s'adapter à l'évolution des changements climatiques importants, dont les activités de transition. Il s'agit notamment de surveiller les progrès vers l'atteinte des cibles de carboneutralité et des objectifs environnementaux qui seront fixés dans le futur. **p.25**
- Déterminer si les normes d'évaluation et de communication au public de l'information relative aux risques climatiques sont comparables à celles qui s'appliquent aux autres priorités ESG de la société. **p.25**
- Déterminer si l'évaluation des priorités de la société en matière d'enjeux ESG et la communication d'information à ce sujet répondent aux normes et aux cadres reconnus. Déterminer également si des contrôles efficaces sont en place pour la préparation et l'examen de cette information. La direction devra effectuer le suivi de ses processus et les adapter en fonction de l'évolution des normes édictées par les autorités de réglementation et les normalisateurs canadiens, le Conseil canadien des normes d'information sur la durabilité (CCNID), de même que par l'International Sustainability Standards Board (ISSB). **p.24**
- En plus d'effectuer un suivi de la création de valeur économique, les conseils d'administration doivent aussi surveiller ce qui suit : (1) la protection et l'amélioration de l'environnement physique (la lettre E dans ESG) (2) les répercussions sociales, et les risques connexes, des mesures d'ordre sociétal à l'égard des employés, des clients et des collectivités au sein desquelles l'entreprise exerce ses activités (la lettre S dans ESG) (3) le respect de normes rigoureuses en matière de gouvernance et d'éthique dans les affaires, dans un monde où les attentes en cette matière ne cessent de croître (la lettre G dans ESG). **p.44**
- La direction doit préciser quels choix en matière d'enjeux ESG concordent avec la finalité de la société et quels choix créent de la valeur (ou empêchent la destruction de valeur) pour ses principales parties prenantes. Bien que l'évaluation de la création de valeur pour les parties prenantes soit bien moins connue que la détermination de choix qui concordent avec la finalité, la direction devra actualiser rapidement ses connaissances en la matière et mettre en place des systèmes et des processus pour la gestion et la communication d'information à cet égard. **p.63**
- Pour évaluer la création de valeur pour les parties prenantes, il faut répondre à une tout autre question : « Qu'apportons-nous aux clients, aux employés, aux collectivités au sein desquelles nous exerçons nos activités et à la société dans son ensemble qui soit en accord avec notre finalité et qui justifie notre existence même? » **p.63**
- La réponse à cette question englobe les répercussions de la société sur l'environnement, le type de culture qu'elle encourage, les processus organisationnels qui favorisent l'inclusion et la participation active ainsi que le bien-être des employés et les initiatives contribuant à des collectivités saines et durables **p.64**

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## ÉTATS-UNIS

### [NACD, 2022, p.20, 37](#)

- In making decisions, boards should consider whether near-term returns are being generated unduly at the expense of investment in people and innovation, and attend to mitigation of longer-term environmental and social costs (externalities) that may flow from a particular decision. **p.20**
- Consistent with directors' fiduciary obligations and the board's oversight role, directors need to understand how environmental and social issues affect the company's strategy, operations, risk profile, and relationships with important stakeholders. The board should consider how corporate strategy affects environmental and social matters and what risks may affect that strategy. **p.37**

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## BRÉSIL

### [IBGC 2023, p. 33](#)

- To fulfill the purpose of the organization, the board of directors should focus on the following issues: (1) Long-term sustainable value creation: the board's strategic choices must contemplate, in an integrated manner, the sustainability agenda (economic, social, and environmental aspects) and innovation. From this perspective, in addition to financial gains, the board must consider the positive and negative impacts of its decisions on stakeholders, society, and the environment, and be able to adapt to changes in society and the business environment.

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## FRANCE

### [AFEP & MDEDF, 2022, p. 6](#)

- Sur proposition de la direction générale, le conseil d'administration détermine des orientations stratégiques pluriannuelles en matière de responsabilité sociale et environnementale.
- La direction générale présente au conseil d'administration les modalités de mise en œuvre de cette stratégie avec un plan d'action et les horizons de temps dans lesquels ces actions seront menées. La direction générale informe annuellement le conseil des résultats obtenus.
- En matière climatique, cette stratégie est assortie d'objectifs précis définis pour différents horizons de temps. Le conseil examine annuellement les résultats obtenus et l'opportunité, le cas échéant, d'adapter le plan d'action ou de modifier les objectifs au vu notamment de l'évolution de la stratégie de l'entreprise, des technologies, des attentes des actionnaires et de la capacité économique à les mettre en œuvre.
- La stratégie climatique mentionnée au [point précédent] ainsi que les principales actions engagées à cet effet sont présentées à l'assemblée générale ordinaire au moins tous les trois ans ou en cas de modification significative de la stratégie.

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## 4.2.2 Intégration des facteurs ESG à la gestion de risque

## CANADA

### [CCGC, 2018, p. 15 et 16](#)

- A robust ERM (Entreprise Risk Management) framework, in which E&S is fully integrated, ensures that all top organizational risks are equally identified, prioritized, mitigated, and monitored. The board and management should agree on the assessment of E&S risks within the ERM framework, including underlying assumptions.
- The board should work with the CEO to assign clear accountability for E&S risks to senior officers. This should include executive ownership to reinforce appropriate behaviours and lead the integration of E&S priorities into long-term strategy and risk management activities. **p.16**

SH

- Board approval processes and practices should enable the board to assess whether material E&S risks are being appropriately considered alongside other top risks, including in capital allocation decisions. This requires sufficient time on the board agenda to review the integration of E&S in strategy and risk management practices. **p.16**

**GL, 2023, p. 23**

- Glass Lewis believes that companies should ensure that boards maintain clear oversight of material risks to their operations, including those that are environmental and social in nature. These risks could include, but are not limited to, matters related to climate change, human capital management, diversity, stakeholder relations, and health, safety & environment

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**ISS, 2023, p.18**

- For companies that are significant greenhouse gas (GHG) emitters, through their operations or value chain, generally vote against or withhold from the incumbent chair of the responsible committee (or other directors on a case-by-case basis) in cases where ISS determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change to the company and the larger economy.
- Minimum steps to understand and mitigate those risks are considered to be the following. Both minimum criteria will be required to be in alignment with the policy: (1) Detailed disclosure of climate-related risks, such as according to the framework established by the Task Force on Climate-related Financial Disclosures (TCFD), including: (2) Board governance measures; (3) Corporate strategy (4) Risk management analyses; and (5) Metrics and targets. (6) Appropriate GHG emissions reduction targets.
- At this time, “appropriate GHG emissions reductions targets” will be medium-term GHG reduction targets or Net Zero-by-2050 GHG reduction targets for a company's operations (Scope 1) and electricity use (Scope 2). Targets should cover the vast majority of the company’s direct emissions.

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**Teachers, 2023, p. 13, 16**

- Le RREO est d’avis que l’ensemble du conseil assume la responsabilité ultime de la surveillance des risques liés au climat, bien que, comme c’est le cas pour d’autres responsabilités clés du conseil en matière d’audit, de rémunération et des mises en candidature et de gouvernance, nous encourageons les conseils à établir la responsabilité en matière de changements climatiques au niveau des comités. [...] **p. 13**
- Les sociétés devraient démontrer une compréhension de leurs émissions matérielles et de leur contribution aux changements climatiques. Elles devraient fournir des cibles de réduction des émissions de carbone/gaz à effet de serre à court, moyen et long terme et leurs progrès vers ces cibles. Les cibles devraient être échelonnées (c.-à-d., fixées provisoirement) et avoir pour objectif de réduire les émissions à zéro d’ici 2050 (ou avant). Nous encourageons la communication d’une explication convaincante dans les cas où il n’y a pas d’objectif de réduction des émissions à zéro d’ici 2050, ou si cet objectif est fixé après 2050. **p. 13**
- Gestion des risques environnementaux et sociaux : Dans les situations où une société ou un conseil n’a pas réussi à gérer de manière adéquate des risques importants ou flagrants inhérents à une gestion et à une supervision médiocres des enjeux environnementaux ou sociaux, nous pouvons décider de *ne pas appuyer* le ou les administrateurs, présidents ou comités du conseil. **p. 16**

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**BlackRock, 2023, p. 18**

- Specifically, we look for companies to disclose strategies that they have in place that mitigate and are resilient to any material risks to their long-term business model associated with a range of climate-related scenarios, including a scenario in which global warming is limited to well below 2°C, and considering global ambitions to achieve a limit of 1.5°C. It is, of course, up to each company to define their own strategy: that is not the role of BlackRock or other investors.

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**BMO, 2021, p. 19**

- Companies should determine how material environmental and social risks and opportunities fit into their core business strategy. As part of this process, companies should proactively identify, assess and manage those risks and opportunities, as well as implement robust sustainability governance frameworks to promote accountability

SH

and ensure effective oversight. We also expect companies to disclose their environmental and social policies, management systems and performance, in line with internationally accepted standards; quantify impacts from environmental and social factors and set targets to mitigate and manage material sustainability risks and impacts.

[Share, 2022](#), p. 18

- Le changement climatique est devenu un risque matériel significatif pour toute sorte d'entreprise. Il offre également de nouvelles occasions commerciales dans une nouvelle économie fondée sur les émissions de carbone faibles. Le Groupe de travail sur l'information financière relative aux changements climatiques (TCFD) recommande que les entreprises intègrent la valeur de ces coûts, risques et occasions liés au climat dans leurs états financiers annuels. Le groupe de travail offre également des lignes directrices pour mettre en œuvre leurs recommandations

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## ÉTATS-UNIS

[NACD, 2022](#), p.37

- The board should also have visibility into the system of controls (including enterprise risk management, information and reporting systems, disclosure controls and procedures, and compliance programs) that relate to environmental and social issues. Many boards will find it efficient to delegate aspects of oversight regarding environmental and social matters to one or more board committees. **p.37**

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## AUSTRALIE

[ACSI, governance guidelines, 2021](#), p. 25, 26

- We expect the board to maintain robust oversight of all ESG issues that materially affect the business. We expect that the board will: ensure ESG risk is integrated into the company's risk frameworks, including ensuring that ESG risks are included in the company's risk appetite **p. 25**
- Integrating climate-related risk into investment decisions requires materially exposed companies to set their strategy to adapt to a low-carbon future. This includes a company identifying climate risks and opportunities, assessing the materiality of these risks for the company, and demonstrating how they are integrated into its governance, strategy and risk management processes. [...] Where companies face material climate-related risks, we expect companies to adopt the risk assessment and reporting framework in the Financial Stability Board's Taskforce on Climate-related Financial Disclosure. (ICFD) and make substantive climate-related disclosures according to this framework. ACSI expects companies to demonstrate how they are integrating these risks and opportunities into their governance, strategy and risk management processes. **p. 26**
- Modern slavery occurs all around the world and has a devastating human impact. It also represents a material investment risk because of its potential to undermine shareholder value. Australia's Modern Slavery Act ('the Act') defines modern slavery to include eight types of serious exploitation – trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, the worst forms of child labour and deceptive recruiting for labour or services. We expect companies to identify modern slavery risk, proactively address the risks identified, and report on their actions and risks across their supply chains. Effective risk management requires companies to genuinely engage with the issue, and work with suppliers, contractors and partners along the supply chain to identify and respond to modern slavery risk. Public reporting is important because it allows investors to assess their level of investment risk, and also supports investors' compliance with their own obligations under the Modern Slavery Act. We encourage companies to improve their capacity to identify and respond to modern slavery risk and will be assessing the extent to which modern slavery statements show improvement in companies' year- on-year performance. If there is a gap between reporting and implementation, this can present a significant investment risk. **p. 29**

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[ACSI, Biodiversity, 2021](#), p. 40

- Investor expectations [re: strategy and risk management] (1) The company has identified its physical, transition and systemic biodiversity risks and opportunities over the short, medium, and long term. (2) The company has assessed the quantitative impact of material biodiversity risks on its business, strategy and financial planning (3)

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The company's strategy is resilient to these risks and capitalises on these opportunities (4) The company has a robust process to identify, assess and manage physical, transition and systemic biodiversity risks, considering both impacts and dependencies, which is integrated into the company's overall risk management process (5) The company's biodiversity risk management process follows the risk mitigation hierarchy (6) This process integrates consideration of other nature-related risks e.g. climate risk, water risk) and the company's broader sustainability strategy

## ALLEMAGNE

### [German Corporate Governance Code, 2022, p. 4](#)

- The Management Board shall systematically identify and assess the risks and opportunities associated with social and environmental factors, as well as the ecological and social impacts of the enterprise's activities. In addition to long-term economic objectives, the corporate strategy shall also give appropriate consideration to ecological and social objectives. Corporate planning shall include corresponding financial and sustainability-related objectives.

### [Rationale of the amendments, 2022, p. 3](#)

- Corporate management that is committed to the interests of the company consists of ensuring the continued existence of the company and its sustainable value creation, while taking into account the interests of shareholders and other stakeholders, including the environmental and social goals of society. This is reflected in the corporate strategy and, according to the sustainability reporting of many companies, corresponds to best practice.
- Recommendation A.1 puts the stakeholder approach into concrete terms, in that both the effects of the sustainability factors on the company and the environmental and social effects of the company's activities are to be identified and measured using risk management methods. This is an important prerequisite for the development of corporate strategy.
- In the long term, economic, environmental and social objectives are often mutually dependent. Ecological and social sustainability are just as much a prerequisite for long-term increase in value as economic strength and stability are a prerequisite for investments and other measures that serve ecological and social objectives.

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## INTERNATIONAL

### [ICGN, 2021, p. 19](#)

- Human rights: The Board should ensure that it is sufficiently informed of how human rights and modern slavery issues may present material business and reputational risks or might compromise a company's own values and standards of behaviour. The Board should establish appropriate due diligence processes, strategy, disclosure, engagement, accountability, and other measures to deal with human rights issues which may materialise in connection with the company's workforce and operations.

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### [BlackRock Global, 2023, p. 12](#)

- BlackRock encourages companies to use the framework developed by the Task Force on Climate-related Financial Disclosures (TCFD) to disclose their approach to ensuring they have a sustainable business model and to supplement that disclosure with industry-specific metrics such as those identified by the Sustainability Accounting Standards Board (SASB), now part of the International Sustainability Standards Board (ISSB) under the International Financial Reporting Standards (IFRS) Foundation. While the TCFD framework was developed to support climate-related risk disclosure, the four pillars of the TCFD governance, strategy, risk management, and metrics and targets are a useful way for companies to disclose how they identify, assess, manage, and oversee a variety of sustainability-related risks and opportunities.

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#### 4.2.3 Traitement des facteurs ESG par les comités appropriés

##### CANADA

###### CCGC, 2018, p. 19, 20

- The board should consider the most effective committee structure for its oversight of E&S management, which, for some companies, will involve dedicated board committee(s). **p. 19**
- Charters for the committees tasked with overseeing E&S management must clearly delineate accountabilities and risk ownership and should be regularly reviewed with the perspective that E&S risks evolve. **p. 19**
- The board's E&S oversight structure should be detailed in the company's regulatory filings, and the accompanying charters should be readily accessible to shareholders. **p. 20**

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###### GL, 2023, p. 23

- For companies listed on the TSX and in instances where we identify material oversight concerns, Glass Lewis will review a company's overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues. Furthermore, given the importance of the board's role in overseeing environmental and social risks, Glass Lewis will generally recommend voting against the governance committee chair of a company in the S&P/TSX Composite index which fails to provide explicit disclosure concerning the board's role in overseeing these issues.

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###### Teachers, 2023, p. 16

- Surveillance en matière de changements climatiques : Nous considérons les risques liés aux changements climatiques comme un ensemble de risques qui peuvent se recouper et s'intégrer aux responsabilités, aux processus et aux pratiques du conseil. Par conséquent, c'est l'ensemble du conseil qui est responsable en dernier ressort de la surveillance de ces risques. Cependant, nous encourageons les conseils à établir la responsabilité en matière de changements climatiques au niveau des comités. Nous procéderons au cas par cas lors de l'évaluation de l'approche d'un conseil à l'égard de la surveillance des risques liés aux changements climatiques et, selon les circonstances, nous envisagerons *de ne pas appuyer* les administrateurs, les présidents ou les comités lorsque nous déterminons qu'un conseil n'a pas pris les mesures appropriées pour surveiller efficacement les risques liés aux changements climatiques qui concernent une société.

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##### FRANCE

###### Middlenext, 2021, p. 27

- Il est recommandé que chaque Conseil se dote d'un comité spécialisé en RSE. Ce comité, en fonction des sujets, travaille en lien avec les autres comités spécialisés. [...]Le comité RSE est présidé par un membre indépendant. Le comité peut se faire accompagner par des personnes qualifiées, autant que de besoin. **p. 27**

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###### AMF, 2022, p. 30, 34, 35, 38, 39, 41, 44

- La pratique consistant à poser des exigences de compétences pour les administrateurs, en fonction du type de comité, et à assurer une transparence sur le niveau de satisfaction de ces exigences (par exemple par la présentation d'une matrice de compétences [...]), est pertinente et mérite d'être encouragée. **p. 30**
- La désignation, au sein du conseil d'administration, d'un « référent » en matière RSE (le Président du comité RSE s'il en existe un), est l'un des moyens de mener le conseil d'administration à approfondir ses travaux en la matière, en particulier sur le sujet de l'environnement et du climat. Au sein de la société Getlink par exemple, le Président du comité RSE a été nommé « Administrateur Référent environnement et climat », et à ce titre, « veille à ce que le conseil d'administration soit en mesure de prendre des décisions éclairées sur une transition appropriée et d'encourager une approche transformationnelle à long terme sur le changement climatique ». Il peut notamment « veiller à ce que le conseil d'administration soit pleinement informé de l'avancement des chantiers conformément à la trajectoire définie et vis-à-vis des jalons critiques, pour permettre à l'entreprise de se préparer sur différentes échelles de temps », « prévoir, en comité éthique et RSE, des mises à jour régulières, et transversales sur la science, l'innovation, les initiatives de pairs ou la réglementation », « inviter des experts, en comité éthique et

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RSE ou en réunion plénière du conseil d'administration, à débattre d'enjeux spécifiques, pour renforcer le savoir collectif », ou « envisager la création d'un panel indépendant de parties prenantes pour éclairer les décisions du conseil d'administration ». Constitue une bonne pratique le fait d'organiser un ou plusieurs points de débats spécifiques du conseil ou du comité RSE dédiés à la question climatique ou environnementale. **p. 34**

- Le comité RSE peut prendre la forme d'un comité dédié spécifiquement aux sujets de responsabilité sociétale et environnementale (« comité dédié »). Il existe également des comités dont les missions ne sont pas exclusivement consacrées à la RSE. Ces comités combinent la RSE avec d'autres questions telles que la rémunération, la nomination, la stratégie, l'éthique, les ressources humaines ou la gouvernance (« comité combiné »). Ces comités ont été considérés comme étant des comités en charge de la RSE aux fins de la présente étude. [...]Trois sociétés ont mis en œuvre une bonne pratique consistant à s'interroger sur l'articulation entre les missions des différents comités en matière de RSE et à en rendre compte dans le document d'enregistrement universel. Le Crédit Agricole a envisagé la question de l'articulation des travaux des différents comités en soulignant la nécessité d'une approche transversale : « Afin de faciliter l'inclusion des enjeux et des risques sociaux et environnementaux dans ses décisions, le Conseil a fait le choix de confier l'examen de sa stratégie ESG à un Comité dédié, le Comité stratégique et de la RSE, tout en gardant une approche transversale impliquant, selon les sujets, la plupart de ses Comités spécialisés notamment le Comité des nominations et de la gouvernance, le Comité des risques et le Comité des rémunérations ». Il est néanmoins regrettable que cette articulation ne soit pas davantage explicitée.
- Envisageant également la question de l'articulation, la société Michelin a préféré une étanchéité entre les comités tout en précisant le rôle de chacun : «Les principes directeurs de l'articulation des rôles entre le comité RSE, le comité d'audit et le comité des rémunérations et des nominations sont les suivants : Le comité RSE a dans son périmètre l'examen de toutes les politiques et ambitions des domaines incombant à la RSE; Le comité d'audit a la responsabilité d'examiner l'ensemble des risques ; Le comité des rémunérations et des nominations propose au Conseil la définition et la mise en œuvre des politiques suivantes : [...]. Le comité RSE peut faire des recommandations au Conseil de surveillance en termes de composantes RSE à intégrer par le comité des rémunérations et des nominations pour les politiques de rémunération des managers et l'intégration des Diversités dans les plans de succession du management ».La société l'Oréal précise que « chacun des quatre Comités d'Études mis en place par le Conseil d'Administration pour instruire les sujets relevant de leur domaine d'expertise est impliqué dans la détermination et le suivi de la stratégie extra- financière ». **p. 35, 38, 39**
- Lorsqu'une résolution climatique est soumise au vote des actionnaires par le conseil et qu'un comité RSE a été établi, il est recommandé d'aborder cette résolution dans le cadre du comité RSE et d'en faire état dans le document d'enregistrement universel. ([AMF, recommandation 2012-02](#) p.10) De manière générale, il est rappelé que les investisseurs attendent une description des travaux des différents comités réalisés ou engagés au cours de l'exercice écoulé. **p. 41**
- Constitue une bonne pratique le fait d'organiser une collaboration entre le comité d'audit et le comité en charge de la RSE afin d'analyser les risques extra-financiers. Cette collaboration peut notamment prendre la forme d'une réunion commune. Tel est le cas de la société Orange : « Le Comité d'audit, le CGRSE et le Comité innovation et technologie se réunissent en forum conjoint une fois par an sous la présidence du président du Comité d'audit ». La société Air Liquide souligne l'intérêt de cette organisation : « La session commune permet ainsi aux membres un moment d'échanges sur des sujets connexes aux deux Comités. La session commune contribue en outre à la démarche de cohérence reflétée dans le rapprochement des données financières et extra-financières du Rapport de gestion intégré ». Il en va de même pour la société Hermès International : « Cette réunion commune a pour objectif de renforcer la coordination et le partage entre les deux Comités sur ce sujet connexe ». Sans instituer des réunions communes, d'autres sociétés organisent un travail conjoint entre le comité RSE et le comité d'audit, s'agissant des risques. Au sein de la société EssilorLuxottica, « Le Comité RSE coordonne ses travaux avec le Comité d'audit et des risques pour toutes les questions qui concernent les domaines d'intervention du Comité RSE, notamment le contrôle interne, la conformité, la gestion et l'analyse des risques et de l'information non financière et les principaux litiges. Le Comité RSE peut également être consulté, conjointement avec le Comité d'audit et des risques, sur les procédures de gestion en cas de risques inhabituels, lorsque le Conseil ou la direction l'estime utile ». La société Téléperformance indique que le comité RSE est en charge de « l'examen des risques extra- financiers et de leurs impacts, en lien avec le comité d'audit, des risques et de la conformité ». La société Vivendi précise : « Une liste de risques a été présentée et validée par le Comité RSE et le Comité d'audit ». **p. 44**

#### 4.2.4 Compétence des dirigeants en matière environnementale

##### CANADA

###### [Dev et Kaplan, 2021](#), p. 21

- The duty of loyalty will be increasingly interpreted to require boards to address issues such as climate change that affect the long term sustainability of the corporation. Leading Canadian companies are putting increased emphasis on director skills in environmental, social and other stakeholder issues [...]These increased expectations demand a new set of skills for directors, which should be the subject of director education as well as included in the skills matrix used to identify new and assess current directors. **p.21**

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###### [CCGC, 2018](#), p. 18

- In recruiting new directors, the evaluation of career experience and expertise should include consideration of E&S capabilities as they relate to the company's industry, financial responsibilities, and risk profile. It should also consider the qualities that will enable open, constructive dialogue on new and evolving topics.
- If the board does not have the requisite knowledge (existing or acquired) to provide oversight on a topic [E&S related], it should be prioritized in director education and/or recruitment.
- E&S-focused capabilities should be captured in the board skills matrix within the proxy circular. Investors require sufficient detail to be assured that material business drivers have the proper oversight. Where appropriate, director biographies should provide specific detail on relevant E&S experience and capabilities.

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###### [CCGC, 2022](#), p. 20

- E&S-focused capabilities should be captured in the board skills matrix when such matters are material to the corporation's business and pertinent to the board's role in risk management and strategic planning oversight. Furthermore, issuers should clearly define the skills and experience that this type of expertise entails given the unique context and circumstances of their business to ensure that they are recruiting directors with the relevant knowledge to provide guidance in these areas. **p.19**

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#### 4.2.5 Divulgateion

##### CANADA

###### Changements climatiques

###### [Dev et Kaplan, 2021](#), p. 21, 39 et 22, 27, 29

- Every corporation should have and should disclose its policy for addressing climate change and climate-related risks and opportunities. Consistent with TCFD (Task Force on Climate-related Financial Disclosures) recommendations, boards should disclose their oversight of climate-related issues including the processes by which board committees consider climate-related issues when reviewing strategic choices and how the board monitors and oversees progress against goals and targets for addressing climate-related issues. **p.39**
- The TCFD recommends that boards disclose their oversight of climate-related risks and opportunities including the process and frequency with which the board and its committees are informed about climate-related issues, whether and how the board considers climate issues in strategic decision making and how the board monitors progress against goals and targets to address climate-related issues. **p.40**

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###### [ISS, 2023](#), p.19

- Companies should disclose climate risk information, such as according to the Task Force on Climate-related Financial Disclosures (TCFD), with either a medium-term GHG emission reductions targets or Net Zero-by-2050

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GHG reduction targets for at least a company's operations (Scope 1) and electricity use (Scope 2). Targets should cover the vast majority of the company's direct emissions. Additional data points will be provided in the company information section for all Climate Action 100+ Focus Group companies in order to support this policy.

**GL, 2023, p. 24**

- Given the exceptionally broad impacts of a changing climate on companies, the economy, and society in general, we view climate risk as a material risk for all companies. We therefore believe that boards should be considering and evaluating their operational resilience under lower-carbon scenarios. While all companies maintain exposure to climate-related risks, we believe that additional consideration should be given to, and that disclosure should be provided by those companies whose GHG emissions represent a financially material risk.
- We believe that companies with this increased risk exposure, such as those companies identified by groups including Climate Action 100+, should provide clear and comprehensive disclosure regarding these risks, including how they are being mitigated and overseen. We believe such information is crucial to allow investors to understand the company's management of this issue, as well as the impact of a lower carbon future on the company's operations.

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**Teachers, 2023, p. 13**

- De plus, nous nous attendons à ce que les entreprises comprennent et divulguent dans quelle mesure les changements climatiques affectent leurs activités actuelles et à long terme ainsi que leur rôle dans la transition vers une économie à faibles émissions de carbone. Le rôle du conseil en matière de surveillance des risques liés au climat devrait être évident et facile à comprendre.
- Dans notre évaluation des efforts déployés par une entreprise en matière de climat, nous nous fions à une divulgation claire, pertinente et complète pour comprendre le profil de risque et les possibilités de l'entreprise. Par conséquent, nous attendons des sociétés qu'elles rendent compte en fonction des normes SASB7 de l'International Sustainability Standards Board (ISSB) et des recommandations formulées par le groupe de travail du Conseil de stabilité financière sur les divulgations financières liées au climat<sup>8</sup>.
- Dans les rapports sur la façon dont une entreprise gère les risques liés aux changements climatiques, il est nécessaire que les divulgations comprennent les mesures suivies, les objectifs associés à ces mesures et les résultats obtenus par rapport à ces objectifs. De plus, les entreprises doivent divulguer leur empreinte carbone et expliquer comment elles la calculent.

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**State Street, 2023, p. 6**

- State Street Global Advisors finds that the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD) provide the most effective framework for disclosure of climate-related risks and opportunities.
- As such, we may take voting action against companies in the S&P 500 and S&P/TSX Composite that fail to provide sufficient disclosure regarding climate-related risks and opportunities related to that company, or board oversight of climate-related risks and opportunities, in accordance with the TCFD framework.

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**Autre source**

- Davies 2022, p. 55 et ss

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**Parties prenantes et autres**

**Dey et Kaplan, 2021, p. 27**

- Reporting is an essential component of addressing stakeholders. From the standpoint of internal and external accountability, without reporting and audits of reports, boards and management cannot make informed decisions, track progress and prove to stakeholders that the company is making good on its word. A statement of purpose risks being characterized as an exercise in "greenwashing" or "purpose-washing" if not backed up with metrics and plans. **p.27**

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- In order for the board and stakeholders to understand the corporation's management of its stakeholders, the corporation should integrate reporting on stakeholder impact in its annual report. The report should reflect the status of and changes in the corporation's relationship with its stakeholders. **p.27**

**CCGC, 2018, p. 14, 17, 27, 28**

- The board should provide at least a high-level discussion of the company's E&S management approach and priorities in its corporate reporting (e.g., Management's Discussion and Analysis, annual report, and/or proxy circular). **p.14**
- The board should provide transparency to investors on how E&S considerations factor into long-term vision, strategies, and objectives. **p.17**
- Companies should consider the perspectives and needs of investors in E&S-related disclosures, particularly in financial reporting. Reporting should convey key considerations related to governance, strategy, and risk management with the right level of detail, context, supporting information, and metrics. Section VIII provides an illustrative view of the guidance and resources available to companies in considering their E&S disclosure approach. **p.28**
- If E&S reporting is separate from financial reporting, there should be some level of board accountability for the information to give it credence with investors. At a minimum, approval for E&S reporting should be under the mandate of the board committee charged with the E&S oversight. The board should have the necessary controls in place, whether internal or external, to provide reasonable verification and assurance of the facts and assumptions relied on by management in preparing the reports. **p.28**

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**AUSTRALIE**

**ACSI, governance guidelines, 2021, p. 25**

- Disclosing information on a range of ESG issues provides an opportunity for the company's board and management to demonstrate strategic thinking in relation to long-term financial sustainability beyond the achievement of short-term financial targets. [...] Effective ESG disclosure should: (1) identify the environmental, social and governance issues that may have a material impact on the company's value over the short, medium and long term (2) provide both data and a supporting narrative explaining why the issue is material and where the material impact occurs in the value chain (3) recognise the company's impact on stakeholders and articulate how the company takes into account the views and interests of its stakeholders (4) describe policies and procedures for managing environmental or social impact over the short and long term and demonstrate how policies and procedures are implemented (5) include information about how the company evaluates whether its ESG management systems are effective, including performance against metrics and targets.

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**FRANCE**

**AMF, 2022, p. 13, 14**

**Durabilité et double matérialité**

- Le 21 juin 2022, le Conseil et le Parlement européen sont parvenus à un accord politique provisoire concernant la directive sur la publication d'informations en matière de durabilité par les entreprises (CSRD). La proposition vise à « remédier aux lacunes des règles existantes en matière de publication d'informations non financières, dont la qualité était insuffisante pour permettre leur bonne prise en compte par les investisseurs. Ces lacunes nuisent à la transition vers une économie durable ». **p. 13**
- La directive sur la publication d'informations en matière de durabilité par les entreprises modifie la directive sur la publication d'informations non financières de 2014/54. Elle introduit des « exigences plus détaillées en matière de rapports et veille à ce que les grandes entreprises soient tenues de publier des informations concernant des questions de durabilité comme les droits environnementaux, les droits sociaux, les droits de l'homme et les facteurs de gouvernance. La directive CSRD introduit aussi une exigence de certification des informations publiées en matière de durabilité ainsi que la meilleure accessibilité des informations, en imposant leur publication dans une section spécifique des rapports de gestion des entreprises » **p. 13**

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- Le concept de durabilité est entendu largement par le projet de directive. Il comprend les aspects « environnementaux, sociaux, de droits de l’homme et de gouvernance ». L’approche retenue est celle du principe dit de « double matérialité »<sup>56</sup>, à savoir l’obligation pour les entreprises de rendre compte à la fois des incidences de leur activité sur les questions de durabilité, et de l’impact de ces dernières sur leur propre situation. **p. 14**
- L’enjeu de ces nouvelles dispositions est majeur. En effet, «c’est l’ensemble du cadre de transparence des entreprises qui va évoluer avec le projet de directive sur le reporting en matière de durabilité (Corporate Sustainability Reporting Directive – CSRD), proposé par la Commission européenne en avril 2021. CSRD pose, en effet, les bases d’une standardisation européenne du reporting extra-financier, qui consacre le principe de la double matérialité et vise à donner une information pertinente aux investisseurs mais aussi à l’ensemble des parties prenantes des entreprises. » **p. 14**
- Voir ([Directive durabilité, 2021](#))

## INTERNATIONAL

[ICGN, 2021](#), p. 27, 28

### Changements climatiques

- The board should assess the impact of climate change on the company business model and how it will be adapted to meet the needs of a net zero economy as part of a long-term strategy. This includes setting and disclosing targets to reduce carbon emissions and a period for achievement. Where climate change risks, whether physical or transitional, are identified as material and relevant, reporting should include discussion of the diligence process, strategy, metrics, targets and initiatives used to manage the risks. Disclosure around these actions would help investors understand the resilience of companies facing climate change risks and to assess progress towards achieving net zero targets. **p. 27**

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### Matérialité

- Sustainability disclosures should focus on materially relevant factors, with many environmental and social factors being sector specific, linked to the company's management of its natural and human capital. Where possible, sustainability related reporting should also seek to address "double materiality", for reporting on the company's external impacts on society and the environment, as well as internal impacts on the company's own financial performance. Moreover, boards should build an awareness of "dynamic materiality", recognising that materiality evolves over time alongside factors including emerging technology, product innovation and regulatory developments. **p. 28**

[BlackRock Global, 2023](#), p. 13

- We look to companies to disclose short-, medium- and long-term targets, ideally science-based targets where these are available for their sector, for Scope 1 and 2 greenhouse gas emissions (GHG) reductions and to demonstrate how their targets are consistent with the long-term economic interests of their shareholders. [...]At this stage, we view Scope 3 emissions differently from Scopes 1 and 2, given methodological complexity, regulatory uncertainty, concerns about double-counting, and lack of direct control by companies. While we welcome any disclosures and commitments companies choose to make regarding Scope 3 emissions, we recognize these are provided on a good-faith basis as methodology develops. Our publicly available commentary provides more information on our approach to climate risk.

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#### 4.2.6 Rémunération incitative re : performance en matière ESG

##### CANADA

###### CCGC, 2018, p. 23

- The board is responsible for monitoring performance against the strategic plan, using appropriate metrics and milestones. The E&S priorities that are part of the strategic plan should be captured in performance evaluation and management compensation structures. The board should work with management to determine which behaviours and objectives to reinforce through metrics, including any existing behaviours that have unintentionally been reinforced and need redirection. **p. 23**
- There should be sufficient overlap and communication between the board's compensation committee and E&S oversight committee(s) to ensure that compensation targets and performance evaluations are appropriately aligned, informed, and mutually reinforce E&S priorities. **p. 23**
- A company's linkage between E&S priorities and compensation should be integrated into pay disclosures. Investors require sufficient information to understand how E&S metrics and performance targets align to long-term strategy and shareholder value, and how the board assesses and rewards performance against E&S objectives, particularly when it comes to discretionary and qualitative measures. If material E&S factors are deliberately not captured in performance metrics, the board should explain why. **p. 23**

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###### GL, 2023, p. 45

- Although we are strongly supportive of companies' incorporation of material E&S risks and opportunities in their long-term strategic planning, we believe that the inclusion of E&S metrics in compensation programs should be predicated on each company's unique circumstances. In order to establish a meaningful link between pay and performance, companies must consider factors including their industry, size, risk profile, maturity, performance, financial condition, and any other relevant internal or external factors. When a company is introducing E&S criteria into executive incentive plans, we believe it is important that companies provide shareholders with sufficient disclosure to allow them to understand how these criteria align with its strategy. Additionally, Glass Lewis recognizes that there may be situations where certain E&S performance criteria are reasonably viewed as prerequisites for executive performance, as opposed to behaviors and conditions that need to be incentivized. For example, we believe that shareholders should interrogate the use of metrics that award executives for ethical behavior or compliance with policies and regulations. It is our view that companies should provide shareholders with disclosures that clearly lay out the rationale for selecting specific E&S metrics, the target-setting process, and corresponding payout opportunities. Further, particularly in the case of qualitative metrics, we believe that shareholders should be provided with a clear understanding of the basis on which the criteria will be assessed. Where quantitative targets have been set, we believe that shareholders are best served when these are disclosed on an ex-ante basis, or the board should outline why it believes it is unable to do so. While we believe that companies should generally set long-term targets for their environmental and social ambitions, we are mindful that not all compensation schemes lend themselves to the inclusion of E&S metrics. We also are of the view that companies should retain flexibility in not only choosing to incorporate E&S metrics in their compensation plans, but also in the placement of these metrics. For example, some companies may resolve that including E&S criteria in the annual bonus may help to incentivize the achievement of short-term milestones and allow for more maneuverability in strategic adjustments to long-term goals. Other companies may determine that their long-term sustainability targets are best achieved by incentivizing executives through metrics included in their long-term incentive plans. **p. 45**

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AFEP & MDEDF, 2022, p. 22

- Dans la détermination des rémunérations des dirigeants mandataires sociaux exécutifs, les conseils et comités prennent en compte et appliquent avec rigueur les principes suivants : [...] **mesure** : la détermination des éléments de la rémunération doit réaliser un juste équilibre et prendre en compte à la fois l'intérêt social de l'entreprise, les pratiques du marché, les performances des dirigeants, et les autres parties prenantes de l'entreprise.

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AMF, 2022, p. 49, 50, 54, 55

- L'article R. 22.10-14, II, 4° du code de commerce prévoit, lorsque la société attribue des éléments de rémunérations variables, que la politique de rémunération précise, pour chaque mandataire social, « les critères clairs, détaillés et variés, de nature financière et non financière, y compris, le cas échéant, relatifs à la responsabilité sociale et environnementale de l'entreprise, qui conditionnent leur attribution et la manière dont ces critères contribuent aux objectifs de la politique de rémunération ». [...] Quelques rares sociétés indiquent que certains critères de performance ne sont pas rendus publics pour des raisons de confidentialité. Dans tous les cas, l'AMF invite les sociétés qui invoquent la confidentialité pour ne pas détailler les critères de performance à justifier, au regard des exigences de l'article R. 22-10-14, II, 4° du code de commerce, les raisons pour lesquelles elles ne publient pas les critères de performance conditionnant la rémunération variable annuelle du dirigeant, et expliquer pourquoi leur publication, le cas échéant, serait susceptible de porter préjudice à la société. Elle rappelle les attentes des investisseurs sur le sujet, notamment en ce qui concerne les critères extra-financiers. Il est en revanche toujours possible de préciser que le niveau de réalisation attendu pour chacun de ces critères est préétabli de manière précise, mais n'est pas rendu public pour des raisons de confidentialité, conformément à la recommandation DOC-2012-02 de l'AMF. **p. 49, 50**
- Le code AFEP-MEDEF demande de présenter la répartition des critères qualitatifs et quantitatifs pour la rémunération variable annuelle et pour la rémunération variable long terme. [voir [AFEP & MDEDF, 2022, p. 24](#)]. En revanche, il ne prévoit de prépondérance des critères quantitatifs de performance que pour la rémunération variable annuelle. S'agissant des critères RSE, il est souvent difficile de connaître à la lecture des documents d'enregistrement universels la part qualitative et quantitative, les sociétés mentionnant souvent qu'il s'agit de critères qualitatifs et quantitatifs. L'AMF relève que certaines sociétés précisent que les critères sont « mesurables ». Les bonnes pratiques, constatées pour la détermination de la performance RSE, sont les suivantes : (1) Indiquer leur lien avec la stratégie, (2) Utiliser un indicateur quantifiable ou à défaut un indicateur qualitatif mesurable. La société Téléperformance, qui a un critère de performance (pesant pour 15 %) fondé sur la réalisation d'un taux de réduction de 38 % « des émissions carbone de scope 1 et de scope 2 par employé équivalent temps plein entre 2019 (baseline) et fin 2024 (le critère RSE) cet objectif est aligné sur la trajectoire validée par Science Based Targets Initiative ». L'enjeu était d'« introduire un critère environnemental et un critère financier lié à la gestion du cash-flow dans la rémunération variable de long-terme en actions. L'objectif poursuivi par le conseil d'administration est double : introduire des critères d'atteinte différents entre la rémunération variable annuelle et de long-terme et retenir des critères objectifs et mesurables importants pour la communauté financière. Ils peuvent ainsi compléter utilement les approches retenues pour la part variable annuelle, croissance et rentabilité pour les critères financiers et engagement des employés et diversité pour les critères extra-financiers. C'est ainsi que les critères retenus pour la rémunération variable de long-terme en actions, soit la génération de liquidités et l'atteinte d'objectifs de réduction de l'empreinte carbone, s'accordent mieux à une approche long-terme, durable et pérenne ». (3) De disposer d'un outil de collecte d'information en relation avec cet indicateur. La société Michelin indique que « un outil informatique en réseau permet une collecte mondiale et standardisée des données depuis chaque site. Les éléments collectés sont définis et normés dans un référentiel qui sert de base aux vérifications internes et externes ». (4) Utiliser des indicateurs de la DPEF (sociétés Carrefour, Getlink et Eiffage), ce qui permet de s'assurer que ces indicateurs sont clairement définis, et le cas échéant de faire le lien avec la matrice de matérialité présentée dans la DPEF. (5) Définir le périmètre sur lequel l'indicateur est fixé : La société Véolia indique que « Tous les critères sont calculés sur un périmètre intégrant Suez à l'exception de trois critères qui n'intègrent pas ce périmètre : éthique et conformité et engagement du personnel parce que ces deux critères sont issus des résultats de l'enquête d'engagement et qu'il n'y a pas de référence 2021 pour Suez ; climat parce que ce critère dans le bonus court terme est fondé sur l'avancement des investissements de sortie du charbon, or Suez n'exploite pas de centrale thermique ». La société Worldline indique : « de plus, suite à la volonté du Groupe

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de privilégier un scénario de désengagement à court terme de la ligne de Services Terminaux, Solutions et Services annoncée en octobre 2021 et l'entrée en négociation exclusive avec Apollo annoncée en février 2022 pour la cession de ces activités dont la réalisation est prévue dans le courant de l'année 2022, les indicateurs relatifs aux terminaux de paiement et à l'économie circulaire faisant partie du programme Trust 2025 n'ont pas été intégrés dans le critère combiné de performance externe en lien avec la RSE ». (6) Faire revoir ces indicateurs par les Commissaires aux comptes et/ou l'OTI: La société Véolia indique, par exemple, «pour s'assurer de la robustesse des plans d'action et de la fiabilité de l'évaluation ou leur demander de formuler une conclusion d'assurance raisonnable sur les taux de réalisation des objectifs 2021 de la Feuille de Route par un cabinet externe ou par l'Organisme Tiers indépendant qui revoit les indicateurs de la DPEF ». « La détermination de la part variable quantifiable non financière sera fonction de la réalisation des objectifs 2022 qui seront audités par un organisme tiers indépendant ». (7) Les simplifier : La société Véolia susmentionnée a procédé à une simplification des indicateurs non- financiers dans ses critères de performance de la rémunération long terme. Cette RVLT est basée sur 4 indicateurs en 2022 contre 9 indicateurs précédemment. **p. 54, 55** (voir [AMF, recommandation 2012-02](#), p. 37)

#### 4.2.7 Considération des parties prenantes

##### CANADA

###### [Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022](#), p. 23, 28, 33

- Déterminer si la direction dispose d'un processus rigoureux pour identifier les autres parties prenantes ainsi que leurs intérêts importants et pour communiquer régulièrement avec celles-ci. **p. 23**
- Exiger que la direction rende compte de la fréquence et de la nature de ses communications auprès des [...] parties prenantes et détermine si les attentes de ceux-ci et les résultats réels concordent. **p. 23**
- Continuer de remplir l'obligation prévue par l'Instruction générale 58-201 relative à la gouvernance adoptée par les autorités en valeurs mobilières provinciales du Canada, qui demande aux sociétés d'« établir un processus permettant aux parties intéressées de communiquer directement avec les administrateurs indépendants ». Ce processus pourrait prévoir une adresse courriel réservée ou un autre mécanisme permettant de communiquer avec le président indépendant ou l'administrateur principal indépendant. Le cas échéant, des réunions pourraient être organisées entre les administrateurs et les parties prenantes selon un ordre du jour arrêté d'un commun accord, afin de s'assurer que le conseil est informé de tout désaccord entre les parties prenantes et la direction **p. 23**
- Examiner le caractère approprié et la qualité de l'information que la direction utilise pour déterminer si la société a atteint sa finalité ou ses objectifs et obtenu des résultats optimaux pour ses parties prenantes. **p. 28**
- Déterminer si les compétences et la personnalité du chef de la direction conviennent au nouveau contexte de multiplicité des parties prenantes et d'attentes sociales croissantes en matière de responsabilité des entreprises. **p. 28**
- Les juristes font valoir que, outre les actionnaires, les autres parties prenantes ont aussi leur importance. Cependant, l'entreprise doit déterminer l'identité de ces autres parties prenantes et l'ordre de priorité à leur accorder. Pour ce faire, elle doit engager le dialogue avec les parties concernées. **p. 33**

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###### [Dev et Kaplan, 2021](#), p. 22, 27, 29

- From a legal standpoint, Section 122 (1.1) of the CBCA specifically lists shareholders, employees, retirees and pensioners, creditors, consumers, government and the environment. However, from a practical standpoint, firms should be concerned about any and all stakeholders that have an impact on or are impacted by the corporation. [...] Each corporation will have its own unique group of stakeholders. **p.27**
- The board should identify those stakeholders that have a material impact on or could be impacted by the corporation's business over the long term and should review the reporting and disclosure about each stakeholder

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group. The board should assess the impact on the corporation's stakeholders of all initiatives requiring board approval. **p.29**

- The board should also have mechanisms for engaging directly with key groups of stakeholders. For many boards, these functions will best be carried out by a Stakeholder Committee which would function in a manner similar to the audit committee in its responsibility for overseeing the veracity of the reporting on stakeholder impact but would also have larger strategic responsibilities for responding to stakeholder interests. **p. 29**

#### **Lambay, 2020 p. 21**

- Businesses have to recognize that to get good public policy, or a benevolent or even benign public policy environment, they need to be dealing with the needs of other stakeholders beyond their shareholders [...] In other words, doing more to help governments solve their problems.
- "Governments are moving at a pace too often on an interventionist and catch-up basis [with] policies, regulations and taxes that have ... well-intentioned short-term or long-term aspirations but are very poorly thought out and can cause major upheaval."
- In response, Lowry says, boards need to determine how they can be agnostic politically while applying the best possible "intelligent listening devices" to gauge the likely course of policy decisions in order to "find a way to run our business such that if they do make those decisions, we minimize their impact."

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#### **Share, 2022, p. 12**

- Au sein des entreprises, la primauté des actionnaires est remise en question. Cela s'est traduit par l'engagement de 181 dirigeants membres de la Business Roundtable (un groupe de PDG de grandes entreprises américaines) à gérer leur entreprise au profit de toutes les parties prenantes.
- Les salariés, souvent qualifiés d'« actif le plus précieux » par les émetteurs, constituent une catégorie importante de parties prenantes. Plusieurs pays européens (l'Allemagne, les Pays-Bas, la Suède, entre autres) incluent des représentants des travailleurs dans leurs conseils d'administration. Une structure de conseil d'administration avec des représentants des travailleurs présente plusieurs avantages, notamment : une meilleure compréhension entre la direction et les autres employés, un plus grand sentiment d'appartenance, car les employés se sentent plus impliqués dans la prise de décision, et une meilleure performance globale de l'entreprise.
- Un vote en faveur de propositions visant à envisager l'inclusion d'une représentation des travailleurs au sein du conseil d'administration sera enregistré.

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## ÉTATS-UNIS

#### **NACD, 2022, p. 17, 20, 42**

- Whether termed stakeholderism, enlightened shareholder value, inclusive capitalism, or a virtuous cycle, the point is that longer-term interests of the company and its shareholders depend on meeting the fair expectations of a variety of participants while managing and mitigating the negative impacts (risks) of corporate activities, which may require addressing environmental and social issues. **p. 17**
- Boards may take actions that adversely impact or fail to maximize profits in the near term, provided there is a plausible, rational connection to the long-term interests of the corporation and its shareholders. They may cause the corporation to invest in R&D with a long-term and uncertain pay-out, provide employee training and benefits that are greater than those provided by peer companies, or invest in modernizing equipment to reduce environmental impact. Given the interdependencies of corporate and stakeholder interests, not only may directors consider and give weight to the impact of board decisions on key stakeholders, but also, in many circumstances, it is in the best interests of the corporation to do so. **p.20**
- As corporate strategies shift to address a broader range of stakeholder and environmental interests, boards should reconsider their approach to compensation. Compensation programs should support the measures the board has identified as important in assessing the company's performance along financial, human capital, compliance, organizational culture, social, and environmental dimensions as appropriate to the company and its industry. The board should consider CEO pay in relation to the compensation of the CEO's direct reports and the general workforce, and ensure that compensation at all levels is rational and equitable. **p.42**

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## GRANDE-BRETAGNE

### UK Code, 2018, p. 4, 5

- The board should understand the views of the company's other key stakeholders and describe in the annual report how their interests and the matters set out in section 172 of the Companies Act 2006 have been considered in board discussions and decision-making. The board should keep engagement mechanisms under review so that they remain effective. For engagement with the workforce,<sup>3</sup> one or a combination of the following methods should be used : (1) a director appointed from the workforce (2) a formal workforce advisory panel (3) a designated non-executive director. If the board has not chosen one or more of these methods, it should explain what alternative arrangements are in place and why it considers that they are effective.

**Workforce Engagement and the UK Corporate Governance Code:** The move to Provision 5 indicates that the ‘black box’ model of board-decision making is no longer fit for purpose as it is replaced by a more explicit process for the integration of a (limited set) of stakeholder interests, focused on a more precise form of control. While this approach is not entirely new—one could view the introduction and evolution over time of independent directors and board committees as representing a similar trend for the representation of shareholder interests—it is a first in the UK in connection with the integration of stakeholder interests. Secondly, the shift towards specifying process also represents a move away from the reliance on disclosure as the primary regulatory technique that has been evident in the development of stakeholder interests through non-financial reporting. That shift can be rationalised on the basis that, while disclosure can inform stakeholders, it does not provide an engagement opportunity with corporate decision-making.

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### Wates, 2018, p. 21, 22

- The board should present to stakeholders a fair, balanced and understandable assessment of the company’s position and prospects and make this available on an annual basis. **p. 21**
- Boards should ensure that there are channels to receive appropriate feedback from discussions with stakeholders. When explaining impact on the community or environment, boards may want to refer to recognised international standards or frameworks that it follows. **p. 21**
- For many large private companies, their largest material stakeholder group is their workforce. Companies should develop a range of formal and informal channels that enable them to engage in meaningful two-way dialogue, enabling the workforce to share ideas and concerns with senior management. This might include engagement with trade unions, focus or consultative groups. Such forms of engagement provide useful feedback about business practices and can support the desired culture. **p. 22**
- Workforce policies and practices should be aligned with the company’s purpose and values. Such policies should establish clear procedures for raising concerns (for example, speak up and whistleblowing policies), and should be reviewed regularly to ensure that they are effective. **p. 22**
- A board should demonstrate how the company has undertaken effective engagement with material stakeholders and how such dialogue has been considered in its decision-making. **p. 22**

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### Purplebricks Group PLC, 2021, p. 3

- The board needs to identify the company’s stakeholders and understand their needs, interests and expectations.
- Where matters that relate to the company’s impact on society, the communities within which it operates or the environment have the potential to affect the company’s ability to deliver shareholder value over the medium to long-term, then those matters must be integrated into the company’s strategy and business model.
- Feedback is an essential part of all control mechanisms.
- Systems need to be in place to solicit, consider and act on feedback from all stakeholder groups.

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## AUSTRALIE

### Governance institute of Australia, 2023, p. 35, 36

- An effective stakeholder strategy will: (1) align to the overall objectives and strategy of the entity (2) comply and be aligned with any and all relevant Commonwealth and state legislation, regulations and departmental guidelines, including any legal duties owed to particular stakeholders (3) consider core values aligned with the entity's desired

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culture, such as transparency, honesty, and equity, as well as broader public sector values (4) recognise and seek to achieve the benefits of stakeholder engagement, including knowledge sharing, consensus building, better and more balanced decision-making, improved risk management, and the avoidance of reputational damage (5) provide for regular, timely and effective communications strategies with various stakeholders consider appropriate protocols, plans and engagement activities, and (6) consider key areas of focus for a reporting period, actions taken to monitor effectiveness, measurable outcomes, and future areas of focus. **p. 35**

- To promote transparency and public trust, a board should not only engage and communicate with stakeholders, but actively consider and be responsive to stakeholder views in its decision-making on an ongoing basis. Boards should pause and consider, when making decisions, whether they are dealing with stakeholders openly, honestly and fairly and if stakeholder concerns have been taken into account. Consultation should include, where applicable, the views of First Nations people and other minority groups. **p. 36**

**ACSI, governance guidelines, 2021, p. 25**

- We expect the board to maintain robust oversight of all ESG issues that materially affect the business. We expect that the board will: [...] (1) recognise that companies rely on a range of stakeholders to operate and succeed, including communities, consumers, employees, governments, investors, regulators, and suppliers, and that acting in the best interests of the company over the long-term requires considering a range of interests (2) clearly identify their key stakeholders and have a strategy for effective engagement

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**Directors' Toolkit, 2022, p. 108, 111**

- To be effective, organisations require formalised stakeholder engagement strategies, plans and processes. A stakeholder engagement framework can help facilitate a consistent, integrated and effective approach. A stakeholder engagement framework may include: (1) Objectives and guiding principles of engagement. (2) Stakeholder models/maps and prioritisation. (3) Responsibilities for developing and managing stakeholder (including agreed accountabilities for the board and management). (4) Methods of engagement at various levels of involvement, such as newsletters, workshops and forums. (5) Methods for gathering information on/from stakeholders (i.e. surveys, focus groups, interviews, etc.). (6) Methods and accountabilities for monitoring and measuring stakeholder concerns, influences and sensitivities. (7) Methods of evaluation for stakeholder engagement activities. (8) Established positions on relevant public or industry specific policies. **p. 108**
- Some practical measures that directors may undertake to ensure the organisation is appropriately engaging and managing its suppliers include: (1) Having visibility over suppliers' business practices and understanding how the organisation's business model may influence supplier behaviour or incentives. (2) Ensuring the organisation maintains robust procurement processes that incorporate not only value for money factors, but also long-term sustainability, corporate reputation and any history of involvement with business practises below the standard expected by the organisation. (3) Ensuring the organisation establishes mechanisms to measure and monitor suppliers' adherence to ESG policies and standards. **p. 111**

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**IBGC 2023, p. 32**

- The board of directors must see to it that each stakeholder receives a benefit that is appropriate and proportional to the bond they have with the organization and the risk to which they are exposed.

**SH**



#### 4.2.8 Critique de la littérature / rôle des régulateurs et proposition d'un cadre en matière de divulgation ESG / CSR

##### AUSTRALIE

[Gill North, 2017](#), p. 145, 159 à 163

- Policy makers are reviewing the legal frameworks and are establishing new rules or strengthening existing regulation around the governance and disclosure of information on employee, supplier, diversity, human rights, community impact, and other sustainability matters. Most of the regulatory options in use or mooted in the corporate sustainability space rely on disclosure as a means to drive awareness of sustainability matters and to ultimately move the culture and activities of corporations towards more sustainable business practices. p. 145
- The Report of the Committee on the Financial Aspects of Corporate Governance (generally referred to as the Cadbury Report)<sup>76</sup> noted that: <if standards of financial reporting and of business conduct more generally are not seen to be raised, a greater reliance on regulation may be inevitable. Any further degree of regulation would, in any event, be more likely to be well directed, if it were to enforce what has already been shown to be workable and effective by those setting the standard.> I agree with this assertion. New rules for the provision of non-financial information should only be applied when they are expected to raise reporting and conduct standards significantly. Further, when a new or additional regulation is introduced, it should be evidence based. Policy makers should consider the models and features of corporations that operate on the Cadbury Report principles of openness, integrity and accountability and that have processes in place for the effective communication of sustainability information. Established approaches within the corporate governance and disclosure regulatory spaces include the introduction of new corporate governance code principles or the conversion of voluntary principles to mandatory status. This approach is used by the Intercontinental Exchange (NYSE) in the United States (US) Section 303A of the NYSE Listed Company Manual contains the corporate governance rules, and many of these rules are mandatory. For example, Listing Rule 303A.01 requires companies to have a majority of independent directors unless an exception applies,<sup>79</sup> and a nominating/corporate governance committee and a compensation committee must be composed entirely of independent directors.<sup>80</sup> These mandatory NYSE rules are highly specific, and as such, can be relatively easily supervised. Monitoring and enforcement of mandatory sustainability disclosure rules within corporate governance codes is more problematic, because the content of these rules is typically broad and non-specific, and the ability and capacity of entities aligned to security exchanges to effectively monitor and enforce such rules is questionable.
- A second commonly used regulatory option is the introduction of exchange listing rules or statutory provisions to address specific areas deemed to be important and where corporate conduct and responses are viewed as inadequate. I advocate statutory provisions as a preferred approach for corporate sustainability reporting, as empirical studies and observations point to higher levels of compliance and better quality public disclosures when reasonably specific and well supported rules apply. The usefulness and worth of sustainability reporting depend on the provision of high quality MD&A. While all major jurisdictions currently require some MD&A in listed company disclosures, most do not prescribe the specific form or content of this commentary within periodic reports and continuous disclosures on company websites. As a result, the overall quality of sustainability reporting commentary is highly variable in quantity and quality.<sup>81</sup> As one regulator notes, MD&A in some reports is 'sometimes so formulaic that it communicates very little to the reader.'<sup>82</sup> To raise sustainability disclosure standards, legislated MD&A rules, regular and independent monitoring of the publicly available information, and a range of supervisory and enforcement measures may be needed. Many securities exchanges lack capacity and motivation to monitor and enforce their disclosure listing rules, particularly those relating to MD&A.<sup>83</sup> National regulators tend to use more systematic processes to monitor and promote sound MD&A reporting, but evidence of formal enforcement of MD&A rules beyond the US is scarce.
- Finally, an especially topical and contestable area concerns the inclusion or otherwise of standardised forms and metrics—sometimes referred to as key performance indicators (KPIs). A survey of company boards found respondents thought the most important reason for standardising sustainability initiatives is for the evaluation of sustainability activities. The survey report notes that a 'critical component of any corporate sustainability initiative is the company's ability to measure, track and improve its performance on specific social and environmental issues.'<sup>85</sup> Developing, recording and reporting corporate performance metrics, especially long term indicators, can be highly beneficial. Long term performance reporting with measurable outcomes against specified goals

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enables corporate managers to clearly identify their priorities and targets, and to chart ongoing progress.<sup>86</sup> Continued reporting of short and longer term targets and achievements provides shareholders and stakeholders with a clear strategic narrative, benchmarks and a report card to assess a company's historical and comparative performance.

- Under voluntary sustainability reporting frameworks, companies can limit their public reporting to indicators that are the most positive and ignore others that might reflect more negative aspects and lead to criticism. Importantly, companies that voluntarily elect to report in accordance with the GRI reporting framework can select the number and content of the indicators they report on, with most third party assurance reports referencing only the reported indicators.<sup>87</sup> These reported performance indicators may not be entirely neutral and objective and may mask underlying power dynamics.<sup>88</sup> Mandatory sustainability performance tables would assist, with disclosure of agreed metrics on a consistent basis over long periods. For reported sustainability metrics to be meaningful, they need to be relevant, reliable and useful for the intended audience, and should provide a balanced picture of a company's performance.<sup>89</sup> The standardised metrics and KPIs should therefore be the subject of widespread consultation to ensure they are broadly operational and useful.
- The agreed sustainability metrics should be combined with qualitative MD&A, as some performance indicators can be manipulated, and some areas are difficult to capture adequately and in a balanced manner using quantitative measures. Companies are encouraged to use more innovative formats and tools on their websites and to provide comprehensive information on a multifaceted basis, including material that extends and enhances the mandated information. Companies should explain their business and sustainability strategies, developments, and performance on a layered basis to enable all of these interested groups to access the type and level of information they require. Layered disclosure requires the availability of information in varying forms and detail to suit a broad audience with differing interests, time constraints, knowledge and abilities. These websites should also encourage and enable stakeholder engagement and interactive functionality, including the ability to ask questions and receive responses, discussion forums, historical and comparative performance charts, and sustainability tables that enable viewers to engage in sensitivity analysis.
- It is important for all participants, including corporate leaders, investors, stakeholders, policy makers and regulators to keep their lenses focused on long-term objectives and outcomes. The ultimate aim of sustainability reporting regimes should be to promote corporate cultures and decisions that integrate long-term sustainability goals and outcomes.<sup>90</sup> To achieve this aim, sustainability frameworks must be adaptive and responsive. Empirical and observational testing is required to ensure that sustainability designs and processes remain relevant and integral to a company's operations and conduct. Independent monitoring of company disclosures is also important. Statutory sustainability reporting rules with federal oversight are more likely to be effective than exchange based regimes, especially when the national supervision is responsive, and proportionate.

**Conclusion:**

- The audiences that public companies communicate and interact with are diverse and extensive, including shareholders, analysts, regulators, creditors, employees, trade unions, industry associations, rating agencies, environmental groups, human rights advocates, researchers, public bodies, and others. While there are major challenges in designing regulatory frameworks that encourage robust dialogue and deliberation of sustainability matters, these challenges have been mitigated by digital developments that enable rapid and low cost communication on a global basis.
- There is some empirical evidence on the motivations driving existing corporate sustainability reporting and the audience and value of these disclosures, but further research on these critical questions is needed. Interdisciplinary empirical studies do suggest company reporting regimes that require and encourage high quality disclosure within public realms are highly beneficial and a critical feature of well-functioning financial markets. There is also growing evidence that sustainability reporting rules can promote positive change in corporate behaviour, decision making, and communication between businesses and society.
- To drive optimal conduct and performance, companies should review their governance designs and processes regularly to ensure they are functioning as well as possible. Reasonably specific sustainability disclosure rules are recommended, particularly those involving MD&A. Sustainability frameworks and the associated reporting processes should also encompass processes to measure and report important long term outcomes and performance. Mandatory sustainability performance tables are suggested to ensure useful and comparative data is provided, with disclosure of agreed metrics on a consistent basis over long periods. The standardised metrics and KPIs should be the subject of widespread consultation to ensure they are broadly relevant and manageable.<sup>91</sup>

These quantitative metrics should be combined with qualitative MD&A, as performance indicators can be manipulated and some areas are difficult to capture appropriately using quantitative measures. Finally, independent and systematic supervision of the reporting and engagement processes are advocated as essential features of a best practice framework given the political nature of corporate sustainability and disclosure frameworks and the large power and informational asymmetries involved.

- Of course, effective corporate communication involves far more than mere technical compliance with regulation.<sup>92</sup> Good corporate communication, like most human interaction, is ultimately built on trust. Hence, a primary focus of listed corporations should be to establish a normative culture of open and regular disclosure and engagement across the organisation, and with external communities of interest, in order to sustain a reputation of transparency and reliability. Directors are required to oversee and steer companies through corporate, economic and financial life cycles that include significant challenges, uncertainties and volatility. The real character and resilience of a listed company is revealed during these stormy periods. Sustainability frameworks are a relatively recent phenomenon, so it will likely take time and many iterations to achieve a workable level of consensus around best practice rules and standards. As with all business and disclosure processes, striving for improvement should be a continuous process.

## 4.3 DEI (autre que la représentation féminine)

### 4.3.1 Premières nations

#### CANADA

##### Dev et Kaplan, 2021, p. 24, 35, 37

- **The corporation should establish and implement a mechanism for fostering its relationship with Indigenous peoples which recognizes the unique historical circumstances under which the relationship is created.** Ideally, such a mechanism would be jointly developed to apply to the specific Indigenous Peoples affected by any prospective project. **p. 24**
- Of 230 CBCA public companies providing disclosure, almost none disclosed having targets for designated groups other than women: one company had a target for visible minorities, one a target for Indigenous Peoples, none had targets for persons with disabilities and two had targets for a combination of designated groups other than women [...] the Capital Markets Modernization Taskforce to recommend in their draft rules that all TSX-listed companies set targets and annually provide data on progress. Our guidelines are consistent with this recommendation. Without targets, it is difficult to hold organizations accountable for their failure to make progress. **p.35**
- While attention to board diversity has been a primary focus of regulators, legislators and advocacy groups, the need for attention to diversity throughout the organization is rising in importance as well. Further, while some might hope that increased diversity on boards will trickle down to representation in the rest of the organization, there is only mixed evidence that this might be the case, and even where present, it occurs at small increments. Thus, it is not enough for boards to focus on their own diversity. **p. 37**

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##### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 23

- Déterminer si l'entreprise dispose d'un mécanisme propre à favoriser les relations avec les peuples autochtones, s'il y a lieu, afin de s'assurer que les activités de l'entreprise tiennent compte des intérêts et des droits de ceux-ci. **p. 23**

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##### Share, 2022, p. 38

- Tous les projets sur les terres autochtones doivent respecter les dispositions de la Déclaration des Nations Unies sur les droits des peuples autochtones. Cela comprend l'obtention du consentement libre, préalable et éclairé des communautés autochtones locales, la protection de l'héritage culturel et l'octroi d'avantages concrets pour ces communautés. Pour les entreprises opérant au Canada, cela inclut un engagement à se conformer à l'appel à l'action n° 92 de la Commission de vérité et réconciliation. Les communautés autochtones doivent jouer un rôle significatif dans la prise de décisions et la gestion des projets ou exploitations sur leurs terres par des sociétés. Cela peut inclure des décisions concernant les plans de fin de projet, comme la remise en état des terres.
- **Que les entreprises soient ou non présentes sur les terres autochtones, elles devraient veiller à ce que les peuples autochtones aient un accès équitable à l'emploi et à la formation et à ce que leurs programmes d'approvisionnement embauchent des fournisseurs autochtones dans la mesure du possible.** Les politiques et les programmes de diversité pour les fournisseurs, employés et administrateurs devraient inclure les peuples autochtones.

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##### Osler 2021, p.65

- Pratiques exemplaires pour augmenter la diversité : **Atco Ltd.** - Le Code d'éthique de la société confirme la volonté de celle-ci de nouer et d'entretenir des relations et partenariats positifs et mutuellement bénéfiques avec toutes les collectivités qu'elle sert. La société est consciente de l'importance de la coopération et de la collaboration avec tous les groupes autochtones, notamment les Premières Nations, les Inuits et les Métis. Elle publie volontairement de l'information sur sa coopération avec les communautés autochtones dans son Rapport sur le développement durable, que l'on peut consulter sur son site web.

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- **Kirkland Lake Gold Ltd.** - Une formation interculturelle obligatoire à l'intention de tout le personnel a été organisée à la mine de Detour Lake par l'équipe locale des affaires autochtones de la société. La société donnera également cette formation à la mine Macassa en 2021. Le programme de la formation interculturelle vise à enrichir et à développer les compétences internes pour faire de la société un employeur de choix pour les nations autochtones locales, à améliorer l'efficacité du recrutement et à établir des partenariats de confiance fructueux avec les collectivités locales et les partenaires autochtones.

#### AUTRES SOURCES

- [Lambay, 2020](#) p. 25 et 26

### AUSTRALIE

#### [Governance institute of Australia, 2023](#), p. 36

- To promote transparency and public trust, a board should not only engage and communicate with stakeholders, but actively consider and be responsive to stakeholder views in its decision-making on an ongoing basis. Boards should pause and consider, when making decisions, whether they are dealing with stakeholders openly, honestly and fairly and if stakeholder concerns have been taken into account. Consultation should include, where applicable, the views of First Nations people and other minority groups. **p. 36**

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#### [ACSI, First Nations, 2021](#), p. 13, 17, 18

- A number of companies, both in Australia and globally, are working to improve their risk management frameworks and relationships with First Nations people. Some companies with better practice are making the following improvements (among others): (1) Aligning policies and practices with international standards and investing resources in robust FPIC processes. (2) Increasing transparency and accountability, for example by committing to share agreements publicly with the approval of the signatory First Nations people. (3) Committing to avoid the use of confidentiality clauses in agreements that prevent First Nations people from speaking publicly. (4) Reviewing agreements with First Nations people to ensure they are up-to-date and reflect the positions of both parties. (5) Training staff and ensuring that they understand the business case for constructive engagement with First Nations people. (6) Ensuring that the board has oversight and ultimate accountability for engagement with First Nations people.
- **Better practices** : (1) Establish processes that embed FPIC and obtain genuine consent from First Nations people for a project/use of land: Establishing a robust process helps to diminish power imbalances and enables constructive dialogue. This is necessary to ensure that any consent provided by First Nations people is genuine (free, prior and informed), and not coerced. (*voir p. 18 et 19 pour les exemples*) (2) Mitigate power imbalances and ensure there is no pressure or coercion in negotiation with First Nations people (*voir p. 20 pour les exemples*) (3) Risk assessment and risk management: Engagement with First Nations people should be a core element of relevant companies' risk management systems. (*voir p. 21 et 22 pour les exemples*) (4) Company Culture: Corporate culture that embeds respect for First Nations people's rights and cultural heritage can reduce the risk of misconduct and damage across a company's operations. Constructive engagement with First Nations people should be a collective responsibility of company leadership and all staff. (*voir p. 23 pour les exemples*) (5) Benefit-sharing: Companies are often able to develop stronger long-term relationships with First Nations people when companies support their long-term progress and well-being? (*voir p. 24 pour les exemples*) (6) Lobbying and advocacy: When companies seek to influence legal change, they should do so in a way that is aligned with the above standards. (*voir p. 24 pour les exemples*)

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#### [Directors' Toolkit, 2022](#), p. 76, 77

- The board sets the tone for the organisation through policies created (what it does) but also through words and actions (what it says). Accordingly, the board should be examining how policies (and related key performance indicators) can be adapted to drive necessary change which embraces the culture and heritage of all people connected to where the organisation operates and has an impact. For some organisations this may require a cultural change program to fast track the change required, especially where the organisation wants to be a leader in this

area. At a minimum, whole of organisation cultural awareness training to support policies being implemented is considered better practice in building common understanding and appreciation. [...] p. 76

- Supporting reconciliation is one way that leading organisations are delivering on the aforementioned social contract. Reconciliation Australia describe reconciliation as being “about strengthening relationships between Aboriginal and Torres Strait Islander peoples and non-Indigenous peoples, for the benefit of all Australians.” [...] To bring reconciliation to life within organisations, at the time of writing this, over 1,100 organisations have developed Reconciliation Action Plans (RAPs) to embed the principles and purpose of reconciliation. Connected to ESG objectives, most organisations with RAPs proudly promote this fact, building awareness of the reconciliation imperative whilst also potentially benefiting from the incidental commercial benefit. Making a decision to pursue a RAP is an investment and the implementation of actions needed may see policies and even potentially strategic objectives needing to be adapted. Accordingly, it would be expected that the decision to develop a RAP would be a matter reserved for the board to decide upon. p. 77

#### 4.3.2 Cibles

### CANADA

#### [Dey et Kaplan, 2021](#), p. 35

- Of 230 CBCA public companies providing disclosure, almost none disclosed having targets for designated groups other than women: one company had a target for visible minorities, one a target for Indigenous Peoples, none had targets for persons with disabilities and two had targets for a combination of designated groups other than women [...] the Capital Markets Modernization Taskforce to recommend in their draft rules that all TSX-listed companies set targets and annually provide data on progress. Our guidelines are consistent with this recommendation. Without targets, it is difficult to hold organizations accountable for their failure to make progress. p.35

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#### [Taskforce, 2021](#), p. 63

- A recent study highlighted that of the 213 CBCA companies that disclosed board diversity data, only 5.5 per cent of all directors were visible minorities. Indigenous directors and directors with disabilities made up 0.5 per cent and 0.4 per cent of board diversity, respectively. p. 63
- The Taskforce recommends (re: regulatory framework): [to] Amend Ontario securities legislation to require publicly listed issuers in Canada to set their own board and executive management diversity targets (aggregated across both groups) and implementation timelines, and annually provide data in relation to the representation of [...] BIPOC, persons with disabilities or LGBTQ+ on boards and executive management. For greater clarity, this would apply to directors and executive management, the latter of which is defined as those who are executive officers or Named Executive Officers of publicly listed issuers. p. 64
- The Taskforce recommends that publicly listed issuers set an aggregated target of [...] 30 per cent for BIPOC, persons with disabilities and LGBTQ+. Implementation of these targets should be completed within [...] seven years to meet the target for the other diversity groups, placing specific focus and emphasis on representation of Black and Indigenous groups. p. 64

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#### [Share, 2022](#), p. 12

- L’objectif de représentation des Noirs, des Autochtones et des personnes de couleur (« BIPOC ») dans les conseils d’administration au Canada et aux États-Unis devrait être de 20 % du conseil. Lorsqu’un conseil d’administration est composé d’un seul genre ou n’inclut pas de membres de groupes sous-représentés, y compris les autochtones, une politique de diversité acceptable devrait reconnaître le besoin d’une plus grande diversité et expliquer les étapes précises pour aider le conseil à y parvenir. Sont exclues les politiques qui déclarent que le conseil base la sélection des nominations seulement sur des critères de mérite sans prendre en compte le facteur de diversité et les politiques contraires à une plus grande diversité dans les conseils d’entreprise

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## ÉTATS-UNIS

### [HLS Roundtable, 2022](#), p.30

- ISS's policy to require at least one ethnically/racially diverse director for U.S. companies in the Russell 3000 and S&P 1500 indices that was announced last year will go into effect beginning with meetings on or after Feb. 1, 2022. In the absence of racially or ethnically diverse board members, ISS will generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis).

### [State Street, 2023](#), p. 5

- We believe effective board oversight of a company's long-term business strategy necessitates a diversity of perspectives, especially in terms of gender, race and ethnicity. If a company in the Russell 1000 does not disclose, at minimum, the gender, racial and ethnic composition of its board, we may vote against the Chair of the nominating committee. We may withhold support from the Chair of the nominating committee also when a company in the S&P 500 does not have at least one director from an underrepresented racial/ethnic community on its board.

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## AUSTRALIE

### [Directors' Toolkit, 2022](#), p. 122, 123

- The inclusion of a specific target follows the KPMG ASX review which suggests that "diversity policies are most effective when a listed entity sets numerical targets to be achieved within a specified timeframe, outlines the initiatives it is introducing to help meet those targets and then reports regularly on its progress in meeting those targets".<sup>221</sup> According to the commentary for Recommendation 1.5 of the ASX Corporate Governance Principles and Recommendations "non-numerical objectives such as "introducing a diversity policy" or "establishing a diversity council", and aspirational objectives such as "achieving a culture of inclusion", while individually worthwhile, are unlikely to be effective in improving gender diversity unless they are backed up with appropriate numerical targets". [...]The commentary of Recommendation 1.5 also states that boards of listed entities should also "have regard to other facets of diversity in addition to gender when considering the composition of the board. **p. 122**
- In particular, having directors of different ages and ethnicities and from different cultural or socio-economic backgrounds can help bring different perspectives and experiences to bear and avoid 'groupthink' in decision making. **p. 123**

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### 4.3.3 Généralités

## CANADA

### [Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022](#), p. 28, 29, 91

- Déterminer régulièrement si des plans de relève solides sont en place pour le chef de la direction et les autres membres de la haute direction, lesquels devraient inclure des candidats diversifiés du point [...], de l'origine ethnique, de l'âge et de l'expérience. **p.28**
- Déterminer si les dirigeants de l'entreprise adhèrent aux principes de diversité, d'équité et d'inclusion, ainsi que la manière dont ces principes s'appliquent à toutes les parties prenantes. **p.28**
- Tout conseil d'administration doit refléter la diversité des parties prenantes de l'entreprise et des collectivités dans lesquelles elle exerce ses activités. [...] De plus, viser à obtenir une représentation d'au moins 30 % de personnes issues de groupes ethniques sous-représentés, de personnes autochtones du Canada et de personnes handicapées. **p.29**
- 5 leçons du rapport McKinsey ([McKinsey, 2020](#), p. 6, 41 à 44) (1) Assurer la représentation de talents diversifiés en examinant soigneusement les formes de diversité à privilégier parmi le genre, l'origine ethnique, l'âge et

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l'expérience. Ce processus comprend la fixation d'objectifs et l'offre d'incitatifs aux gestionnaires et autres employés en vue d'atteindre ces objectifs. (2) Renforcer le leadership en matière de DEI au-delà de la fonction des ressources humaines. Chaque dirigeant de l'entreprise doit soutenir les femmes et les minorités sous-représentées et doit comprendre les préjugés et les microagressions auxquels ces groupes sont exposés. (3) Permettre une véritable égalité des chances à l'égard des promotions et de la rémunération grâce à l'équité et à la transparence. (4) Promouvoir l'ouverture et lutter contre les microagressions afin qu'un comportement ouvert et inclusif devienne la norme. Mettre en place des processus pour s'assurer que tous adoptent ce comportement. (5) Favoriser un sentiment d'appartenance en soutenant de manière explicite un large éventail de diversité. **p.91**

#### ISS, 2023, p. 16, 17

- For meetings on or after Feb. 1, 2024, for companies in the S&P/TSX Composite Index, generally vote against or withhold from the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or the Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where the board has no apparent racially or ethnically diverse members **p. 16**
- It appears to be the view of many investors that boards should aim to reflect the company's customer base and the broader societies in which they operate by including directors drawn from racial and ethnic minority groups, and also support the expectation for disclosure from companies on racial/ethnic diversity at the board level and hold the belief that all companies should disclose this information to the fullest extent possible. **p. 17**

#### Teachers, 2023, p. 11, 12

- Les sociétés devraient élaborer une approche de la diversité, de l'équité et de l'inclusion dans les dimensions mises en évidence qui comprend une explication, soit par l'élaboration d'une politique ou d'un énoncé, d'un plan ayant des objectifs assortis d'échéances en vue d'accroître la participation des groupes sous-représentés au conseil et au sein de la haute direction en fonction de la disponibilité des bassins de main-d'œuvre. En outre, les sociétés devraient communiquer en temps opportun des divulgations claires sur leurs efforts en matière de diversité, d'équité et d'inclusion, y compris sur la réalisation des objectifs qu'elles se sont fixés. Afin que les investisseurs comprennent les progrès d'un conseil en matière de diversité, la déclaration devrait présenter la diversité des genres d'une part et les autres formes de diversité d'autre part. **p.11**
- **Pour ce qui est des autres aspects de la diversité, nous encourageons les conseils d'administration à établir et à divulguer des objectifs assortis d'échéances afin d'augmenter le nombre de directeurs s'identifiant comme faisant partie d'un groupe sous-représenté et de rendre des comptes sur la réalisation de ces objectifs.** Nous encourageons également les conseils à utiliser l'auto-identification comme moyen de démontrer leur engagement et leur progrès dans la création d'un conseil diversifié au-delà de la mixité. Les conseils devraient adopter une approche holistique à l'égard de la diversité, de l'équité et de l'inclusion, cherchant à améliorer la diversité dans tous les aspects en tenant compte d'autres facteurs comme la durée du mandat et l'évaluation continue des conseils à titre d'outils en facilitant le renouvellement. Au sein de la haute direction, les initiatives liées à la diversité, à l'équité et à l'inclusion et à la planification de la relève, qui sont entreprises à la fois par le conseil et la direction, devraient inclure la mise en place d'un pipeline au sein de l'entreprise qui soutient la mobilité ascendante des personnes provenant de groupes sous-représentés afin de s'assurer d'avoir une main-d'œuvre représentative de la disponibilité des bassins de main-d'œuvre et d'une progression, d'une année à l'autre, vers un milieu de travail plus diversifié, équitable et inclusif. Dans l'ensemble de l'organisation, la direction devrait tirer parti des données d'auto-identification pour étayer les stratégies de diversité, d'équité et d'inclusion et élaborer des plans afin de réduire les préjugés dans les décisions relatives aux talents et de créer une culture d'inclusion au moyen d'efforts de recrutement et de programmes internes, comme des groupes de ressources pour les employés qui réunissent et célèbrent l'identité et la diversité de pensées et d'expériences intersectionnelles. **p.12**
- **[En matière de divulgation] :** Pour être en mesure de réaliser des progrès en matière de diversité, d'équité et d'inclusion, nous comptons sur l'information accessible au public qui, au bout du compte, est influencée par l'auto-identification et les divulgations connexes. Nous encourageons fortement les conseils d'administration à réfléchir à la façon de communiquer cette information en temps opportun aux investisseurs, car elle éclaire la prise de décisions sur nos activités d'investissement et de gérance. Nous attendons des conseils qu'ils fournissent

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aux actionnaires une explication complète, qui comprend idéalement une politique ou un énoncé correspondant à leur mandat, de la façon dont ils traitent la diversité dans leur processus de recrutement des administrateurs et des objectifs qu'ils se sont fixés en matière de diversité, d'équité et d'inclusion. La divulgation est essentielle pour mieux comprendre la diversité de la main-d'œuvre. Nous soulignons la divulgation relative à l'égalité d'accès à l'emploi (EEO-1) prescrite par le US Department of Labor comme un modèle de déclaration que les entreprises peuvent adopter ou adapter. Nous encourageons les sociétés établies aux États-Unis qui sont tenues d'effectuer des divulgations en vertu de l'EEO-1 à publier le rapport. **p.12**

**Vanguard, 2022, p. 7**

- **Board diversity disclosure should at least include the skills, experiences, genders, races or ethnicities, and tenures that are represented on the board.** Disclosure of personal characteristics (such as race, ethnicity, or indigenous peoples) should be on a self-identified basis and may occur at an aggregate level or at the director level. Disclosure of tenure, skills, and experiences at the director level is expected [...]
- A fund will generally vote for a shareholder proposal if: (1) The proposal seeks disclosure about directors' diversity of personal characteristics (including gender, race/ ethnicity, and national origin) or skills and qualifications, and this information is not already disclosed. (2) The proposal asks companies to adopt policies designed to ensure appropriate diversity on boards, and appropriate policies do not already exist. (3) The proposal is not overly prescriptive about what factors should be included or how this information must be presented.

SH

**Share, 2022, p. 12**

- Bien que les exigences juridiques et réglementaires relatives à la diversité des conseils d'administration et du personnel varient selon la juridiction en question, **[le fonds] s'attend à ce que les entreprises élaborent et divulguent au moins une politique appropriée en matière de diversité ou expliquent pourquoi une telle politique ne peut pas être mise en place.** Il existe plusieurs types de politiques de diversité, mais elles ne sont pas toutes acceptables. Une bonne politique est celle qui, une fois mise en place, donne lieu à une plus grande diversité au sein du conseil en une période raisonnable et définie.

SH

**Taskforce, 2021, p. 64**

- The Taskforce recommends: Board Diversity Targets and Timelines Amend Ontario securities legislation to require publicly listed issuers to adopt a written policy respecting the director nomination process that expressly addresses the identification of candidates who [identify as] BIPOC, persons with disabilities or LGBTQ+ during the nomination process.

SH

ÉTATS-UNIS

**CII, 2023, point 2.8 b, p. 5**

- Board Diversity: CII supports a diverse board. **CII believes a diverse board has benefits that can enhance corporate financial performance, particularly in today's global market place.** Nominating committee charters, or equivalent, ought to reflect that boards should be diverse, including such considerations as background, experience, age, race, gender, ethnicity, and culture.

SH

**NACD, 2022, p.49**

- Boards benefit from including directors reflecting a diversity of backgrounds (including as to gender, race/ethnicity, and age) who can bring different perspectives to board decision-making and help identify potential blind spots—including around board priorities, agenda, and information needs.

SH

**State Street, 2023, p. 5**

- We may vote against the Chair of the compensation committee at companies in the S&P 500 that do not disclose their EEO-1 reports. Acceptable disclosures include:
  - The original EEO-1 report response
  - The exact content of the report translated into custom graphics

## AUTRES SOURCES

- [Nasdaq, 5600](#), IM-5605-7 et 5606 (p. 8 à 12 du pdf)

## GRANDE-BRETAGNE

### [Wates, 2018](#), p. 13

- Appointments to the board should promote diversity in line with the protected characteristics within the Equalities Act 2010. An effective board should be able to demonstrate that there has been a considered effort to establish an appropriate balance of expertise, diversity and objectivity.
- A policy on diversity and inclusion aligned to company strategy can support appointments to the board and succession planning. Such a policy should also consider targets and aspirations promoted by Government and industry initiatives or expert reviews.

SH

## 4.3.4 Critique de la littérature / état des lieux en matière de divulgation sur la DEI

## ÉTATS-UNIS

### [Diversity Washing, Andrew C. Baker et al., 2023](#), abstract, p. 17, 20, 33

- We provide large-sample evidence on whether U.S. publicly traded corporations use voluntary disclosures about their commitments to employee diversity opportunistically. We document significant discrepancies between companies' external stances on diversity, equity, and inclusion (DEI) and their hiring practices. Firms that discuss DEI more than their actual employee gender and racial diversity ("diversity washers") obtain superior scores from environmental, social, and governance (ESG) rating organizations and attract more investment from institutional investors with an ESG focus. These outcomes occur even though diversity-washing firms are more likely to incur discrimination violations and have negative human-capital-related news events. Our study provides evidence consistent with growing allegations of misleading statements from firms about their DEI initiatives and highlights the potential consequences of selective ESG disclosures. **Abstract**
- We first provide evidence that diversity-washing firms are more likely to be associated with other negative DEI- and ESG-related outcomes. Specifically, we highlight that our proxy is positively correlated with Equal Employment Opportunity Commission ("EEOC") penalties and negative ESG and human-capital news. We also show that our proxy is also positively correlated with questionable diversity and ESG-related activities, as reflected by the presence of policies without numeric targets. We provide further evidence that diversity-washing firms also hire less diverse candidates in the future, confirming that their DEI discussions do not appear to be aspirational in nature. Finally, we find that diversity washers exhibit similar disclosure patterns in other communication channels, such as Twitter, suggesting that the discussions in financial reports are broadly representative of their general stance on these issues. **p. 17**
- A potential concern with our measurement strategy is that we may misclassify firms with aspirational diversity goals that are not yet reflected in their actual diversity. Given our focus on contemporaneous diversity, which is a function of past hiring decisions, DEI discussion that relates to future hiring may be erroneously ascribed to misreporting. If these discussions are aspirational in nature and meant to describe ongoing efforts to improve diversity, we would expect future levels of diversity to improve. Alternatively, observing no effect, or even a decline in diversity, would suggest that diversity washers overstate their commitments. Such overstatement may be intended to influence the market's perception of firms' diversity practices. **p. 20**
- Our collective evidence highlights that many firms may be providing misleading disclosures about their ESG commitments, leading to potentially mistaken inferences among investors and other market participants. Collectively, our findings support the need for ongoing regulation and enforcement to hold firms accountable for reporting their ESG activities truthfully. **p. 33**

### [Nathan C. Goldman, 2022](#), abstract

- Starting in 2020, the SEC requires firms to disclose human capital information material to their operations. Many firms discuss their commitment to employee-level diversity, equity, and inclusion (DEI) in their human capital disclosures. We examine whether these disclosures reflect credible communication about a firm's commitment

to DEI or whether they merely reflect social washing. We find that these firm-provided DEI disclosures are associated with higher employee ratings on DEI. Consistent with the positive economic implications of committing to DEI, the DEI disclosures are also associated with higher employee productivity. In additional analysis, we document that the market responds positively to a firm's general or quantitative DEI disclosures for smaller firms. Our findings provide novel evidence on the credibility and the informativeness of the new DEI disclosures in 10-K filings, suggesting that firms, on average, credibly communicate their commitment to employee-level DEI. **abstract**

- Firms have incentives to engage in DEI-themed social washing in the prominent 10-K filings because of the significant public scrutiny in today's world that emphasizes environmental, social, and government (ESG) topics. These incentives have intensified after several recent social and civic events associated with racial injustice. Firms also have opportunities to engage in social washing because the human capital disclosures are principles-based and mostly include hard-to-verify, qualitative information (Grzegorzek 2021). However, [...] these disclosures are subject to public monitoring. Any social washing behavior, if detected, can have significant adverse consequences (Kick 2019; Asare 2020). Thus, firms that intend to engage in social washing must carefully weigh the related costs and benefits. **p. 1, 2**
- Critics are concerned that many firms engage in social washing behavior to appease ESG investors and to manage their public image (Argenti 2020; Dowell and Jackson 2020; Marsh 2020). Raghunandan and Rajgopal (2021) provide empirical evidence that firms often commit to ESG without supporting their commitments with concrete investments, consistent with social washing behavior. To the extent that firms view recruiting and supporting a diversified workforce as distracting and costly and do not invest in DEI, their social washing incentives could be particularly strong given the heightened scrutiny and pressure from ESG investors and the public. The DEI-related social washing can involve statements of solidarity and increased emphasis on gender/ethnic representation without taking accountability for the problem or implementing foundational changes (Marsh 2020). Given that the newly required human capital disclosures are provided as part of Section 1A on business in the 10-K filings and hence are highly visible (Beyer, Cohen, Lys, and Walther 2010), firms with DEI-related social washing incentives are expected to employ these human capital disclosures as a channel to overstate their commitment to DEI. Importantly, the principles-based human capital disclosure rule can facilitate social washing behavior. The SEC does not specify topics required to be included and does not require quantitative disclosures, which are more objective and easier to verify. This lack of clarity leaves greater opportunities for firms to engage in "cheap talk" by making unsubstantiated claims or misrepresenting the firms' DEI objectives and policies (Grzegorzek 2021). Consistent with these views, many of the SEC comment letter respondents voiced concerns about whether the human capital disclosures would be meaningful and informative (SEC 2020) because the flexibility in defining and assessing materiality and the use of boilerplate language can diminish the informativeness or the credibility of these disclosures (Christiensen, Hail, and Leuz 2021). However, it is important to note that these DEI disclosures are subject to significant scrutiny. Given the public nature of the human capital disclosure in 10-K filings, corporate stakeholders, particularly employees with direct experiences with a firm's DEI commitments and initiatives, can observe the disclosures and detect any social washing. There can be substantial adverse effects for firms caught social washing. For example, Asare (2020) suggests that social washing can make employees frustrated with their workplace and diminish firm value. Kick (2019) states, "businesses that preach diversity on paper but do little to make inclusion a daily workplace value at every level leave themselves vulnerable to many of the same problems. In fact, in some ways, a half-hearted approach to diversity and inclusion can set you up to lose bigger, as the organization comes away looking either disconnected from its values or like a fraud." The reputation damage can affect firms' ability to retain and attract employees and customers, transact with suppliers, and raise capital from investors. Overall, the costs associated with social washing may be so high that they discourage social washing but incentivize firms to provide credible DEI disclosures. **p. 11, 12, 13**
- Focusing on DEI disclosures in the new mandatory human capital disclosures in 10-K filings, this study examines whether these DEI disclosures reflect credible communication of a firm's commitment to DEI in the workplace or whether they are a manifest of a social washing mechanism to window dress a firm's public image. We first show that these DEI disclosures are positively associated with the presence of strong external stakeholder groups. We then show that these DEI disclosures appear to credibly communicate firms' true commitments, as evidenced by two key dimensions: (1) better employee ratings on DEI environment and overall job satisfaction, and (2) higher employee productivity. Consistent with the credibility of the DEI disclosures and the positive economic

implications of DEI commitment, we also document a more positive market reaction among small firms whose DEI commitments were less publicized and visible before the disclosures. Our findings collectively suggest that DEI disclosures in the new human capital disclosures provide credible information about firms' DEI commitments in the workplace. **p. 29**

## 4.4 Autres

### 4.4.1 Sélection du chef de la direction

#### CANADA

##### Initiative conjointe de Groupe TMX Limitée et l'Institut des administrateurs de sociétés, 2022, p. 88, 89 et 94

- Les lignes directrices actuelles du Canada en matière de gouvernance d'entreprise sont étrangement silencieuses sur le rôle du conseil d'administration dans la sélection du chef de la direction.
- Le conseil d'administration doit s'attendre à ce qu'un chef de la direction accomplisse ce qui suit : (1) Mener un processus rigoureux pour identifier les actionnaires et les autres parties prenantes clés de la société et établir un dialogue avec eux (2) Formuler les priorités ESG de l'entreprise et obtenir les résultats attendus par les parties prenantes, conformément à la stratégie de l'entreprise (3) Faire preuve du sens stratégique et de l'agilité nécessaires pour atteindre la finalité de l'entreprise et créer une valeur qui satisfait aux attentes de ses parties prenantes concernées (4) Concevoir un système robuste de gestion des risques (5) Mettre au point des systèmes adéquats pour évaluer la performance et en rendre compte, qui fournissent une information de haute qualité sur les facteurs et les résultats qui sont pertinents pour toutes les parties prenantes
- Déterminer si les compétences et la personnalité du chef de la direction conviennent au nouveau contexte de multiplicité des parties prenante et d'attentes sociales croissantes en matière de responsabilité des entreprises

SH

### 4.4.2 Prévention de l'« overboarding » / « interlocking »

#### CANADA

##### CCGC, 2022, p. 11

- Boards should limit the number of director interlocks. EQB discloses its policy on director interlocks and indicates which of its board members also serve together on the boards of other public companies. EQB (below) also presents the board's opinion on existing interlocks and indicates that outside directorships are reviewed regularly.
- EQ: The Governance and Nominating Committee has determined that this relationship does not impair the ability of these directors to exercise independent judgment. CEO directors should serve on no more than two public company boards, including their own, and non-CEO directors should not serve on more than five public company boards. Directors are required to notify the Chair of the Board and the Chair of the Governance and Nominating Committee prior to accepting an invitation to join another board

[GL, 2023, p. 25](#)

- We believe that directors should have the necessary time to fulfill their duties to shareholders. In our view, an overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. In addition, recent research indicates that the time commitment associated with being a director has been on a significant upward trend in the past decade. As a result, at TSX companies, we will generally recommend that shareholders oppose the election of a director who: (1) Serves as an executive officer of a public company while serving on more than one additional external public company board; or (2) Serves as an executive chair/vice chair of a public company while serving on more than two additional external public company boards; or (3) Serves as a non-executive director on more than five public company boards in total.

[ISS, 2023, p. 15](#)

- Generally vote withhold for individual director nominees who: (1) Are non-CEO directors and serve on more than five public company boards; or (2) Are CEOs of public companies who serve on the boards of more than two public companies besides their own - withhold only at their outside boards.
- Transitioning directors: It is preferable for a director to step down from a board at the annual meeting to ensure orderly transitions, which may result in a director being temporarily overboarded (e.g. joining a new board in March but stepping off another board in June). ISS will generally not count a board for policy application purposes when it is publicly-disclosed that the director will be stepping off that board at its next annual meeting. This disclosure must be included within the company's proxy circular to be taken into consideration. Conversely, ISS will include the new boards that the director is joining even if the shareholder meeting with his or her election has not yet taken place.
- Background: Directors must be able to devote sufficient time and energy to a board in order to be effective representatives of shareholders' interests. While the knowledge and experience that come from multiple directorships is highly valued, directors' increasingly complex responsibilities require an increasingly significant time commitment. Directors must balance the insight gained from roles on multiple boards with the ability to sufficiently prepare for, attend, and effectively participate in all of their board and committee meetings.

[Teachers, 2023, p. 18](#)

- **[Opposition au chef de la direction / overboarding]** : Nous croyons qu'étant donné le temps qu'il faut pour être à la fois chef de la direction et administrateur, il est approprié de limiter un chef de la direction en exercice à un conseil d'administration de société ouverte en dehors de son propre conseil d'administration. Un chef de la direction actif qui siège au conseil de plus d'une société ouverte, sans compter le conseil d'administration de la société dont il est le chef de la direction, fera l'objet d'une opposition. En général, nous n'appuyons pas la réélection de l'administrateur s'il est un chef de la direction faisant l'objet d'une opposition. **p. 17**
- **[Relations d'interdépendance / interlocking]** : Il existe une relation d'interdépendance lorsque deux administrateurs ou plus siègent ensemble au conseil d'une ou de plusieurs autres sociétés. Selon la relation entre les personnes interdépendantes, l'incidence peut aller de légère à la création d'une relation réciproque réelle ou perçue menant à un conflit d'intérêts important et inacceptable. Nous examinerons les relations d'interdépendance au cas par cas et n'appuierons pas les administrateurs lorsque nous déterminerons que la relation d'interdépendance crée ou pourrait créer un conflit d'intérêts important qui ne peut être géré adéquatement. Certaines relations d'interdépendance doivent toujours être évitées, car le conflit d'intérêts qu'elles présentent est trop important et, à notre avis, irréconciliable. En guise d'exemple d'une telle relation d'interdépendance, mentionnons une situation dans laquelle deux chefs de la direction siègent respectivement au conseil d'administration et sont respectivement membres du comité de la rémunération de la société l'autre. **p. 18**

[State Street, 2023, p. 5, 6](#)

- When voting on the election or re-election of a director, we also consider the number of outside board directorships that a non-executive and an executive may undertake. Thus, State Street Global Advisors may take voting action against a director who exceeds the number of board mandates listed below: (1) Named Executive Officers (NOs) of a public company who sit on more than two public company boards (2) Non-executive board chairs or lead independent directors who sit on more than three public company boards (3) Director nominees who sit on more than four public company boards

- For non-executive board chairs/lead independent directors and director nominees who hold excessive commitments, as defined above, we may consider waiving our policy and vote in support of a director if a company discloses its director commitment policy in a publicly available manner (e.g., corporate governance guidelines, proxy statement, company website). This policy or associated disclosure must include: (1) A numerical limit on public company board seats a director can serve on - This limit cannot exceed our policy by more than one seat (2) Consideration of public company board leadership positions (e.g., Committee Chair) (3) Affirmation that all directors are currently compliant with the company policy (4) Description of an annual policy review process undertaken by the Nominating Committee to evaluate outside director time commitments

**Vanguard, 2022, p. 4, 5**

- Independence is generally defined in accordance with the relevant exchange listing standards, with the following exceptions: (1) Former CEOs. Former CEOs will not be considered independent unless they held only an "interim" CEO position for less than 18 months. An interim CEO who held his or her temporary position for less than 18 months will be considered independent three years after leaving the interim CEO position. (2) CEO interlocks. CEOs who sit on one another's boards will not be considered independent. **p. 4**
- [...]
- Directors' responsibilities are complex and time-consuming. Therefore, a director may be considered "overboarded" if the number of directorship positions that he/she has accepted makes it challenging to dedicate the requisite time and attention to effectively fulfill his/her responsibilities at each company. While no two boards are identical and time commitments may vary, the funds believe that the limitations below are appropriate, absent compelling evidence to the contrary.
- A fund will generally vote against any director who is a named executive officer (NEO) and sits on more than two public boards. The two boards could comprise either the NEO's "home board" plus one outside board or two outside boards if the NEO does not serve on his/her home board. In the instance that an NEO sits on more than two public boards, a fund will typically vote against the nominee at each company where he/ she serves as a nonexecutive director, but not at the company where he/she serves as an NEO.
- A fund will also generally vote against any director who serves on five or more public company boards. In that instance, the fund will typically vote against the director at each of these companies except the one where he/she serves as chair or lead independent director of the board.
- In certain instances, a fund will consider voting for a director who would otherwise be considered overboarded under the standards above because of company-specific facts and circumstances. This includes indications that the director will indeed have sufficient capacity to fulfill his/her responsibilities and/or a review of the full board's skill and diversity composition. In addition, a fund may vote for an overboarded director if the director has publicly committed to stepping down from the other directorship(s) necessary to fall within the thresholds listed above.
- The Vanguard funds will look for portfolio companies to adopt good governance practices regarding director commitments, including adopting an overboarding policy and disclosure of the board's oversight of the implementation of that policy.

**BMO, 2021, p. 6**

- We seek to ensure that directors are not only independent from the company, but also of one another. We expect companies to disclose interlocking board relationships and to explain how the independence of individual directors is preserved when directors jointly serve on two or more of the same boards. Such interlocking relationships can raise concerns when there is an imbalance of power between the two directors. The most common situation is when one of the individuals is an executive on the first board, and, therefore, is evaluated and remunerated by a fellow director. Therefore, on the second board where the director is expected to serve as an independent non-executive, that individual's independence may be compromised.

**Share, 2022, p. 11**

- Les administrateurs qui occupent le poste de cadre supérieur dans d'autres sociétés ne devraient pas siéger au comité de rémunération, à moins qu'il s'agisse de sociétés privées non cotées en bourse et de taille très petite, composée de deux ou trois employés, par exemple.
- [...]

- [Le fonds] s’abstiendra de voter pour les administrateurs qui sont des dirigeants d’une société publique et qui siègent à plus d’un autre conseil. [Le fonds] s’abstiendra de voter pour les autres administrateurs qui siègent à plus de cinq autres conseils. [Le fonds] s’abstiendra de voter pour un administrateur qui est président d’une société publique et qui siège à plus de deux autres conseils d’administration. [Le fonds] votera contre ou s’abstiendra de voter en faveur des administrateurs existants s’ils ont manqué plus de 25 % des réunions du conseil et des comités tenues, à moins que la circulaire de sollicitation fasse mention de circonstances atténuantes. [Le fonds] votera pour les propositions qui demandent aux sociétés de divulguer l’assiduité des administrateurs aux réunions.

**CDPO, 2020, p. 6**

- We recognize the benefits of having board members who sit on more than one board. However, board members must ensure that they manage their commitments so as to ensure no compromise is made to their obligations and responsibilities. We encourage directors to attend board meetings and to devote enough time to preparing for them, except in cases where a valid reason is provided.
- If we feel the number of boards on which members sit limits their ability to effectively fulfill their obligations, we may oppose their election.

**ÉTATS-UNIS**

**HLS Roundtable, 2022, p.27, 28, 35**

- Directors’ responsibilities are complex and time-consuming. Therefore, a director may be considered “overboarded” if the number of directorship positions that they have accepted makes it challenging to dedicate the requisite time and attention to effectively fulfill their responsibilities at each company. While no two boards are identical and time commitments may vary, the funds believe that the limitations below are appropriate, absent compelling evidence to the contrary. **p.27, 28**
- A fund will generally vote against any director who is a named executive officer (NEO) and sits on more than two public boards. The two boards could comprise either the NEO’s “home board” plus one outside board or two outside boards if the NEO does not serve on their home board. If an NEO sits on more than two public boards, a fund will typically vote against the nominee at each company where they serve as a nonexecutive director, but not at the company where they serve as an NEO.
- A fund will also generally vote against any director who serves on five or more public company boards. In that instance, the fund will typically vote against the director at each of these companies except the one where they serve as board chair or lead independent director. **p.27, 28**
- In certain instances, a fund will consider voting for a director who would otherwise be considered overboarded under the standards above because of company-specific facts and circumstances. This includes indications that the director will have sufficient capacity to fulfill their responsibilities and/or a review of the full board’s skill and diversity composition. In addition, a fund may vote for an overboarded director if the director has publicly committed to stepping down from the other directorship(s) necessary to fall within the thresholds listed above. **p.27, 28**
- Looking ahead, the Vanguard funds will look for portfolio companies to adopt good governance practices regarding director commitments, including an overboarding policy and disclosure of the board’s oversight of the implementation of that policy. **p.27, 28**
- Investor viewpoints around the maximum number of public company boards have converged toward a maximum of one outside board for the CEO (i.e., two boards total) (together with the comparable limit as applied to named executive officers, or NEOs) and four boards total for other directors **p.35**

**ISG, 2017, principle 5**

- 5.4 The responsibilities of a public company director are complex and demanding. Directors need to make the substantial time commitment required to fulfill their responsibilities and duties to the company and its shareholders. When considering the nomination of both new and continuing directors, the nominating committee should assess a candidate’s ability to dedicate sufficient time to the company in the context of their relevant outside commitments.

## FRANCE

### Middlenext, 2021, p. 22

- Il est recommandé que le «membre du Conseil», lorsqu'il exerce un mandat de « dirigeant », n'accepte pas plus de deux autres mandats de « membre du Conseil » dans des sociétés cotées, y compris étrangères, extérieures à son groupe. **p. 22**

## ALLEMAGNE

### German Corporate Governance Code, 2022, p. 8

- A Supervisory Board member who is not a member of any Management Board of a listed company shall not accept more than five Supervisory Board mandates at non-group listed companies or comparable functions, with an appointment as Chair of the Supervisory Board being counted twice.
- Members of the Management Board of a listed company shall not have, in aggregate, more than two Supervisory Board mandates in non-group listed companies or comparable functions, and shall not accept the Chairmanship of a Supervisory Board in a non-group listed company.

## BRÉSIL

### IBGC 2023, p. 37, 38,

- **[Overboarding]** Board members should not accumulate an excessive number of positions on boards, committees or in executive management. When taking on a new position, they should consider their personal and professional commitments, assessing whether they will be able to dedicate the necessary time to the position. They should inform the organization of other activities and positions on boards, and committees, especially if they are a board chair, committee coordinator, or top executive in another organization. This information should be made available to the board and its members for them to evaluate time availability and possible conflicts of interest. **p. 37**
- **[Overboarding]** It is recommended that the by laws, articles of incorporation, or articles of association establish the maximum number of other boards, committees, or executive positions that may be held by members, taking into consideration the complexity of the organization and the dedication required for the position. **p. 38**
- **[Overboarding]** Directorshavenon-delegable responsibilities. The existence of an annual calendar of meetings agreed upon in meetings and of technologies that allow for virtual participation in meetings makes it possible for board members to be in all of them, reducing the need for substitutes. If the organization elects alternates, practices should be adopted to allow these members to be updated on the relevant subjects and only take over the position of the incumbent in case of a definitive vacancy. **p. 38**
- **[Interlocking]** Organizations must have mechanisms to identify and be duly informed of possible or potential conflicts of interest resulting from the participation of board members in other organizations, whether as a member of the board, a member of a committee, an executive, consultant, supplier or other relevant roles. : **a)** When taking office, board members must sign a consent form and a free statement indicating the absence of conflict of interest and whether they are politically exposed. Members must inform the other board members about any other governing bodies (executive, fiscal, and/or advisory) of which they are part, as well as any consultancy which they provide that may implicate a conflict of interest. In the event of any changes to the board member's main occupation, he/she must report it to the board. **b)** Iftheboarddetectsaconflict of interest involving any of its members, the other members must evaluate whether it would be convenient to have this member remain on the board, and submit the subject to the general meeting. This information, along with those relative to the board member's main activity, should be disclosed and made available in the organization's periodic informational reports and other means of communication. **p. 45**



#### 4.4.3 Mise en œuvre du « comply or explain »

##### FRANCE

###### AFEP & MEDEF, 2022, p. 31

- **La mise en œuvre de la règle « appliquer ou expliquer » par les sociétés :** Les sociétés cotées qui se réfèrent au présent code de gouvernement d'entreprise font état de manière précise, dans leur rapport sur le gouvernement d'entreprise, de l'application des présentes recommandations et fournissent une explication lorsqu'elles écartent, le cas échéant, l'une d'entre elles. L'explication à fournir lorsqu'une recommandation n'est pas appliquée doit être compréhensible, pertinente et circonstanciée. Elle doit être étayée et adaptée à la situation particulière de la société et indiquer, de manière convaincante, en quoi cette spécificité justifie la dérogation. Elle doit indiquer les mesures alternatives adoptées le cas échéant et décrire les actions qui permettent de maintenir la conformité avec l'objectif poursuivi par la disposition concernée du code. Lorsqu'une société entend mettre en œuvre à l'avenir une recommandation qu'elle écarte provisoirement, elle mentionne quand cette situation temporaire prendra fin. Les sociétés indiquent dans une rubrique ou un tableau spécifique les recommandations qu'elles n'appliquent pas et les explications afférentes.

###### Middlenext, 2021, p. 9

- Les recommandations: Il s'agit des règles auxquelles les entreprises qui adoptent le présent Code doivent souscrire. Dans ce cas, le rapport sur le gouvernement d'entreprise doit indiquer clairement comment elles les appliquent et en cas contraire, pourquoi elles ne le font pas, dans la logique « se conformer ou s'expliquer » (comply or explain). La flexibilité qu'offre le principe du comply or explain permet de tenir compte de la spécificité de chaque société. Mais, c'est un enjeu déterminant de crédibilité que les « explications » soient pertinentes : elles doivent permettre à toutes les parties prenantes d'apprécier les conséquences de la dérogation à une recommandation particulière. Il s'agit pour les entreprises d'invoquer des arguments concrets qui permettent de caractériser la spécificité de la gouvernance de l'entreprise et donc de faire preuve d'intelligence et de réflexivité en appliquant avec la souplesse nécessaire des principes par ailleurs très rigoureux. C'est également un enjeu d'efficacité interne : la cohérence entre le discours et la pratique de l'entreprise est un gage d'intégrité et d'exemplarité. Répondre à cette attente doit permettre de déjouer le piège de l'excès de réglementation, de concourir à l'épanouissement de l'esprit d'entreprise et de réduire les risques de conflits d'intérêts.

###### AMF, 2022, p. 58

- Conformément aux termes de l'article 27.1 du code AFEP-MEDEF, l'objet de l'explication (« explain ») n'est pas de remettre en cause le bien-fondé d'un code de gouvernement d'entreprise et de fournir des arguments en ce sens, mais d'indiquer, de manière compréhensible, pertinente et circonstanciée, en quoi la dérogation est justifiée dans la société concernée, et d'indiquer quelles mesures alternatives ont été adoptées pour parvenir au même objectif que celui poursuivi par le code. S'agissant de l'indépendance des administrateurs, l'explication devrait permettre de s'assurer que les intérêts des administrateurs minoritaires sont dûment représentés.

#### 4.4.4 Critique de la littérature / adaptation nécessaire du cadre réglementaire encadrant la divulgation des pratiques de gouvernance

##### CANADA

###### Abdallah, 2022, p. sommaire, résumé, p. 47, 48, 222, 223

- **1.** Quels sont les éléments d'information en matière des pratiques de gouvernance que les investisseurs actuels et potentiels utilisent ? ; **2.** Comment les investisseurs actuels et potentiels interprètent-ils les informations en matière de pratique de gouvernance qu'ils détiennent ? ; **3.** Dans quelle mesure le cadre actuel de réglementation canadienne, notamment le Règlement 58-101 sur l'information concernant les pratiques en matière de gouvernance et l'Instruction générale 58-201 relative à la gouvernance, répond-il aux besoins spécifiques des investisseurs actuels et potentiels en matière d'information portant sur les pratiques de gouvernance des

entreprises? Des données et des observations ont été collectées en effectuant des entrevues semi-structurées auprès d'un échantillon de neuf gestionnaires de fonds d'investissement œuvrant dans différentes organisations d'investissement au Canada. **p. 47**

- Notre étude propose un cadre théorique permettant de mieux comprendre les problèmes de la divulgation d'information en matière des pratiques de gouvernance par les entreprises, dans un contexte réglementé et obligatoire, et leur utilisation par les gestionnaires de fonds d'investissement dans leur prise de décision.

### **Sommaire**

- Nos résultats révèlent de nombreuses préoccupations et lacunes relatives aux besoins spécifiques en information portant sur les pratiques de gouvernance des entreprises pour les gestionnaires de fonds d'investissement et pour que l'information actuellement publiée, en vertu des règlements des autorités compétentes, réponde effectivement à leurs besoins. L'information divulguée doit donc être plus simple, plus exhaustive et plus accessible.

### **Résumé**

- La première conclusion par suite à notre analyse des entrevues effectuées est que les gestionnaires de fonds d'investissement n'utilisent pas toutes les informations divulguées en matière des pratiques de gouvernance. En d'autres mots, ils regardent des informations bien particulières. Bien que l'utilisation de l'information divulguée puisse varier d'un gestionnaire à l'autre, certaines tendances se sont révélées. À titre d'exemple, tous les gestionnaires interviewés ont confirmé qu'ils s'intéressent à l'information divulguée sur les composantes et les caractéristiques de la rémunération des dirigeants (salaire de base, bonis, options d'achat d'action, régime de retraite, etc.). En réponse à la question sur les pratiques de gouvernance les plus utilisées, nous citons : « les composantes de la rémunération des dirigeants est la pratique la plus importante qu'on regarde profondément et en détail, GF2 », « C'est l'élément le plus regardé et le plus analysé parmi toutes les pratiques de gouvernance. Il a un grand impact sur la décision d'investissement[...] ». En ce qui concerne le cadre actuel de réglementation canadienne et s'il répond aux besoins des investisseurs, nous citons : « Beaucoup de réglementation, ce qui cause une barrière à la rentrée pour la petite capitalisation. Est-ce que toutes ces réglementations vont prévenir la fraude? La réponse est non ». Concernant l'interprétation des informations en matière des pratiques de gouvernance et surtout la composition du conseil d'administration et les caractéristiques de ces membres, nous citons : « [...] Mais si on prend chaque pratique individuellement, ça ne change pas grand-chose. Mais ensemble, avec une analyse approfondie ça devrait affecter la décision d'investissement » **p. 48**
- Le troisième et dernier constat est que le cadre actuel de réglementation au Canada sur l'information portant sur les pratiques de gouvernance ne comble pas tous les besoins spécifiques des gestionnaires de fonds à cet égard. Les entrevues révèlent l'existence d'un écart entre l'information désirée par les gestionnaires et l'information réellement divulguée et que des améliorations sont nécessaires pour que le cadre actuel réponde mieux à leurs besoins spécifiques en information. Là, il importe de noter que les gestionnaires s'entendent sur le fait que le cadre actuel est complexe et qu'il faut le simplifier : « Beaucoup de réglementation ». « Too much rules ». Parfois, on se perd si c'est bon ou non, « Toujours il y a des améliorations à faire à tous les niveaux ». Ainsi, ils s'entendent que dans toute cette réglementation, l'objectif ultime du législateur doit être la protection des investisseurs et non pas l'alourdissement du travail des entreprises par l'émission de trop des lois : « Il y a tellement de réglementation et parfois trop. Ça complique parfois le Business. Par contre, le rôle de législateur est de mettre en place des lois et des règlements pour protéger les investisseurs surtout les petits et fermer tous les trous causés par l'utilisation abusive des lois », « Est-ce que toutes ces réglementations vont prévenir la fraude? La réponse est NON ». Bien que les gestionnaires interviewés considèrent qu'il y a beaucoup de réglementation et qu'il faut l'alléger, ils évoquent le problème du manque d'équilibre en information sur les différentes pratiques de gouvernance, ce qu'il faut corriger : « Mais parfois on trouve beaucoup de réglementations spécifiques à une pratique et un manque dans d'autres comme par exemple, la rémunération des dirigeants où les entreprises ont encore beaucoup de cachettes à ce niveau. Encore, on ne sait l'établissement de la rémunération ». Donc, du point de vue de gestionnaires de fonds, le cadre actuel de réglementation a besoin d'être modifié pour mieux satisfaire leurs besoins spécifiques en information. **p. 48**
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**Conclusion – synthèse :**

- Tout d'abord, les résultats montrent que les gestionnaires de fonds d'investissement sont davantage préoccupés au regard des pratiques de gouvernance par l'obtention des informations internes pertinentes concernant la performance des entreprises et l'assurance que les informations communiquées par les entreprises sur leurs pratiques de gouvernance reflètent la réalité de la performance des entreprises. Sur l'information portant sur 25 pratiques spécifiques de gouvernance, les gestionnaires de fonds utilisent, en général, des éléments d'information relatifs aux 11 pratiques spécifiques de gouvernance, moins que la moitié, dans leurs décisions d'investissement. Du point de vue des gestionnaires de fonds d'investissement, ces éléments d'information aident à savoir si l'entreprise visée performe bien. Cela mène évidemment à remettre en question l'utilité des 14 autres pratiques pour les gestionnaires de fonds, notamment dans la prise de décision d'investissement. **p. 222**
- En général, les gestionnaires de fonds ont besoin de connaître l'information sur le processus de prise de décision à l'intérieur des entreprises. Pour satisfaire ce besoin, ils se fient alors à plusieurs éléments d'information divulgués relatifs aux pratiques spécifiques de gouvernance portant sur les porteurs importants de titre et actions à droit des votes subalternes ou multiples ainsi que sur le pourcentage d'indépendance des membres du CA. Ils ont également besoin de savoir comment va la surveillance des activités comptable et financière des entreprises. Ils utilisent, afin de satisfaire ce besoin, certains éléments d'information divulgués relatifs aux pratiques spécifiques de gouvernance portant sur le comité d'audit, le cabinet d'auditeurs externes, les honoraires des auditeurs externes pour des services autres que l'audit, et la durée de la relation avec le même cabinet. Enfin, les gestionnaires de fonds soulèvent le besoin de savoir comment est le comportement des dirigeants des entreprises. Ils regardent alors pour ce besoin des éléments d'information divulgués relatifs aux pratiques spécifiques de gouvernance portant sur le comité de la rémunération des dirigeants, les composantes et caractéristiques de la rémunération des dirigeants et son ampleur et, finalement, la rotation des dirigeants. **p. 222**
- Dans une perspective globale, les éléments d'information qu'utilisent essentiellement les gestionnaires de fonds d'investissement dans leurs décisions d'investissement sont : la détention d'actions des investisseurs institutionnels et des dirigeants, le niveau d'indépendance du CA et des comités d'audit et de rémunération, la réputation du cabinet d'auditeurs externes et la stabilité de la relation avec le même cabinet, les critères d'établissement de la rémunération des dirigeants, la proportion des composantes de la rémunération des dirigeants autres que le salaire de base et enfin, la stabilité des dirigeants au sein de l'entreprise. Dans cette thèse, l'utilité de l'information actuellement publiée en vertu des lois et règlements s'explique par l'utilisation de l'information par les gestionnaires de fonds dans leurs décisions d'investissement, autrement dit, par l'interprétation que confèrent les gestionnaires de fonds à l'information et par son impact sur leurs prises de décisions. [...] **p. 223**