International Comparison of Selected Corporate Governance Guidelines and Codes of Best Practice

United States • United Kingdom • France • Germany • OECD

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Weil attorneys have advised the World Bank, the Organisation for Economic Co-operation and Development ("OECD"), the European Commission and various stock exchanges and regulatory bodies on governance reform efforts and have been leaders in providing director training programs worldwide. In addition, the Firm has played a leading role in the development of some of the world's most influential corporate governance recommendations and guidelines, including: National Association of Corporate Directors ("NACD"), REPORT OF THE NACD BLUE RIBBON COMMISSION ON DIRECTOR PROFESSIONALISM (1996, reissued 2001, 2005 and 2011); General Motors Board of Directors, CORPORATE GOVERNANCE GUIDELINES (1994, revised 2011); OECD PRINCIPLES OF CORPORATE GOVERNANCE (1999, revised 2004); European Association of Securities Dealers, CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS (2000); International Corporate Governance Network, STATEMENT ON GLOBAL CORPORATE GOVERNANCE PRINCIPLES (1999, revised 2009); REPORT OF THE BLUE RIBBON COMMITTEE ON IMPROVING THE EFFECTIVENESS OF CORPORATE AUDIT COMMITTEES (for the New York Stock Exchange and National Association of Securities Dealers) (1999); REPORT OF THE OECD BUSINESS SECTOR ADVISORY GROUP ON CORPORATE GOVERNANCE (1998), and NACD, KEY AGREED PRINCIPLES TO STRENGTHEN CORPORATE GOVERNANCE FOR U.S. PUBLICLY TRADED COMPANIES (2008). The Firm also completed a study of guidelines and codes for the European Commission entitled: COMPARATIVE STUDY OF CORPORATE GOVERNANCE CODES RELEVANT TO THE EUROPEAN UNION AND ITS MEMBER STATES (2002).

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The attached analysis compares corporate governance guidelines and codes of practice in place in the United States, United Kingdom, France and Germany, and is organized in accordance with the Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies ("Key Agreed Principles") published by the National Association of Corporate Directors ("NACD") in 2008 with input from the business and investor communities. Footnotes reference relevant provisions of the Dodd-Frank Act of 2010, the Sarbanes-Oxley Act of 2002 and New York Stock Exchange ("NYSE") Listing Rules, the 2011 ABA Corporate Director's Guidebook, survey data on actual board practices compiled by the NACD and Spencer Stuart, and other information.

"Corporate governance" refers to that blend of law, regulation, and appropriate voluntary private-sector practices which enables the corporation to attract financial and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stakeholders and society as a whole.

The principal characteristics of effective corporate governance are: transparency (disclosure of relevant financial and operational information and internal processes of management oversight and control); protection and enforceability of the rights and prerogatives of all shareholders; and directors capable of independently approving the corporation's strategy and major business plans and decisions, and of independently hiring management, monitoring management's performance and integrity, and replacing management when necessary.

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and noted authority on corporate governance

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** In the tables that follow, *italic typeface* is used to indicate the author's comments. All other typeface represents the quoted text of the Guidelines and Codes cited.

*** Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines addressing: director responsibilities; director qualification standards; director orientation and continuing education; director compensation; annual board performance evaluation; director access to management; management succession; and board access, as necessary and appropriate, to independent advisors. The double asterisk next to a heading indicates a topic that must be addressed in a domestic (US) NYSE-listed company's guidelines.

OVERVIEW				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
<u>Code</u>: *Report of the NACD Blue Ribbon Commission on Director Professionalism (November 1996, reissued 2001, 2005, 2011)* <u>Issuing Body</u>: *National Association of Corporate Directors ("NACD")* <u>Legal Basis and Compliance</u>: *Voluntary* <u>Objective</u>: *Improve quality of board (supervisory) governance; improve governance-related information available to equity markets* <u>Scope</u>: *Listed companies; encouraged to all companies* <u>Predominant Board Structure (listed companies)</u>: *Unitary*	<u>Code</u>: *The UK Corporate Governance Code (December 1992, most recently revised June 2010) (formerly known as the Report of the Committee on the Committee on the Financial Aspects of Corporate Governance (Cadbury Report) and the Combined Code).* <u>Issuing Body</u>: *The Financial Reporting Council ("FRC"), a UK association that includes representatives of business, accountancy, law, government and the public sector* <u>Legal Basis and Compliance</u>: *The Code includes Principles, which are mandatory; and Provisions, which are to be observed on a comply or explain basis.* <u>Objective</u>: *Improve quality of board (supervisory) governance; improve governance-related information available to equity markets; improve investor confidence by raising standards of corporate governance* <u>Scope</u>: *Listed companies (with a Premium Listing of equity shares)* <u>Predominant Board Structure (listed companies)</u>: *Unitary*	<u>Code</u>: *The Corporate Governance Code of Listed Corporations (October 2003, revised April 2010)* <u>Issuing Bodies</u>: *Mouvement des Enterprises de France ("MEDEF") and Association Française des Entreprises Privées ("AFEP")* <u>Legal Basis and Compliance</u>: *Disclosure (comply or explain)* <u>Objectives</u>: *Improve quality of board (supervisory) governance; improve quality of governance-related information available to equity markets* <u>Scope</u>: *Listed companies* <u>Predominant Board Structure (listed companies)</u>: *Unitary* *Note that listed companies in France are permitted to choose which corpus of corporate governance recommendations to comply with (e.g., small and medium-sized enterprises may prefer to follow the Middlenext corporate governance recommendations issued December 2009).*	<u>Code</u>: *German Corporate Governance Code (February 2002, most recently revised May 2010)* <u>Issuing Body</u>: *Government Commission on Corporate Governance ("Cromme Commission")* <u>Legal Basis and Compliance</u>: *This Code includes Recommendations, which are to be observed on a comply or explain basis and which are indicated by use of the word "shall"; Suggestions, which are optional and which are indicated by terms such as "should" or "can"; and passages which do not use these terms and which are mandatory under applicable law (Cf. Foreword)* <u>Objective</u>: *Improve companies' performance, competitiveness and/or access to capital; improve quality of governance-related information available to equity markets* <u>Scope</u>: *Listed companies, encouraged to all companies* <u>Predominant Board Structure (listed companies)</u>: *Two-tier*	<u>Code</u>: *OECD Principles of Corporate Governance (April 1999, revised April 2004)* <u>Related Document</u>: *Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets – A Report to the OECD ("the Millstein Report") (April 1998)* <u>Issuing Body</u>: *Organisation for Economic Cooperation & Development ("OECD"), an intergovernmental organisation* <u>Legal Basis and Compliance</u>: *Voluntary* <u>Objective</u>: *Improve companies' performance, competitiveness and/or access to capital* <u>Scope</u>: *Listed companies; encouraged to all companies*

KEY AGREED PRINCIPLES[1]

I. BOARD RESPONSIBILITY FOR GOVERNANCE

Governance structures and practices should be designed by the board to position the board to fulfill its duties effectively and efficiently.

The board of directors, as the central mechanism for oversight and accountability in our corporate governance system, is charged with the direction of the corporation, including responsibility for deciding how the board itself should be organized, how it should function, and how it should order its priorities. The board's fiduciary objective is long-term value creation for the corporation; governance form and process should follow.

Shareholders and management have important viewpoints about governance structures and processes, and shareholders elect directors and have authority for certain critical decisions. However, it is the board that is charged with selecting and evaluating senior executives; planning for succession; monitoring performance; overseeing strategy and risk; compensating executives; approving corporate policies and plans; approving material capital expenditures and transactions not in the ordinary course of business; ensuring the transparency and integrity of financial disclosures and controls; providing oversight of compliance with applicable laws and regulations; and setting the "tone at the top." Ultimately, therefore, the board must decide how best to position itself to fulfill its fiduciary obligations.

The corporation today faces pressures and scrutiny from a variety of stakeholders (for example, employees, customers, suppliers, special interest groups, communities, politicians, and regulators) having diverse interests in its operation and success. Moreover, shareholders are increasingly diverse and the capital markets and the business and social environment are increasingly complex and challenging. In addition to individuals who hold shares directly, investors now include a growing variety of entities that invest monies on behalf of their beneficiaries and have diverse time horizons, strategies, and interests in the corporation. These include hedge funds, private equity and venture capital funds, public and private pension funds, mutual funds, sovereign wealth funds, insurance companies, banks and other types of lenders, and derivative product holders. In responding to the pressures facing the corporation, the board must understand the diverse interests of stakeholders and investors, and consider competing demands and pressures as necessary and appropriate while ensuring that the corporation is positioned to create the long-term value that all shareholders have an interest in as a unified body.

This is the context in which the board must order its governance structures and processes, providing both oversight and guidance to management regarding strategic planning, risk assessment and management, and corporate performance. Serving as a director is demanding and—in addition to significant substantive knowledge and experience relevant to the business and governance needs of the company—requires integrity, objectivity, judgment, diplomacy, and courage.

[1] Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies (National Association of Corporate Directors, 2008) (hereinafter "Key Agreed Principles"), available at http://www.nacdonline.org/files/NACDKeyAgreedPrinciples_1283432229581.pdf.

I.A. The Corporate Objective & Mission of the Board of Directors[2]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
The objective of the corporation (and therefore of its management and board of directors) is to conduct its business activities so as to enhance corporate profit and shareholder gain. In pursuing this corporate objective, the board's role is to assume accountability for the success of the enterprise by taking responsibility for the management, in both failure and success. This means selecting a successful corporate management team, overseeing corporate strategy and performance, and acting as a resource for management in matters of planning and policy. (p. 1) Among the most important missions of the board is ensuring that shareholder value is both enhanced through corporate performance and protected through adequate internal financial controls. (p. 8) *See* Topic Heading I.B, *below*. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON BOARD LEADERSHIP (2004).	Boards of directors are responsible for the governance of their companies. …The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting. (p. 1) Every company should be headed by an effective board, which is collectively responsible for the long-term success of the company. (Main Principle A.1) The board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed. The board should set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met. (Supporting Principle A.1) *See* Topic Heading I.B, *below*.	Regardless of its membership or how it is organised, the Board of Directors is and must remain a collegial body representing all shareholders collectively. It is required to act at all times in the interests of the company. (¶ 1.1) In exercising its statutory prerogatives, the Board of Directors is carrying out the main missions below: it defines the corporation's strategy, appoints the executive directors in charge of managing the corporation in line with that strategy, selects the form of organisation (separation of the offices of chairman and chief executive officer or combination of such offices), and monitors the management and secures the quality of information provided to shareholders and to the markets, through the accounts or in connection with major transactions. (¶ 1.2) It is not desirable, having regard to the great diversity of listed corporations, to impose formal and identical ways of organisation and operation for all Boards of Directors. The organisation of the Board's work, and likewise its membership, must be suited to the shareholder make-up, to the size and nature of each firm's business, and to the particular circumstances facing it. Each Board is the best judge of this, and its foremost responsibility is to adopt the modes of organisation and operation enabling it to carry out its mission in the best possible manner. (¶ 1.3) French law offers an option between a unitary formula (Board of Directors) and a two-tier formula (Supervisory Board and Management Board) for all corporations, including listed corporations. (¶ 3.1) The Board of Directors represents all the shareholders. It is collectively accountable for performance of its assignments to the meeting of shareholders . . . . (¶ 5.1) *See* ¶ 5.2 (The Board of Directors must take care not to infringe upon the specific powers of the shareholders if the transaction that it proposes is such as to modify, in fact or in law, the object[ive]s of the company, which is the very basis of the contract founding the corporation.). *See also* Topic Heading I.B, *below*.	[T]he obligation of the Management Board and the Supervisory Board [is] to ensure the continued existence of the enterprise and its sustainable creation of value in conformity with the principles of the social market economy (interest of the enterprise). (Foreword) [T]he General Meeting resolves on the Articles of Association, the purpose of the company, amendments to the Articles of Association and essential corporate measures…. (§ 2.2.1) *Supervisory Board* The Supervisory Board appoints, supervises and advises the members of the Management Board and is directly involved in decisions of fundamental importance to the enterprise . . . . The representatives elected by the shareholders and the representatives of the employees are equally obliged to act in the enterprise's best interests. (Foreword) *Management Board* The Management Board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise. (Foreword) The Management Board coordinates the enterprise's strategic approach with the Supervisory Board and discusses the current state of strategy implementation with the Supervisory Board in regular intervals. (§ 3.2) The Management Board is responsible for independently managing the enterprise in the interest of the enterprise, thus taking into account the interests of the shareholders, its employees and other stakeholders, with the objective of sustainable creation of value. (§ 4.1.1) The Management Board develops the enterprise's strategy, coordinates it with the Supervisory Board and ensures its implementation. (§ 4.1.2) *See* Topic Heading I.B, *below*.	The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders. B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly. C. The board should apply high ethical standards. It should take into account the interests of stakeholders. (Principle VI) *See* Principle I (The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.). *See* Millstein Report, Perspective 21 ([C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term.). *See also* Topic Heading I.B, *below*.

[2] *See* American Bar Association, Corporate Director's Guidebook (6th ed. 2011) (hereinafter "2011 ABA Guidebook") at 11 ("Directors have a responsibility to act in the best interests of the corporation and its shareholders. To do so, they must focus on maximizing the value of the corporation for the benefit of its shareholders."); *id*. at 13 ("[T]he board's principal responsibilities are to select the top management for the corporation, plan for succession, and provide general direction and guidance with respect to the corporation's strategy and management's conduct of the business."); Business Roundtable, Statement on Corporate Governance (September 1997) (hereinafter "1997 BRT Statement") at 1 ("[T]he principal objective of a business enterprise is to generate economic returns to its owners."); Business Roundtable, Statement on Corporate Governance and American Competitiveness (1990) (hereinafter "1990 BRT Statement") at 7 ("The boards of directors of American corporations play a central role in corporate governance. Their principal responsibility is to exercise governance so as to ensure the long-term successful performance of their corporation.").

I.B. Board Job Description / Director Responsibilities[3]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
[E]ach board has the freedom – and, the Commission believes, the obligation – to define its role and duties in detail. (p. 1) [B]oard responsibilities include: • Approving a corporate philosophy and mission. • Selecting, monitoring, evaluating, compensating, and – if necessary – replacing the CEO. . ., and ensuring management succession. • Reviewing and approving management's strategic and business plans . . . . • Reviewing and approving the corporation's financial objectives, plans, and actions . . . . • Reviewing and approving material transactions not in the ordinary course of business. • Monitoring corporate performance against the strategic and business plans . . . . • Ensuring ethical behavior and compliance with laws and regulations, auditing and accounting principles, and the corporation's own governing documents. • Assessing its own effectiveness . . . . • Performing such other functions as are prescribed by law or are assigned to the board in the corporation's governing documents. (pp. 1-2) Boards should periodically review board and CEO role descriptions to accommodate changes in corporate governance and company operations. (p. 4) *See generally* Chapter 2, Processes: How Boards Should Fulfill Their Responsibilities, pp. 3-6. *See also* Topic Heading I.A, *above*.	All directors must act in what they consider to be the best interests of the company, consistent with their statutory duties. (Supporting Principle A.1) The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management. (Code Provision A.1.1) As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. (Main Principle A.4) Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning. (Supporting Principle A.4) *See* Topic Heading I.A, *above*.	The Board of Directors . . . calls the meeting [of shareholders] and sets its agenda, appoints and dismisses the chairman, the chief executive officer, and deputy chief executive officers in charge of the corporation's management, supervises their management, determines the annual accounts submitted to the meeting of shareholders for approval, and reports on its action in the annual report. (¶ 5.1) Any director of a listed corporation should consider himself or herself as being bound by the following obligations: • Before accepting office, the director should ensure that he or she has taken cognisance of the general or specific obligations connected with that office. . . • The director should be a shareholder . . . . • [T]he director represents all the shareholders. . . . • The director is bound to report to the Board any conflict of interest . . . . • The director should apply to his or her duties the necessary time and attention . . . . • The director should be regular in attendance and take part in all meetings of the Board . . . . • The director is under a duty to obtain information . . . . • [T]he director should consider that he or she is bound by a strict confidentiality duty . . . . • [T]he director should abstain from [insider trading and] disclose transactions in the corporation's securities . . . . • [T]he director should attend the meeting of shareholders. (¶17) *See also* Topic Headings I.A, *above*, and II.C, *below*.	The Management Board and Supervisory Board cooperate closely to the benefit of the enterprise. (§ 3.1) <u>*Supervisory Board*</u> For transactions of fundamental importance, the Articles of Association or the Supervisory Board specify provisions requiring the approval of the Supervisory Board. They include decisions or measures which fundamentally change the asset, financial or earnings situations of the enterprise. (§ 3.3) The task of the Supervisory Board is to advise regularly and supervise the Management Board in the management of the enterprise. It must be involved in decisions of fundamental importance to the enterprise. (§ 5.1.1) The Supervisory Board appoints and dismisses the members of the Management Board. (§ 5.1.2) The Supervisory Board shall issue Terms of Reference. [regulating Management Board responsibilities]. (§ 5.1.3) <u>*Management Board*</u> [T]he shareholders' General Meeting is to be convened by the Management Board…. (§ 2.3.1) The Management Board ensures that all provisions of law and the enterprise's internal policies are abided by and works to achieve their compliance by group companies (compliance). (§ 4.1.3) The Management Board ensures appropriate risk management and risk controlling in the enterprise. (§ 4.1.4) By-Laws shall govern the work of the Management Board…. (§ 4.2.1) *See* Topic Headings I.A, *above*, and II.C, *below*.	The board should fulfill certain key functions, including: 1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures. 2. Monitoring the effectiveness of the company's governance practices . . . . 3. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning. 4. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders. 5. Ensuring a formal and transparent board nomination and election process. 6. Monitoring and managing potential conflicts of interest of management, board members and shareholders . . . . 7. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place . . . . 8. Overseeing the process of disclosure and communications. (Principle VI.D) The board should be able to exercise objective independent judgment on corporate affairs. (Principle VI.E) *See* Topic Heading I.A, *above*.

[3] Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that clearly articulate the responsibilities of directors. There is no comparable requirement for Nasdaq-listed companies. *See* <u>2011 ABA Guidebook</u> at 12 ("In general, state laws provide that all corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and its business and affairs shall be managed by or under the direction of, and subject to the oversight of, the board. . . . State corporate statutes emphasize the board's responsibility to make major decisions on behalf of the corporation and to oversee the management of the corporation.").

KEY AGREED PRINCIPLES

II. CORPORATE GOVERNANCE TRANSPARENCY

Governance structures and practices should be transparent— and transparency is more important than strictly following any particular set of best practice recommendations.

A variety of structures and practices may support and further effective governance. Boards should tailor governance structures and practices to the needs of the company in a pragmatic search for what is most effective and efficient. Governance best practices should be adopted thoughtfully, and not by rote reliance on the recommendations posited by any entity or group. However, every board should strive to understand generally the parameters of and variations in standards of best practice recommended by NACD, Business Round Table, and other thoughtful proponents of effective governance practices….

Every board should explain, in proxy materials and other communications with shareholders, why the governance structures and practices it has developed are best suited to the company. Some boards may choose to disclose their own practices in relation to a set of recognized best practice recommendations, identifying those areas where their practices differ and explaining the board's rationale for such differences. Whether or not a board discloses its practices against a defined set of recommendations, it is the disclosure of governance structures and practices generally and the rationale for divergences from widely accepted best practices that is important. Disclosure of the practices adopted and adapted by the board, along with the rationale for unusual aspects, is far preferable to the adoption of any prescribed set of best practices. Valuing disclosure over rigid adoption of any set of recommended best practices encourages boards to experiment and develop approaches that address their own particular needs, and avoids rigidity. Boards that explain their practices should be rewarded and not penalized for decisions to adapt best practice to their own needs.

II.A. Corporate Governance Guidelines & Related Disclosure[4]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
In general, boards are permitted, but not required, to appoint committees to assist in the management of their responsibilities. However, publicly traded companies listed on the major U.S. exchanges are required to have an audit committee composed of independent directors. Moreover, certain proxy rules and regulations mandate disclosure of certain committee structures and functions, which may encourage the appointment of board nominating and compensation committees. Many companies have elected to elaborate on these requirements and responsibilities and on methods for the board to fulfill them by developing board guidelines . . . . These corporate elaborations on board responsibilities serve two purposes: first, they show that boards understand their role and the importance of independence; second, they demonstrate that directors have taken steps to exercise their authority in this role. Both of these purposes contribute to a culture of board professionalism, and prospective board members should ask if such guidelines exist when considering joining any board. (p. 2) Boards should establish guidelines for . . . committees . . . . (p. 5) [T]o ensure board independence: [b]oards should define and disclose to shareholders a definition of "independent director." (p. 10) Shareholders' understanding of board and director assessment processes and criteria is indispensable to both board credibility and shareholders' ability to appraise the board's recommended resolutions and proposed slate of directors. Boards should disclose evaluation procedures to shareholders in the proxy statement or other shareholder communication. Board disclosure of procedures is distinct from sharing the substance of such deliberations, which should be confidential. (p. 16)	Chairmen are encouraged to report personally in their annual statements how the principles relating to the role and effectiveness of the board (in Sections A and B of the new Code) have been applied. Not only will this give investors a clearer picture of the steps taken by boards to operate effectively but also, by providing fuller context, it may make investors more willing to accept explanations when a company chooses to explain rather than to comply with one or more provisions. Above all, the personal reporting on governance by chairmen as the leaders of boards might be a turning point in attacking the fungus of ''boiler-plate'' which is so often the preferred and easy option in sensitive areas but which is dead communication. (p. 3) The nomination committee should make available its terms of reference, explaining its role and . . . authority . . . . (Code Provision A.4.1) A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. (Code Provision B.2.4) [T]erms and conditions of appointment of non-executive directors should be made available…. (Code Provision B.3.2) The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. (Code Provision B.6.1) The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board. (Code Provision D.2.1) The terms of reference of the audit committee, including its role and the authority delegated to it by the board, should be made available. A separate section of the annual report should describe the work of the committee in discharging those responsibilities. (Code Provision C.3.3) *See* Schedule B: Disclosure of corporate governance arrangement (pp. 28-35).	Listed corporations should report, with particulars, in their reference documents or in their annual reports, on implementation of these [Code] recommendations and, if applicable, explain the reasons why any of them may not have been implemented. (¶ 22) [I]t is essential for the shareholders and third parties to be fully informed of the choice made between separation of the offices of chairman and chief executive officer and maintenance of these positions as a single office. (¶ 3.2) [I]dentification of independent directors is carried out not only by the corporation's management but by the Board itself. (¶ 8.3) [S]hareholders should be informed each year in the annual report of the evaluations [of the board and management] carried out and, if applicable, of any steps taken as a result. (¶ 9.3) The number of meetings of the Board of Directors and of the committees held during the past financial year should be mentioned in the annual report, which must also provide the shareholders with any relevant information relating to the directors' attendance . . . . (¶ 10) Rules laying down the duties and mode of operation [of the audit committee] should be drafted by the audit committee and approved by the Board. (¶ 14.3) Rules laying down the duties and mode of operation [of the compensation committee] should be drafted by the compensation committee and approved by the Board. (¶ 16.2)	The Management Board and Supervisory Board shall report each year on the enterprise's Corporate Governance in the Annual Report (Corporate Governance Report). This includes the explanations of possible deviations from the recommendations of this Code. The company shall keep previous declarations of conformity with the Code available for viewing on its website for five years. (§ 3.10) The concrete objectives of the Supervisory Board [with respect to Supervisory Board composition] and the status of the implementation shall be published in the Corporate Governance Report. (§ 5.4.1) If a member of the Supervisory Board took part in less than half of the meetings … in a financial year, this shall be noted in the Report of the Supervisory Board. (§ 5.4.7) In its report, the Supervisory Board shall inform the General Meeting of any conflicts of interest … together with their treatment. (§ 5.5.3) Beyond the statutory obligation to report and disclose dealings in shares of the company without delay, the ownership of shares in the company or related financial instruments by Management Board and Supervisory Board members shall be reported if these directly or indirectly exceed 1% of the shares issued by the company. If the entire holdings of all members of the Management Board and Supervisory Board exceed 1% of the shares issued by the company, these shall be reported separately according to Management Board and Supervisory Board. The aforesaid disclosures shall be included in the Corporate Governance Report. (§ 6.6) *See* § 6.2 (*disclosure of significant changes in voting rights*).	Disclosure should include, but not be limited to, material information on: . . . 2. Company objectives. 3. Major share ownership and voting rights. 4. [I]nformation about board members [including] whether they are regarded as independent . . . . 8. Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented. (Principle V.A.8) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. (Principle II.D) Particularly for enforcement purposes, and to identify potential conflicts of interest, related party transactions and insider trading, information about record ownership may have to be complemented with information about beneficial ownership. In cases where major shareholdings are held through intermediary structures or arrangements, information about the beneficial owners should therefore be obtainable at least by regulatory and enforcement agencies and/or through the judicial process. (Annotation to Principle V.A.3) [C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value long term. (Millstein Report, Perspective 21)

[4] Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines. There is no comparable requirement for Nasdaq-listed companies. *See* 2011 ABA Guidebook at 104 ("[The nominating and corporate governance] committee typically addresses . . . developing, recommending to the board, and monitoring a statement of corporate governance principles or guidelines…").

II.B. Content, Character & Accuracy of Disclosure				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered directly, but see Topic Headings II.A, *above, and* II.C & VII.G, *below.*	The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management. (Code Provision A.1.1) The annual report should identify the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the board committees. It should also set out the number of meetings of the board and its committees and individual attendance by directors. (Code Provision A.1.2) The board should present a balanced and understandable assessment of the company's position and prospects. (Main Principle C.1) The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements. (Supporting Principle C.1) The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and there should be a statement by the auditor about their reporting responsibilities. (Code Provision C.1.1) The directors should include in the annual report an explanation of the basis on which the company generates or preserves value over the longer term (the business model) and the strategy for delivering the objectives of the company. (Code Provision C.1.2) The directors should report in annual and half-yearly financial statements that the business is a going concern, with supporting assumptions or qualifications as necessary. (Code Provision C.1.3) The board should state in the annual report the steps they have taken to ensure that the members of the board, and, in particular, the non-executive directors, develop an understanding of the views of major shareholders about the company, for example through direct face-to-face contact, analysts' or brokers' briefings and surveys of shareholder opinion. (Code Provision E.1.2)	Each listed company must be equipped with reliable procedures for the identification and assessment of its commitments and risks, and provide shareholders and investors with relevant information in this area. For such purposes: • the annual report should specify the internal procedures set up to identify and monitor off-balance-sheet-commitments, and to evaluate the corporation's material risks; • each company must develop and clarify the information provided to shareholders and investors regarding off-balance-sheet-commitments and material risks, and disclose the company's ratings by financial rating agencies as well as any changes occurred during the financial year. (¶ 2.2) In addition to the forms of disclosure required by decree, the annual report is the medium for the disclosure to which shareholders are entitled, and the Board should report to them the grounds and justification for its decisions. (¶ 3.2) The annual report should detail the dates of the beginning and expiration of each director's term of office, so as to make clear the existing staggering [of terms of office of directors on classified boards]. It should also mention, for each director, in addition to the list of offices and positions held in other corporations, his or her age and principal position, and a list by name of members of each Board committee. (¶ 12) See ¶¶ 14.3, 15.2.2 and 16.2 (the annual report should include statements on the activities of the audit, compensation and nominations committees during the elapsed financial year).	The Management Board must disclose insider information … without delay…. (§ 6.1) The company's treatment of all shareholders in respect of information shall be equal. All new facts made known to financial analysts and similar addressees shall also be disclosed to the shareholders without delay. (§ 6.3) Any information which the company discloses abroad, in line with corresponding capital market law provisions, shall also be disclosed domestically without delay. (§ 6.5) The Consolidated Financial Statements and the Condensed Consolidated Financial Statements in the half-year financial report and the quarterly financial report shall be prepared under observance of internationally recognised accounting principles. (§ 7.1.1) The Consolidated Financial Statements must be prepared by the Management Board and examined by the auditor and Supervisory Board. Half-year and any quarterly financial reports shall be discussed with the Management Board by the Supervisory Board or its Audit Committee prior to publication. In addition, the Financial Reporting Enforcement Panel and the Federal Financial Supervisory Authority are authorized to check that the Consolidated Financial Statements comply with the applicable accounting regulations (enforcement). The Consolidated Financial Statements shall be publicly accessible within 90 days of the end of the financial year; interim reports shall be publicly accessible within 45 days of the end of the reporting period. (§ 7.1.2) *See generally* § 6, Transparency, *and* § 7, Reporting and Audit of the Annual Financial Statements.	The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. (Principle V) Disclosure should include, but not be limited to, material information on: 1. The financial and operating results of the company. 2. Company objectives. 3. Major share ownership and voting rights. 4. Remuneration policy for members of the board and key executives, and information about board members, including . . . whether they are regarded as independent by the board. 5. Related party transactions. 6. Foreseeable risk factors. 7. Issues regarding employees and other stakeholders. 8. Governance structures and policies . . . . (Principle V.A) Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure. (Principle V.B) Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users. (Principle V.E) *See* Millstein Report, Perspectives 9-10 (Regulators should require that corporations disclose accurate, timely information [and] cooperate internationally in developing clear, consistent and comparable standards for disclosure.).

II.C. Disclosure Regarding Compensation[5]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should disclose fully in the proxy statement the philosophy and process used to determine director compensation and the value of all elements of compensation. (p. 5)	Where a company releases an executive director to serve as a non-executive director elsewhere, the remuneration report should include a statement as to whether or not the director will retain such earnings and, if so, what the remuneration is. (Code Provision D.1.2) There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. (Main Principle D.2) Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company. (Code Provision D.2.1)	The annual report of listed companies must include a chapter, determined with the support of the compensation committee, informing shareholders of the compensation received by executive directors. This chapter must contain the following: • A detailed presentation of the policy for the determination of the compensation paid to executive directors . . . . • Information concerning the pension systems or commitments provisioned by the company. • A detailed presentation of each executive director's individual compensation, compared with that of the preceding financial year, and broken down between fixed components and variable components. • The aggregate and individual amount of directors' fees paid to directors . . . . • A description of the policy for the award of stock options to all beneficiaries . . . . • A description of the share award policy applicable to employees . . . . • The valuation of stock options and performance shares awarded to executive directors (¶ 21.2) [R]ules for allocation of attendance fees and individual amounts of payments made to directors should be set out in the annual report. (¶ 18.3) *See* ¶ 12 (The number of shares in the corporation held personally by each director should appear in the annual report and in the notice calling the meeting of shareholders.). *See* Annexe: Standardised Presentation of the Compensation of Executive Directors of Companies Whose Securities are Admitted to Trading on a Regulated Market	*Supervisory Board Compensation* The compensation of the members of the Supervisory Board shall be reported individually in the Corporate Governance Report, subdivided according to components. Also, payments made by the enterprise to the members of the Supervisory Board or advantages extended for services provided individually, in particular, advisory or agency services, shall be listed separately on an individual basis in the Corporate Governance Report. (§ 5.4.6) *Management Board Compensation* The total compensation of each one of the members of the Management Board is to be disclosed by name, divided into fixed and variable compensation components. The same applies to promises of benefits that are granted to a Management Board member in case of premature or statutory termination of the function of a Management Board member or that have been changed during the financial year. Disclosure may be dispensed with if the General Meeting has passed a resolution to this effect by three-quarters majority. (§ 4.2.4) Disclosure shall be made in a compensation report which as part of the Corporate Governance Report describes the compensation system for Management Board members in a generally understandable way. (§ 4.2.5) The Corporate Governance Report shall contain information on stock option programmes and similar securities-based incentive systems of the company. (§ 7.1.3)	Disclosure should include, but not be limited to, material information on . . . [r]emuneration policy for members of the board and key executives . . . . (Principle V.A.4) Information about board and executive remuneration is . . . of concern to shareholders. Of particular interest is the link between remuneration and company performance. Companies are generally expected to disclose information on the remuneration of board members and key executives so that investors can assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to company performance. Disclosure on an individual basis (including termination and retirement provisions) is increasingly regarded as good practice and is now mandated in several countries. In these cases, some jurisdictions call for remuneration of a certain number of the highest paid executives to be disclosed, while in others it is confined to specified positions. (Annotation to Principle V.A.4)

[5] The Dodd-Frank Act requires companies to include new "pay vs. performance" and internal "pay equity" disclosures in certain filings.

II.D. Disclosure Regarding Charitable and Political Contributions				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered.	*Not covered.*	*Not covered.*	*Not covered.*	*Not covered.*

KEY AGREED PRINCIPLES

III. DIRECTOR COMPETENCY & COMMITMENT

Governance structures and practices should be designed to ensure the competency and commitment of directors.

A board's effectiveness depends on the competency and commitment of its individual members, their understanding of the role of a fiduciary and their ability to work together as a group. Obviously, the foundation is an understanding of the fiduciary role and the basic principles that position directors to fulfill their responsibilities of care, loyalty, and good faith.

However, an effective board is far more than the sum of its parts: it should bring together a variety of skill sets, experiences, and viewpoints in an environment conducive to reaching consensus decisions after a full and vigorous discussion from diverse perspectives. While the board should reflect a mix of diverse experiences and skill sets relevant to the business and governance of the company, each board must determine for itself, and review periodically, what those experiences and skill sets are and what the appropriate mix should be as the company faces different challenges over time.

Typically, a board will want some persons with specialized knowledge of relevant businesses and industries and the business environment in which the company functions who can provide insight regarding strategy and risk. Director qualifications and criteria should be designed to position the board to provide oversight of the business.

Directors need to exhibit a commitment of both time and active attention to fulfill their fiduciary obligations. Generally, that means that directors should ensure that they have the time to attend board and committee meetings and the annual meeting of shareholders, prepare for meetings, stay informed about issues that are relevant to the company, consult with management as needed, and address crises should crises arise.

The board may wish to articulate guidelines that encourage directors to limit their other commitments. Such guidelines assist in communicating expectations about the commitment that is expected. Given the considerable variation in individual capacity, boards should apply their judgment and assess directors' commitment through their actions, rather than rely on rigid standards.

III.A. Board Membership Criteria / Director Qualification Standards[6]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
To be considered for board membership, individual directors should possess all of the following personal characteristics: • Integrity and Accountability . . . . • Informed Judgment . . . . • Financial Literacy . . . . • Mature Confidence. . . . [and] • High Performance Standards. (pp. 7-8) The Commission recommends that the board as a whole should possess all of the following core competencies, with each candidate contributing knowledge, experience, and skills in at least one domain: • Accounting and Finance . . . . • Business Judgment . . . . • Management . . . . • Crisis Response. . . . . • Industry Knowledge . . . . • International Markets . . . . • Leadership. . . . [and] • Strategy/Vision. (pp. 8-9) Boards should seriously consider . . . the distinctive skills, perspectives, and experiences that candidates diverse in gender, ethnic background, geographic origin and professional experience . . . can bring to the boardroom. (p. 13) *See also* Topic Heading VIII.B, *below*.	The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively. (Main Principle B.1) The search for board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender. (Supporting Principle B.2) *See* Supporting Principle B.2 (The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience . . . .). *See also* Provision B.7.2 (The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected.).	The first quality of a Board of Directors is in its membership: directors who are, naturally, honest, but also competent, who understand the corporation's operations, are concerned with the best interests of all shareholders, and are sufficiently involved in the definition of strategy and in discussions to play an active part in decision making, which is collegial, in order subsequently to support any decisions effectively. (¶ 6.1) Each Board should consider what would be the desirable balance within its membership and within that of the committees of Board members which it has established, in particular as regards the representation of men and women and the diversity of competencies, and take appropriate action to assure the shareholders and market that its duties will be performed with the necessary independence and objectivity. In order to reach such balance, the objective is that each board shall reach and maintain a percentage of at least 20% of women within a period of three years and at least 40% of women within a period of six years, from the date of publication of this recommendation or from the date of the listing of the company's shares on a regulated market, whichever is later. The directors who are permanent representatives of the legal person and the directors representing employees/shareholders are taken into account in order to determine these percentages, but such is not the case as regards directors elected by the employees. When the board is comprised of fewer than 9 members, the gap at the end of six years, between the number of directors of each gender, may not be in excess of two. In addition, those boards that do not presently have any female member must nominate a female director at the latest upon the second general meeting following the publication of the recommendation, either through appointment of a new director or replacement of a director whose term of office has expired. (¶ 6.3)	<u>*Supervisory Board*</u> The Supervisory Board has to be composed in such a way that its members as a group possess the knowledge, ability and expert experience required to properly complete its tasks. The Supervisory Board shall specify concrete objectives regarding its composition which, whilst considering the specifics of the enterprise, take into account the international activities of the enterprise, potential conflicts of interest, an age limit to be specified for the members of the Supervisory Board and diversity. These concrete objectives shall, in particular, stipulate an appropriate degree of female representation. Recommendations by the Supervisory Board to the competent election bodies shall take these objectives into account. (§ 5.4.1) To permit the Supervisory Board's independent advice and supervision of the Management Board … [n]ot more than two former members of the Management Board shall be members of the Supervisory Board, and Supervisory Board members shall not exercise directorships or similar positions or advisory tasks for important competitors of the enterprise. (§ 5.4.2) <u>*Management Board*</u> *Not covered directly*, *but see* § 5.1.2 (The Supervisory Board appoints and dismisses the members of the Management Board . . . . The Supervisory Board can delegate preparations for the appointment of members of the Management Board, as well as for the handling of the conditions of the employment contracts including compensation, to committees.).	[B]oards in many companies have established nomination committees . . . to facilitate and coordinate the search for a balanced and qualified board. . . . To further improve the selection process, the Principles also call for disclosure of the experience and background of candidates for the board and the nomination process, which will allow an informed assessment of the abilities and suitability of each candidate. (Annotation to Principle II.C.3) [T]he board has a key role in identifying potential members for the board with the appropriate knowledge, competencies and expertise to complement the existing skills of the board and thereby improve its value-adding potential for the company. (Annotation to Principle VI.D.5) *See* Annotation to Principle II (Shareholders' rights to influence the corporation center on certain fundamental issues, such as . . . the composition of the board.). *See also* Topic Heading VIII.B, *below*.

[6] On December 16, 2009, the SEC amended its rules to require disclosure, for each director and nominee, of the specific experience, qualifications, attributes or skills that led the board to conclude that the person should serve as a director of the company, in light of the company's business and structure, as well as whether and, if so, how the nominating committee considers diversity in identifying nominees for director. If the nominating committee or the board has a policy with regard to the consideration of diversity in identifying director nominees, the new rules require disclosure of how this policy is implemented and how the nominating committee or the board assesses the effectiveness of its policy. Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that address qualification standards for directors. There is no comparable requirement for Nasdaq-listed companies. *See* <u>2011 ABA Guidebook</u> at 43 ("[B]oards should identify the personal qualities required of individual directors (such as integrity, candor, capacity for objective judgment) and identify the overall mix of expertise, experience, independence and diversity of backgrounds it seeks . . . The goal is to create a body with the right mix of skill sets, experiences, and diverse viewpoints to contribute to corporate success."); NACD, <u>Report of the NACD Blue Ribbon Commission on Performance Evaluation of Chief Executive Officers, Board and Directors</u> (1994) (hereinafter "<u>1994 NACD Report</u>") at 7-8 (Directors "should be chosen on the basis of . . . talent, expertise, and accomplishment. Diversity of race, gender, age, and nationality . . . may also be taken into account . . . Diversity should not, however, be confused with constituency representation . . . Also, each director should be a shareholder of the corporation."); <u>1990 BRT Statement</u> at 9, 11-12 ("Effective boards are composed of individuals who are highly experienced in business, investments, large organizations or public affairs, [and] willing and able to commit the time and effort needed to be an effective director.").

III.B. Commitment & Limits on Other Board Service[7]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
The commitment to director professionalism carries with it a responsibility for near-perfect attendance at board and committee meetings, including specially called sessions. It also carries the responsibilities to: (1) rigorously prepare prior to a meeting (especially by critically reading all materials provided); (2) give undivided attention at each meeting; and (3) actively participate in meetings through relevant and thought-provoking questions and comments. (p. 10) [T]he board should consider guidelines that limit the number of positions on other boards, subject to individual exceptions – for example, for CEOs and senior executives, one or two; for others fully employed, three or four; and for all others, five or six. (p. 20)	All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively. (Main Principle B.3) For the appointment of a chairman, the nomination committee should prepare a job specification, including an assessment of the time commitment expected, recognising the need for availability in the event of crises. A chairman's other significant commitments should be disclosed to the board before appointment and included in the annual report. Changes to such commitments should be reported to the board as they arise, and their impact explained in the next annual report. (Code Provision B.3.1) The letter of appointment [of non-executive directors] should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved, and the board should be informed of subsequent changes. (Code Provision B.3.2) The board should not agree to a full time executive director taking on more than one non-executive directorship in a FTSE 100 company nor the chairmanship of such a company. (Code Provision B.3.3)	The director should apply to his or her duties the necessary time and attention. If performing executive duties, he or she should not, in principle, agree to hold more than four other directorships in listed corporations, including foreign corporations, not affiliated with the [company] group. The director should be regular in his or her attendance and take part in all meetings of the Board, and any committees of which he or she is a member. (¶ 17)	*Supervisory Board* Not more than two former members of the Management Board shall be members of the Supervisory Board, and Supervisory Board members shall not exercise directorships or similar positions or advisory tasks for important competitors of the enterprise. (§ 5.4.2) Management Board members may not become members of the Supervisory Board of the company within two years after the end of their appointment unless they are appointed upon a motion presented by shareholders holding more than 25% of the voting rights in the company. In the latter case appointment to the chairmanship of the Supervisory Board shall be an exception to be justified to the General Meeting. (§ 5.4.4) Every member of the Supervisory Board must take care that he/she has sufficient time to perform his/her mandate. (§ 5.4.5) *Management Board* Members of the Management Board shall take on sideline activities, especially Supervisory Board mandates outside the enterprise, only with the approval of the Supervisory Board. (§ 4.3.5) Members of the Management Board of a listed company shall not accept more than a total of three Supervisory Board mandates in non-group listed companies or in supervisory bodies of companies with similar requirements. (§ 5.4.5)	Board members should be able to commit themselves effectively to their responsibilities. (Principle VI.E.3) Service on too many boards can interfere with the performance of board members. Companies may wish to consider whether multiple board memberships by the same person are compatible with effective board performance and disclose the information to shareholders. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders. Achieving legitimacy would also be facilitated by the publication of attendance records for individual board members (e.g., whether they have missed a significant number of meetings) and any other work undertaken on behalf of the board and the associated remuneration. (Annotation to Principle VI.E.3) It is important to disclose membership [on] other boards not only because it is an indication of experience and possible time pressures facing a member of the board, but also because it may reveal potential conflicts of interest and makes transparent the degree to which there are interlocking boards. (Annotation to Principle V.A.4)

[7] *See* 2011 ABA Guidebook at 43-44 ("Directors must devote substantial time and attention to their responsibilities, and the time required will vary considerably (depending on the size and complexity of the enterprise and the issues being addressed at a particular time). It is not uncommon for a director's total time commitment to involve 250 hours or more a year, including meeting preparation, travel, meeting attendance, informal consultation with other board members and management, and review of materials to keep up with corporate developments. . . . Certain situation, including change-of-control transactions, financial distress, compliance failures, financial restatements and management succession crises, also require substantially more time. Directors considering new or continued board service should carefully consider the time required to meet their responsibilities . . . Directors should not over-commit themselves . . . "); 2011 NACD Public Company Governance Survey (hereinafter "2011 NACD Survey") at 16 (Overall, respondents indicated spending on average 227.5 hours per year on board-related matters.); *id* at 27 (52.4% of respondents reported requiring directors to resign upon a change of professional status.); *id.* at 20 (44.3% of respondents reported having a policy restricting the number of boards a CEO may serve at any one time.); 2011 Spencer Stuart Board Index at 15 (74% of S&P 500 companies restrict the number of outside corporate boards their directors may join (up from 27% in 2006). Of the 142 boards that do not have numerical restrictions, 67 (44%) ask that directors notify the chairman in advance of accepting an invitation to join another company board and/or they encourage directors to "reasonably limit" their other board service. Among the 270 boards that impose a limit for all directors, 95% cap other directorships at 3, 4 or 5 boards, with 4 the most common. 69 boards place tighter restrictions on directors who are fully employed executives or CEOs of public companies; in these cases, the most common cap is 2 other outside boards.).

III.C. Director Orientation & Continuing Education[8]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
When first selected, many directors will not have extensive knowledge of the major businesses in which the company is engaged. Directors have an obligation to develop broad, current knowledge of all the company's major businesses, including, specifically, the relevant technology, markets, and economics, as well as the strengths and weaknesses of the company vis-à-vis its major competitors. Being an outstanding director also requires developing broad, current knowledge of all of the company's responsibilities, including the general legal principles applicable to directors' activities in fulfilling those responsibilities. Boards should select candidates who possess or are willing to develop broad, current knowledge of both critical issues affecting the company (including industry-, technology-, and market-specific information), and directorship roles and responsibilities (including the general legal principles that guide board members). (pp. 10-11) *See* p. 10 (A director should maintain leadership in the field of endeavor that attracted the board to select that director. For example, a person chosen for expertise in biotechnology should keep up-to-date in that field. A director who has retired from a CEO position but is invited to remain on the board should stay current with the world of business and the latest management thought and practice. Similarly, other persons who retire from the position they had when selected should remain up-to-date in their fields of expertise.).	All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge. (Main Principle B.4) The chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees. The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities. To function effectively, all directors need appropriate knowledge of the company and access to its operations and staff. (Supporting Principle B.4) The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board. As part of this, directors should avail themselves of opportunities to meet major shareholders. (Code Provision B.4.1) The chairman should regularly review and agree with each director their training and development needs. (Code Provision B.4.2)	One of the major requirements for appointment of a director consists of his or her business knowledge and judgment, but these cannot extend to specific prior knowledge of the corporation's organisation and activities. Each director should accordingly be provided, if he or she considers it to be necessary, with supplementary training relating to the corporation's specific features, its businesses and its markets. (¶ 11) *See* ¶ 14.3.1 ([A]udit committee members … should be provided, at the time of appointment, with information relating to the corporation's specific accounting, financial and operational features.).	The members of the Supervisory Board shall on their own take on the necessary training and further education measures required for their tasks. They shall be supported by the company appropriately. (§ 5.4.1)	[A]n increasing number of jurisdictions are now encouraging companies to engage in board training and voluntary self-evaluation that meets the needs of the individual company. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks through in-house training and external courses. (Annotation to Principle VI.E.3)

[8] Under NYSE listing rules, domestic listed companies' corporate governance guidelines are required to address the matter of orientation and continuing education of directors. There is no comparable requirement for Nasdaq-listed companies. *See* 2011 NACD Survey at 13 (93.3% agree or strongly agree that director education enhances board effectiveness. Although directors assert that director education is beneficial, 62.9% state that their board does not require continuing education.).

III.D. Board Size[9]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should determine the appropriate board size, and periodically assess overall board composition to ensure the most appropriate and effective board membership mix. (p. 4)	The board should be of sufficient size that the requirements of the business can be met and that changes to the board's composition and that of its committees can be managed without undue disruption, and should not be so large as to be unwieldy. (Supporting Principle B.1)	*Not covered directly, but see* ¶ 1.3 (It is not desirable, having regard to the great diversity of listed corporations, to impose formal and identical ways of or ganisation and operation for all Boards of Directors. The organisation of the Board's work, and likewise its membership, must be suited to the shareholder make-up, to the size and nature of each firm's business, and to the par-ticular circumstances facing it. Each Board is the best judge of this, and its foremost responsibility is to adopt the modes of organisation and operation enabling it to carry out its mission in the best possible manner.)	*Supervisory Board* *Not covered.* *Management Board* The Management Board shall be comprised of several persons and have a Chairman or Spokesman. By-Laws shall govern the work of the Management Board, in particular the allocation of duties among individual Management Board members, matters reserved for the Management Board as a whole, and the required majority for Management Board resolutions (unanimity or resolution by majority vote). (§ 4.2.1)	*Not covered directly, but see* Annotation to Principle VI (Board structures and procedures vary both within and among OECD countries. Some countries have two-tier boards that separate the supervisory function and the management function into different bodies…. Other countries have "unitary" boards, which bring together executive and nonexecutive board members. In some countries there is also an additional statutory body for audit purposes. The Principles are intended to be sufficiently general to apply to whatever board structure is charged with the functions of governing the enterprise and monitoring management.). *See also* Millstein Report, Perspective 15 ([B]oard structure . . . is not a "one-size-fits-all" proposition, and should be left, largely, to individual participants.).

[9] *See* 2011 ABA Guidebook at 42 ("Each board should determine the appropriate size to accommodate the corporation's needs, objectives, and circumstances. Factors that influence board size include the corporation's need for particular types of expertise on the board, the ability to meet applicable independence or other regulatory standards, the need to populate committees with appropriate expertise as required by regulatory or other board-determined standards, and the need for relationships with significant shareholders or other constituencies. Boards should balance these needs with the fact that a board that is too large can impede effectiveness."); 1994 NACD Report at 7 ("Ideally, a board should be small enough to permit thorough discussion of important issues, with enough 'air time' for each view presented, yet large enough to bring a sufficient variety of views and talents to the table."); 2011 NACD Survey at 8 (Mega-cap company boards average 11.8 members; large-cap company boards average 11 members; mid-cap company boards average 9.4 members, small-cap company boards average 8.5 members, micro-cap company boards average 7.9 members, and nano-cap company boards average 7.9 members.); 2011 Spencer Stuart Board Index at 14 ("The average size of S&P 500 boards has remained at 10.7 directors, about the same as in recent years but down from 11.1 in 2001.").

KEY AGREED PRINCIPLES

IV. BOARD ACCOUNTABILITY & OBJECTIVITY

Governance structures and practices should be designed to ensure the accountability of the board to shareholders and the objectivity of board decisions.

Boards are accountable to shareholders for the governance and performance of the corporation, and must provide active oversight of the management of the corporation. Accountability in the oversight of the corporation is premised on the ability of the board to be objective and distinct from management. While actual board objectivity is key, reassuring shareholders that the board is structured to lessen the likelihood of undue management influence is also important.

Listing standards require that a majority of directors qualify as “independent,” and reserve key functions relating to audit, compensation, and nominating/governance matters to independent directors. (Heightened standards of independence apply to audit committee members.) Listing standards also define certain relationships that are inconsistent with a finding of director independence while otherwise leaving to board discretion the determination whether a director has family, business, consulting, charitable, or other relationships with the company and its management that might undermine objectivity.

Boards are encouraged by listing standards to disclose the standards they apply in determining director independence and must disclose, by category or type, the relationships that they consider in their assessment. Disclosure serves as a significant disciplining force for board independence decisions. Given…the impossibility of defining all the relationships with a company that may arise for directors and director candidates, and the likelihood that many relationships outside the per se prohibited relationships provided by listing rules and SEC regulations will be significantly attenuated, it is advisable that boards retain discretion to decide independence on a case by case basis. Application of board judgment to the independence determination (within the framework provided by listing standard and applicable SEC regulations) is preferable to application of the more rigid standards prescribed in some best practice recommendations.

Executive sessions—usually including both independent directors and those outside directors who do not qualify as independent— without members of management present should be held regularly; more often than once or twice a year. Such sessions provide the opportunity for open discussion of management’s performance and management proposals regarding strategies and actions. Executive sessions are critical in establishing an appropriate environment of objectivity and candor. Most boards also spend time in the board meeting alone with the CEO to provide the CEO with the opportunity for candid exchange outside the presence of executives and staff. In addition, the independent and other outside directors should have the opportunity, from time to time, to meet alone with the chief financial officer, general counsel, and/or other key senior officers outside the presence of the CEO.

Careful respect should be given to maintaining the distinction between the role of the board and the role of management. Undue board involvement in matters of management may interfere with the board’s ability to provide objective oversight of management performance.

IV.A. Independent Board Majority[10]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should require that independent directors fill the substantial majority of board seats. Boards should ensure that any director candidate under consideration, with the exception of their own CEO or senior managers, is independent. (p. 9)	The board should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking. (Supporting Principle B.1) Except for smaller companies [i.e., below the FTSE 350 throughout the year immediately prior to the reporting year)], at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors. (Code Provision B.1.2)	Even though the quality of the Board of Directors cannot be defined simply by reference to a percentage of independent directors … it is important to have on the board of directors the presence of a significant proportion of independent directors not only in order to satisfy an expectation of the market but also in order to improve the quality of proceedings. The independent directors should account for half the members of the Board in widely-held corporations and without controlling shareholders. In controlled companies, independent directors should account at least for a third. (¶ 8.2) [T]he law limits to a maximum of three the number of directors bound to the corporation by contracts of employment . . . . (¶ 7.1, footnote 3) *See* ¶ 7 (It is not desirable to have within the Board representatives of various specific groups or interests, first because the Board could become a battleground for vested interests instead of representing the shareholders as a whole, and second because the presence of independent directors is sufficient to ensure that all appropriate interests have been taken into account.) *See also* ¶ 7.2.2 (Rather than seeking to provide specific representation for minority shareholders, the best formula consists in appointing independent directors in controlled corporations in the proportions defined in this Code.) *See also* ¶ 7.2.3 (In non-controlled corporations, the interests of small shareholders should be taken into account by appointing independent directors.)	*Supervisory Board* [T]he Supervisory Board shall include what it considers an adequate number of independent members. . . . Not more than two former members of the Management Board shall be members of the Supervisory Board. . . . (§ 5.4.2) *See* Foreword ([M]embers of the Supervisory Board are elected by the shareholders at the General Meeting. In enterprises with more than 500 or 2000 employees in Germany, employees are also represented on the Supervisory Board, which then is composed of employee representatives to one-third or to one-half respectively.). *Management Board* *Members of the Management Board are, by definition, executives.*	The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. (Principle VI) A number of national principles, and in some cases laws . . . recommend that a majority of the board should be independent. (Annotation to Principle V.A.4) *See* Annotation to Principle VI.E (Board independence . . . usually requires that a sufficient number of board members will need to be independent of management. [However,] [t]he variety of board structures, ownership patterns and practices in different countries . . . require different approaches to the issue of board objectivity. In many instances objectivity requires that . . . independence from controlling shareholders or another controlling body will need to be emphasized.). *See* Millstein Report, Perspective 15 (Policy makers and regulators should encourage some degree of independence in the composition of corporate boards. Stock exchange listing requirements that address a minimal threshold for board independence . . . have proved useful, while not unduly restrictive or burdensome.).

[10] Under NYSE and Nasdaq listing rules, domestic listed companies (subject to certain exemptions for "controlled companies") are required to have a majority of independent directors. *See* 1997 BRT Statement at 10 ("It is important for the board of a large, publicly owned corporation to have a substantial degree of independence from management. Accordingly, a substantial majority of the directors of such a corporation should be outside (non-management) directors.").

IV.B. Definition of "Independence"[11]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Relationships that may compromise a director's independence include, but are not limited to: reciprocal directorships (or "director interlocks"); an existing significant consulting or employment relationship; an existing substantial commercial relationship between the director's organization and the board's company; or new business relationships that develop through board membership. (p. 9) *See* p. 10 ([T]o ensure board independence: • Boards should define and disclose to shareholders a definition of "independent director." • Boards should require that director candidates disclose all existing business relationships between them or their employer and the board's company. • Boards should then evaluate the extent to which, if any, a candidate's other activities may impinge on his or her independence as a board member, and determine when relationships are such that a candidate can no longer be considered independent.).	The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director: • has been an employee of the company or group within the last five years; • has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company; • has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme; • has close family ties with any of the company's advisers, directors or senior employees; • holds cross-directorships or has significant links with other directors through involvement in other companies or bodies; • represents a significant shareholder; or • has served on the board for more than nine years from the date of their first election. (Code Provision B.1.1)	A director is independent when he or she has no relationship of any kind whatsoever with the corporation, its group, or the management of either, that is such as to colour his or her judgment. Accordingly, an independent director is to be understood not only as a non-executive director, i.e., one not performing management duties in the corporation or its group, but also one devoid of any particular bonds of interest (significant shareholder, employee, other) with them. (¶ 8.1) [C]riteria … to have a director qualify as independent. . .: • Not to be an employee or executive director of the corporation, or an employee or director of its parent or a company that it consolidates, and not having been in such a position for the previous five years; • Not to be an executive director of a company in which the corporation holds a directorship, directly or indirectly, or in which an employee appointed as such or an executive director of the corporation . . . is a director; • not to be a customer, supplier, investment banker or commercial banker (i) that is material to the corporation or its group; or (ii) for a significant part of whose business the corporation or its group accounts; • not to be related by close family ties to a corporate officer; • not to have been an auditor of the corporation within the previous five years; [and] • not to have been a director of the corporation for more than twelve years. (¶ 8.4) [D]irectors representing major shareholders … may be considered as being independent, provided that they do not take part in control of the corporation. (¶ 8.5) *See* ¶ 8.3 (*board is ultimate judge of a director's independent status*). *See also* ¶ 6.3 (A designation as independent director does not imply a value judgment. Independent directors are not by virtue of their personal qualities supposed to be different from the other directors in a way that would give them a stronger incentive to act in the interests of the shareholders.)	*Supervisory Board* A Supervisory Board member is considered independent if he/she has no business or personal relations with the company or its Management Board which cause a conflict of interests. (§ 5.4.2) *Management Board* *Not applicable.*	*Not covered directly, but see* Principle VI.E (The board should be able to exercise objective independent judgment on corporate affairs.). *See also* Annotation to Principle VI.E (In order to exercise its duties of monitoring managerial performance, preventing conflicts of interest and balancing competing demands on the corporation, it is essential that the board is able to exercise objective judgment. In the first instance this will mean independence and objectivity with respect to management . . . . The variety of board structures, ownership patterns and practices in different countries will . . . require different approaches to the issue of board objectivity. In many instances objectivity requires that a sufficient number of board members not be employed by the company or its affiliates and not be closely related to the company or its management through significant economic, family or other ties. This does not prevent shareholders from being board members. In others, independence from controlling shareholders or another controlling body will need to be emphasized. . . . This has led to both codes and the law in some jurisdictions to call for some board members to be independent of dominant shareholders . . . . In other cases, parties such as particular creditors can also exercise significant influence. Where there is a party in a special position to influence the company, there should be stringent tests to ensure the objective judgment of the board.).

[11] Under NYSE Listing Company Manual Section 303A.02, "[n]o director qualifies as 'independent' unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company)." Under Nasdaq Marketplace Rule 5605(2), "'independent director' means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director." Certain family, employment and close consulting and business relationships are presumptively or *per se* "material" under NYSE and Nasdaq listing rules. Section 301 of the Sarbanes-Oxley Act and Rule 10A-3 of the Securities Exchange Act of 1934 define an "independent" director (for audit committee purposes only) as one who accepts no compensation from the company other than director's fees and is not an "affiliated person" of the company or any of its subsidiaries. *Id*. *See also* 2011 ABA Guidebook at 45 ("Generally, the major securities markets provide that a director is independent only if the board makes an affirmative determination that the director is free of any material family, charitable, business, or professional relationship (other than stock ownership and the directorship) with the corporation or its management that is reasonably likely to affect objectivity.").

IV.C. Executive Sessions of Outside Directors[12]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Executive sessions, defined here as meetings comprised solely of independent directors, provide board members the opportunity to react to management proposals and/or actions in an environment free from formal or informal constraints. They also provide an opportunity for dialogue between and among independent directors that facilitates a more open and timely exchange of ideas, perspectives, and feelings. Regularly scheduled executive sessions set an expectation that private discussions among independent directors will be held as a matter of course, thus disarming concern over an action that may otherwise be perceived as unusual or threatening. Boards should adopt a policy of holding periodic executive sessions at both the full board and committee levels on a preset schedule. (p. 6)	The chairman should hold meetings with the no-executive directors without the executives present. Led by the senior independent director, the non-executive directors should meet without the chairman present at least annually to appraise the chairman's performance and on such other occasions as are deemed appropriate. (Code Provision A.4.2)	It is recommended that the directors that are external to the company (i.e., are neither corporate officers nor employees) meet periodically without the "in-house" directors. The internal rules of operation of the Board of Directors could provide for such a meeting once a year, at which time the evaluation of the chairman's, chief executive officer's, and deputy chief executive's respective performance would be carried out, and the participants could reflect on the future of the company's executive management. (¶ 9.3) See ¶ 14.3.2 (The audit committee should interview the statutory auditors, but also the persons responsible for finance, accounting and treasury matters. It should be possible to hold these interviews, if the committee so wishes, out of the presence of the corporation's general management.).	In Supervisory Boards with co-determination, representatives of the shareholders and of the employees should prepare the Supervisory Board meetings separately, possibly with members of the Management Board. If necessary, the Supervisory Board should meet without the Management Board. (§ 3.6) The Chairman of the Supervisory Board will be informed by the Chairman or Spokesman of the Management Board without delay of important events which are essential for the assessment of the situation and development as well as for the management of the enterprise. The Chairman of the Supervisory Board shall then inform the Supervisory Board and, if required, convene an extraordinary meeting of the Supervisory Board. (§ 5.2)	*Not covered directly, but see* Annotation to Principle VI.E (In a number of countries with single tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and chairman, or, if these roles are combined, by designating a lead non-executive director to convene or chair sessions of the outside directors.).

[12] Under NYSE and Nasdaq listing rules, domestic listed companies are required to hold regular executive sessions of the non-management directors without members of management present. The name of the director who will preside at these executive sessions or, alternatively, the procedure by which a presiding director will be selected for each executive session, must be disclosed by NYSE-listed companies in the proxy statement, together with information about how interested parties can communicate with either the presiding director or the non-management directors as a group. *See* 2011 ABA Guidebook at 50 ("[M]any public companies hold an executive session at every board meeting. These sessions provide a forum for non-management and independent directors to raise issues and ideas they may otherwise be reluctant to raise in the full boardroom, to share candid views about management's performance, to discuss whether board operations are satisfactory, and to raise potentially sensitive issues regarding specific members of management. These sessions are usually coordinated with meetings of the board and, if regularly scheduled, become routine and accepted by management.").

IV.D. Board Access to Senior Management[13]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered directly, but see p. 2 ([The board should act] as a resource for management in matters of planning and policy. To ensure effective decision-making . . . board members must not only act as advisors, question-askers, and problem-solvers, but also as active participants and decision-makers in fostering the overall success of the company.).	To function effectively, all directors need appropriate knowledge of the company and access to its operations and staff. (Supporting Principle B.4) All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. (Code Provision B.5.2)	Directors should meet with the corporation's main managers, even outside the presence of corporate officers. In the latter case, these should be given prior notice. (¶ 11) *See* ¶ 13 (The committees of the Board may contact, for the carrying out of their duties, the main executives of the corporation, after informing the chairman of the Board of Directors and subject to reporting back to the Board on such contacts.)	The Management Board and Supervisory Board co-operate closely to the benefit of the enterprise. (§ 3.1) The Management Board coordinates the enterprise's strategic approach with the Supervisory Board and discusses the current state of strategy implementation with the Supervisory Board in regular intervals. (§ 3.2) Good corporate governance requires an open discussion between the Management Board and Supervisory Board as well as among the members within the Management Board and the Supervisory Board. The comprehensive observance of confidentiality is of paramount importance for this. (§ 3.5) The Chairman of the Supervisory Board shall regularly maintain contact with the Management Board, in particular, with the Chairman or Spokesman of the Management Board and consult with him on strategy, business development and risk management of the enterprise. The Chairman of the Supervisory Board will be informed by the Chairman or Spokesman of the Management Board without delay of important events which are essential for the assessment of the situation and development as well as for the management of the enterprise. The Chairman of the Supervisory Board shall then inform the Supervisory Board. . . . (§ 5.2)	The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company such as, for example, the company secretary and the internal auditor . . . . (Annotation to Principle VI.F)

[13] Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that address director access to management. There is no comparable requirement for Nasdaq-listed companies. *See* 2011 ABA Guidebook at 99 ("[T]he board must be able to receive candid input from senior management. . . . [T]he [nominating and corporate governance] committee should consider how best to have access to senior management to ensure that input. Some nominating and corporate governance committees determine that senior officers in addition to the CEO should serve as directors, whereas others decide that attendance at board or committee meetings by senior officers in a non-director capacity is sufficient to facilitate the board's ready access to information regarding the business and operations of the corporation.").

IV.E. Number/Structure of Committees[14]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
[K]ey committees—compensation, audit, and nominating or governance . . . . (p. 5) *See* p. 5 (Boards should establish guidelines for, and discuss with some pre-defined frequency, the number of committees [and] the size and structure of committees, and the selection and rotation of committee members).	There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. (Code Provision B.2.1) The board should establish an audit committee of at least three, or in the case of smaller companies two, independent non-executive directors. In smaller companies the company chairman may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as chairman. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience. (Code Provision C.3.1) The board should establish a remuneration committee of at least three, or in the case of smaller companies two, independent non-executive directors. In addition the company chairman may also be a member of, but not chair, the committee if he or she was considered independent on appointment as chairman. (Code Provision D.2.1)	The number and structure of the committees are determined by each Board. However, it is recommended that: • the review of accounts, • the monitoring of internal auditing, • the selection of statutory auditors, • the compensation and stock options policies, and • appointments of directors and corporate officers should be subject to preparatory work by specialised committees . . . . (¶ 13)	*Supervisory Board Committees* Depending on the specifics of the enterprise and the number of its members, the Supervisory Board shall form committees with sufficient expertise. They serve to increase the efficiency of the Supervisory Board's work and the handling of complex issues. The respective committee chairmen report regularly to the Supervisory Board on the work of the committees. (§ 5.3.1) The Supervisory Board shall set up an Audit Committee. . . . The chairman of the Audit Committee . . . should be independent and not be a former member of the Management Board of the company whose appointment ended less than two years ago. (§ 5.3.2) The Supervisory Board shall form a nomination committee composed exclusively of shareholder representatives which proposes suitable candidates to the Supervisory Board for recommendation to the General Meeting. (§ 5.3.3) The Supervisory Board can delegate preparations for the appointment of members of the Management Board, as well as for the handling of the conditions of the employment contracts including compensation, to committees. (§ 5.1.2) The Supervisory Board can refer other factual issues to one or more committees for handling. They include the enterprise's strategy, the compensation of the members of the Management Board, investments and financings. (§ 5.3.4) The Supervisory Board can arrange for committees to prepare Supervisory Board meetings and to make decisions in place of the Supervisory Board. (§ 5.3.5) *Management Board Committees* *Not covered.*	Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and nonfinancial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration. (Principle VI.E.1) The board may . . . consider establishing specific committees to consider questions where there is a potential for conflict of interest. (Annotation to Principle VI.E.1) *See* Principle IV.E.2 (When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.).

[14] Under NYSE listing rules, domestic listed companies (subject to certain exemptions for "controlled companies") are required to have an audit committee, a nominating/corporate governance committee and a compensation committee. Companies may allocate the responsibilities of the nominating/corporate governance and compensation committees to committees of their own denomination, provided that the committees are comprised entirely of "independent directors." Nasdaq-listed companies (subject to certain exemptions for "controlled companies") are required to have an audit committee and must have board nomination and executive compensation decisions or recommendations made by independent directors. *See also* 2011 ABA Guidebook at 59 ("No universal mandate exists for a particular committee structure, except for certain actions and duties. In particular, federal law and the major securities markets' listing standards require the audit, compensation, and nominating/corporate governance committees to be composed of independent directors…. Each board should tailor its processes and committee structure to the company's specific circumstances, including size, the complexity of its operations and risk management issues, the regulatory schemes applicable to its operations and the competitive environment in which it operates.."); 2011 NACD Survey at 12 (Prevelence of audit, compensation, and nominating/governance committees are nearly universal. Prevelance of other standing committees: executive – 28.3%, finance – 20.2%, risk oversight/crisis management – 12.5%, investment – 8.2%, strategic planning – 6.5%, ethics/compliance: 5%, employee benefits/retirement plan: 4.8%, technology – 4.6%, environmental policy – 4%, public affairs/policy/social responsibility – 4%, mergers & acquisitions – 3.4%, and HR/labor relations/management development – 2.1%.); 2011 Spencer Stuart Board Index at 28 (audit – in place at 100% of S&P 500 companies, compensation/HR – 100%, nominating/governance – 99%, executive - 35%, finance - 33%, public policy/social & corporate responsibility - 14%, science & technology – 6%, environment, health and safety - 6%, legal/compliance - 5%, strategy and planning - 3%, investment/pension - 2%, and acquisitions/corporate development - 2%.).

IV.F. Independence/Qualifications of Committee Members[15]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should require that key committees—compensation, audit, and nominating or governance––include only independent directors . . . . (p. 5)	The . . . committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively. (Main Principle B.1) A majority of members of the nomination committee should be independent non-executive directors. (Code Provision B.2.1) The board should establish an audit committee of at least three, or in the case of smaller companies two, independent non-executive directors. In smaller companies the company chairman may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as chairman. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience. (Code Provision C.3.1) *See* Supporting Principle B.1 (No one other than the committee chairman and members is entitled to be present at a meeting of the nomination, audit or remuneration committee, but others may attend at the invitation of the committee.).	Each Board should appoint an audit committee. . . . The proportion of independent directors on the audit committee should be raised to two-thirds and the committee should not include any corporate officer. . . . One should avoid the appointment to corporation A's audit committee of a director from a company on whose similar committee a director from corporation A is a member. (¶¶ 14 – 14.1) [The compensation committee] should not include any executive directors, and should have a majority of independent directors. The recommendation relating to cross-directorships in committees stated for the audit committee also applies to the compensation committee. (¶ 16.1) [E]ach Board should appoint from among its members a committee for the appointment or nomination of directors and corporate officers, which may or may not be separate from the compensation committee. . . . [T]he recommendations relating to the latter's membership and mode of operation are also applicable to it. (¶ 15 – 15.1) *See* ¶ 13 [([C]reation of . . . committees shall in no event remove the matter from the purview of the Board itself, which has sole statutory decision-making authority. . . .).	The chairman of the Audit Committee . . . should be independent and not be a former member of the Management Board of the company whose appointment ended less than two years ago. (§ 5.3.2)	[Board] committees may require a minimum number or be composed entirely of nonexecutive members. In some countries, shareholders have direct responsibility for nominating and electing nonexecutive directors to specialised functions. (Annotation to Principle VI.E.1) It is increasingly regarded as good practice in many countries for independent board members to have a key role on [the nominating/corporate governance] committee. (Annotation to Principle II.C.3) Stock exchange listing requirements that address a minimal threshold for . . . audit committee independence have proved useful, while not unduly restrictive or burdensome. (Millstein Report, Perspective 15)

[15] Under NYSE listing rules, domestic listed companies (subject to certain exemptions for "controlled companies") are required to have an audit committee, a nominating/corporate governance committee and a compensation committee, and all three committees must consist exclusively of "independent" directors. Nasdaq-listed companies (subject to certain exemptions for "controlled companies") are required to have an audit committee comprised of "independent directors" and must have board nomination and executive compensation decisions or recommendations made by "independent directors." Audit committee members of NYSE-listed companies must be financially literate or become so within a reasonable period of time, and the audit committee must include at least one director with accounting or related financial management expertise. Audit committee members of Nasdaq-listed companies must be able to read and understand fundamental financial statements at the time of appointment, and the audit committee must include at least one financially sophisticated director. The Sarbanes-Oxley Act requires that companies disclose whether or not the audit committee includes at least one member who is an "audit committee financial expert" and, if not, the reasons. See also 2011 ABA Guidebook at 63-64 ("The board should select committee members using criteria appropriate to the committee's purpose and in compliance with any applicable legal and stock exchange requirements…. Committee membership criteria may include: experience relevant to committee responsibilities; subject matter expertise that will assist the committee members' ability to meet requisite time commitments; disinterest in the committee's subject matter; and independence from management, as appropriate."); *id.* at 102 ("[T]he nominating and governance committee should . . . recommend qualifications for membership on committees."); 2011 NACD Survey at 12 (92.1% of respondents indicate that their company requires all members of the audit committee to demonstrate financial literacy.).

IV.G. Assignment & Rotation of Committee Members[16]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should establish guidelines for, and discuss with some pre-defined frequency . . . the selection and rotation of committee members. (p. 5)	The value of ensuring that committee membership is refreshed and that undue reliance is not placed on particular individuals should be taken into account in deciding chairmanship and membership of committees. (Supporting Principle B.1) The chairman or an independent non-executive director should chair the [nomination] committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. (Code Provision B.2.1) In smaller companies the company chairman may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as chairman. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience (Code Provision C.3.1)	When extension of the term of office of the audit committee's chairman is proposed by the appointments committee, it should be specially reviewed by the Board. (¶ 14.1) [A]udit committee members . . . should be competent in finance or accounting. . . . (¶ 14.3.1) [T]he current Board chairman shall be associated with the appointments or nominations committee's proceedings. . . . It is natural for the chairman to be a member of the committee . . . but, while his or her views should be considered, it is not desirable that he or she should chair this committee. (¶ 15.1)	*Supervisory Board Committees* The Chairman of the Supervisory Board shall also chair the committees that handle contracts with members of the Management Board and prepare the Supervisory Board meetings. He should not be Chairman of the Audit Committee. (§ 5.2) The Chairman of the Audit Committee shall have specialist knowledge and experience in the application of accounting principles and internal control processes. He should be independent and not be a former member of the Management Board of the company whose appointment ended less than two years ago. (§ 5.3.2) The Supervisory Board shall form a nomination committee composed exclusively of shareholder representatives which proposes suitable candidates to the Supervisory Board for recommendation to the General Meeting. (§ 5.3.3) *See* § 5.4.4 (Management Board members may not become members of the Supervisory Board of the company within two years after the end of their appointment unless they are appointed upon a motion presented by shareholders holding more than 25% of the voting rights in the company. In the latter case appointment to the chairmanship of the Supervisory Board shall be an exception to be justified to the General Meeting.). *Management Board Committees* *Not covered.*	*Not covered directly, but see* Topic Headings IV.E & F, *above*.

[16] *See* 2011 ABA Guidebook at 63-64 ("The board should select committee members using criteria appropriate to the committee's purpose and in compliance with any applicable legal and stock exchange requirements…. Committee membership criteria may include: experience relevant to committee responsibilities; subject matter expertise that will assist the committee members' ability to meet requisite time commitments; disinterest in the committee's subject matter; and independence from management, as appropriate."); *id.* at 102 ("[The nominating and governance] committee should . . . recommend qualifications for membership on committees …. Although some boards have a policy of periodic rotation of committee memberships among the directors to develop expertise and allocate equitably the time commitment, rotation may be more difficult for the audit committee than for others..").

IV.H. Audit Committee Meeting Frequency, Length & Agenda[17]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered directly, but see p. 4 (For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting.). *See also* p. 5 (Boards should establish guidelines for . . . committees . . . .). *See also* Topic Heading VII.G, *below*. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON AUDIT COMMITTEES (2002).	The main role and responsibilities of the audit committee should be set out in written terms of reference and should include: • to monitor the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them; • to review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems; • to monitor and review the effectiveness of the company's internal audit function; • to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, reappointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor; • to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process . . . ; • to develop and implement policy on the engagement of the external auditor to supply non-audit services . . . . (Code Provision C.3.2) *See generally* C.3, Audit Committee and Auditors	The main tasks of the audit committee are: • to review the accounts and ensure the relevance and consistency of accounting methods used in drawing up the corporation's consolidated and corporate accounts; • to monitor the process for the preparation of financial information; • to monitor the effectiveness of the internal control and risk management systems. (¶ 14.2.1) [T]he committee should steer the procedure for selection of the statutory auditors . . . . (¶ 14.2.2) *See generally* ¶ 14 (*audit committee*).	*Supervisory Board Committees* The Supervisory Board shall set up an Audit Committee which, in particular, handles issues of accounting, risk management and compliance, the necessary independence required of the auditor, the issuing of the audit mandate to the auditor, the determination of auditing focal points and the fee agreement. (§ 5.3.2) The Supervisory Board can arrange for committees to prepare Supervisory Board meetings and to take decisions in place of the Supervisory Board. (§ 5.3.5) *Management Board Committees* *Not covered.*	It is increasingly common for external auditors to be recommended by an independent audit committee of the board or an equivalent body and to be appointed either by that committee/body or by shareholders directly. (Annotation to Principle V.C) The audit committee or an equivalent body is often specified as providing oversight of the internal audit activities and should also be charged with overseeing the overall relationship with the external auditor including the nature of nonaudit services provided by the auditor to the company. (Annotation to Principle V.C) In fulfilling its control oversight responsibilities it is important for the board to encourage the reporting of unethical/unlawful behaviour without fear of retribution. . . . In a number of companies either the audit committee or an ethics committee is specified as the contact point for employees who wish to report concerns about unethical or illegal behaviour that might also compromise the integrity of financial statements. (Annotation to Principle VI.D.6) *See* Topic Headings IV.L & VII.G, *below*.

[17] Under NYSE and Nasdaq listing rules, the audit committee is required to adopt and disclose a written charter that addresses its purpose and responsibilities. Under the Sarbanes-Oxley Act, the audit committee of a public company is to be responsible for the appointment, compensation and oversight of the work of auditors. In addition, the audit committee must pre-approve all services, whether audit or non-audit, provided to the public company by a registered accounting firm. *See also* 2011 NACD Survey at 16 (The average number of meetings per year for audit committees was 8.9, spanning an average of 3.1 hours per meeting.); 2011 Spencer Stuart Board Index at 29 (Audit committees met on average 8.7 times a year, with 24% of audit committees meeting 11 or more times in 2011.); 2011 ABA Guidebook at 77 ("The audit committee should discuss and determine the number of meetings it needs to hold annually in order to deal effectively with its responsibilities. The major securities markets' listing standards require audit committees to review quarterly and annual reports filed with the SEC, and as a result, the audit committee should meet at least four times a year. It is common for public company audit committees to have an in-person or telephonic meeting with the company's CEO, CFO, other senior financial managers, and external auditor in advance of each quarterly or annual earnings release. As a result, almost all audit committees schedule at least our, and some as many as five to eight, meetings per year.").

IV.I. Nominating/Corporate Governance Committee Meeting Frequency, Length & Agenda[18]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered directly, but see p. 4 (For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting.). *See also* p. 5 (Boards should establish guidelines for . . . committees . . . .). *See also* Topic Headings II.A & III.A *above, and* IX.A, *below.* *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON THE GOVERNANCE COMMITTEE (2007).	[The] nomination committee . . . should lead the process for board appointments and make recommendations to the board. (Code Provision B.2.1) The nomination committee should evaluate the balance of skills, experience, independence and knowledge on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment. (Code Provision B.2.2) The nomination committee should make available its terms of reference, explaining its role and the authority delegated to it by the board. (Code Provision B.2.1)	[The appointments or nominations] committee is in charge of submitting proposals to the board [for achieving a] desirable balance in the membership of the Board . . . identification and evaluation of potential candidates [and] desirability of extensions of terms. In particular, it should organise a procedure for the nomination of future independent directors . . . . [It] should [also] design a plan for replacement of corporate officers. . . . (¶ 15.2) *See generally* ¶ 15 (*appointments or nominations committee*).	*Supervisory Board Committees* The Supervisory Board shall form a nomination committee composed exclusively of shareholder representatives which proposes suitable candidates to the Supervisory Board for recommendation to the General Meeting. (§ 5.3.3) The Supervisory Board can arrange for committees to prepare Supervisory Board meetings and to take decisions in place of the Supervisory Board. (§ 5.3.5) *Management Board Committees* *Not covered.*	With respect to nomination of candidates, boards in many companies have established nomination committees to ensure proper compliance with established nomination procedures and to facilitate and coordinate the search for a balanced and qualified board. (Annotation to Principle II.C.3) These Principles promote an active role for shareholders in the nomination and election of board members. The board has an essential role to play in ensuring that this and other aspects of the nominations and election process are respected. First, while actual procedures for nomination may differ among countries, the board or a nomination committee has a special responsibility to make sure that established procedures are transparent and respected. Second, the board has a key role in identifying potential members for the board with the appropriate knowledge, competencies and expertise to complement the existing skills of the board and thereby improve its value-adding potential for the company. In several countries there are calls for an open search process extending to a broad range of people. (Annotation to Principle VI.D.5) *See also* Topic Headings II.A & III.A *above, and* IX.A, *below.*

[18] Under NYSE listing rules, the nominating/corporate governance committee is required to adopt and disclose a written charter that addresses its purpose and responsibilities. Nasdaq-listed companies are required to adopt and disclose a written charter or board resolution that address the nomination process. *See also* 2011 ABA Guidebook at 99 ("[T]he board must be able to receive candid input from senior management. . . . [T]he [nominating and corporate governance] committee should consider how best to have access to senior management to ensure that input. Some nominating and corporate governance committees determine that senior officers in addition to the CEO should serve as directors, whereas others decide that attendance at board or committee meetings by senior officers in a non-director capacity is sufficient to facilitate the board's ready access to information regarding the business and operations of the corporation."); *id.* at 102 ("[The nominating and governance] committee should . . . recommend qualifications for membership on committees."); 2011 NACD Survey at 16 (The average number of meetings per year for governance/nominating committees was 4.8, for an average of 1.8 hours per meeting); 2011 Spencer Stuart Board Index at 29 (Nominating/governance committees met on average 4.7 times a year, with 50% of nominating/governance committees meeting 5 or more times in 2011.).

IV.J. Compensation Committee Meeting Frequency, Length & Agenda[19]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered directly, but see p. 4 (For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting.). *See also* p. 5 (Boards should establish guidelines for . . . committees . . . .). *See also* Topic Headings II.C, *above and* VII.E, *below.* *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON EXECUTIVE COMPENSATION AND THE ROLE OF THE COMPENSATION COMMITTEE (2003, reissued 2007).	The remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in performance. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases. (Supporting Principle D.1) In designing schemes of performance-related remuneration for executive directors, the remuneration committee should follow the provisions in Schedule A to this Code. (Code Provision D.1.1) The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointment would entail in the event of early termination. The aim should be to avoid rewarding poor performance. They should take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss. (Code Provision D.1.4) The remuneration committee should consult the chairman and/or chief executive about their proposals relating to the remuneration of other executive directors. The remuneration committee should also be responsible for appointing any consultants in respect of executive director remuneration. Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest. (Supporting Principle D.2) The remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of 'senior management' for this purpose should be determined by the board but should normally include the first layer of management below board level. (Code Provision D.2.2) *See generally* Schedule A: The design of performance-related remuneration for executive directors.	The compensation committee should define the rules for determination of the variable portion [of corporate officers' compensation and] review the annual application of those rules. It should also evaluate the total compensation and benefits collected by such managers, if any, from other group affiliates [and] be informed of the policy for compensation of the main managers who are not corporate officers. (¶ 16.3.1) *See generally* ¶ 16 (*compensation committee*).	<u>*Supervisory Board Committees*</u> The Supervisory Board can delegate preparations for the appointment of members of the Management Board, as well as for the handling of the conditions of the employment contracts including compensation, to committees. (§ 5.1.2) The Supervisory Board can refer other factual issues to one or more committees for handling. They include the enterprise's strategy, the compensation of the members of the Management Board, investments and financings. (§ 5.3.4) The Supervisory Board can arrange for committees to prepare Supervisory Board meetings and to take decisions in place of the Supervisory Board. (§ 5.3.5) <u>*Management Board Committees*</u> *Not covered.*	It is considered good practice in an increasing number of countries that remuneration policy and employment contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors. There are also calls for a remuneration committee that excludes executives who serve on each others' remuneration committees, which could lead to conflicts of interest. (Annotation to Principle VI.D4) *See* Topic Headings II.C, *above and* VII. D & E, *below.*

[19] Under NYSE listing rules, the compensation committee is required to adopt and disclose a written charter that addresses its purpose and responsibilities. There is no comparable requirement for Nasdaq-listed companies. The Dodd-Frank Act requires the SEC to direct national securities exchanges to require that a listed company's compensation committee members each satisfy a heightened standard of independence (to be set by the SEC), which must consider relevant factors including the receipt of consulting or advisory fees and "affiliate" status. *See also* <u>2011 NACD Survey</u> at 16 (The average number of meetings for compensation committees was 6.4 times a year with an average of 2.2 hours per meeting.); <u>2011 Spencer Stuart Board Index</u> at 29 (Compensation committees met on average 6.6 times a year, with 28% of compensation committees meeting 8 or more times in 2011.).

IV.K. Board Access to Independent Advisors[20]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should require that key committees—compensation, audit, and nominating or governance . . . are free to hire independent advisors as necessary. (p. 5) Boards and board committees occasionally need independent advice. In most cases, the company and the board can jointly satisfy their needs through the retention of a common resource. In other cases, given the different roles and responsibilities of management and the board, the board may need to retain its own professional advisors. Board members and senior management, as necessary, should concurrently participate in the selection of outside professionals who give advice both to the board and to management. Under special circumstances, the board and board committees may wish to hire their own outside counsel, consultants, and other professionals to advise the board. (p. 6)	The board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors. Committees should be provided with sufficient resources to undertake their duties. (Code Provision B.5.1) The remuneration committee should . . . be responsible for appointing any consultants in respect of executive director remuneration. (Supporting Principle D.2)	The committees of the Board may request external technical studies relating to matters within their competence, at the corporation's expense, after informing the chairman of the Board of Directors or the board of directors itself, and subject to reporting back to the Board thereon. (¶ 13) *See* ¶ 9.3 (There should be a formal [board] evaluation at least once every three years. It could be implemented, possibly under the leadership of an independent director, with help from an external consultant.). *See also* ¶ 14.3.2 (The [audit] committee should be able to call upon outside experts as needed.). *See also* Topic IV.L, *below*.	If the Supervisory Board calls upon an external compensation expert to evaluate the appropriateness of the compensation, care must be exercised to ensure that said expert is independent of respectively the Management Board and the enterprise. (§ 4.2.2) The Supervisory Board commissions the auditor to carry out the audit and concludes an agreement on the latter's fee. (§ 7.2.2) The auditor takes part in the Supervisory Board's deliberations on the Annual Financial Statements and Consolidated Financial Statements and reports on the essential results of its audit. (§ 7.2.4) *See* Topic Heading IV.L, *below*.	The contributions of nonexecutive board members to the company can be enhanced by providing . . . recourse to independent external advice at the expense of the company. (Annotation to Principle VI.F) *See* Topic Heading IV.L, *below*.

[20] On December 16, 2009, the SEC amended its rules to require new disclosures about fees paid to and services provided by compensation consultants and their affiliates if the consultants provide consulting services related to director or executive compensation and also provide other services to the company. The Dodd-Frank Act requires the SEC to direct national securities exchanges to require that, before selecting an advisor, the compensation committee of each listed company must consider various factors bearing on independence to be identified by the SEC. Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that address director access to independent advisors. There is no comparable requirement for Nasdaq-listed companies. The audit committee of a NYSE- or Nasdaq-listed company must have sole authority to hire and fire independent auditors and the audit committee charter must give them sole authority to retain, set the retention terms of, and terminate any independent advisors that the committee deems necessary for the performance of its responsibilities. The charters of the nominating/corporate governance and compensation committees of a NYSE-listed company must give them sole authority to retain, set the retention terms of, and terminate any independent advisors that these committees deem necessary for the performance of their respective responsibilities. The Sarbanes-Oxley Act contains provisions relating to the audit committee's hiring and oversight of outside auditors, approving any significant nonaudit relationship with the independent auditors, and engaging any outside counsel and advisors that the audit committee deems necessary for the performance of its responsibilities. *See* 2011 ABA Guidebook at 18 ("The board and board committees should have access to the corporation's regular outside counsel, if one exists, and the authority to retain their own legal counsel and professional advisors, independent of those who usually advise the corporation,."); id. at 20("If expert advice would be needed for a decision, the director should request that the board seek such advice."); *id*. at 26 ("Independent advice regarding the merits of a conflict of interest or related person transaction is generally helpful.").

IV.L. Auditor Independence[21]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered directly, but see Topic Heading IV.K, *above.*	The main role and responsibilities of the audit committee . . . should include: . . . to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements; [and] to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken. (Code Provision C.3.2) The annual report should explain to shareholders how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded. (Code Provision C.3.7)	[The audit] committee should steer the procedure for selection of the statutory auditors, and submit the outcome of that selection to the Board of Directors…. The committee should in particular receive each year the following information from the statutory auditors: • the amount of the fees paid to the network of statutory auditors by the companies controlled by the company or by the entity controlling the company, in respect of services not directly related to the statutory auditors' assignment; • information concerning the services supplied in respect of the tasks directly related to the statutory auditors' engagement. In addition, the committee must also review with the statutory auditors the risks weighing on their independence and the protection measures taken in order to attenuate these risks. The committee must in particular ensure that the amount of the fees paid by the company and its group, or the share of such fees in the turnover of the firms and networks are not likely to impair the statutory auditors' independence. For listed corporations, the statutory auditing assignment should be exclusive of any other assignment not related to statutory audit. The selected firm should give up, for itself and the network to which it belongs, any consulting activity (legal, tax, IT, etc.) performed directly or indirectly for the corporation having selected it or for its group. However, subject to prior approval from the audit committee, services that are accessory or directly complementary to auditing may be performed, such as acquisition audits, but exclusive of valuation or advisory services. (¶ 14.2.2)	The General Meeting . . . elects the shareholders' representatives to the Supervisory Board and, as a general rule, the auditors. (§ 2.2.1) The Supervisory Board shall set up an Audit Committee which, in particular, handles issues of accounting, risk management and compliance, the necessary independence required of the auditor, the issuing of the audit mandate to the auditor, the determination of auditing focal points and the fee agreement. (§ 5.3.2) Prior to submitting a proposal for election, the Supervisory Board or, respectively, the Audit Committee shall obtain a statement from the proposed auditor stating whether, and where applicable, which business, financial, personal and other relationships exist between the auditor and its executive bodies and head auditors on the one hand, and the enterprise and the members of its executive bodies on the other hand, that could call its independence into question. This statement shall include the extent to which other services were performed for the enterprise in the past year, especially in the field of consultancy, or which are contracted for the following year. The Supervisory Board shall agree with the auditor that the Chairman of the Supervisory Board or, respectively, the Audit Committee will be informed immediately of any grounds for disqualification or partiality occurring during the audit, unless such grounds are eliminated immediately. (§ 7.2.1) The Supervisory Board commissions the auditor to carry out the audit and concludes an agreement on the latter's fee. (§ 7.2.2)	An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects. (Principle V.C) The board should fulfill certain key functions, including . . . [e]nsuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit . . . . (Principle VI.D.7) It is increasingly common for external auditors to be recommended by an independent audit committee of the board or an equivalent body and to be appointed either by that committee/body or by shareholders directly. Moreover, the IOSCO PRINCIPLES OF AUDITOR INDEPENDENCE AND THE ROLE OF CORPORATE GOVERNANCE IN MONITORING AN AUDITOR'S INDEPENDENCE states that, "standards of auditor independence should establish a framework of principles, supported by a combination of prohibitions, restrictions, other policies and procedures and disclosures, that addresses at least the following threats to independence: self-interest, self-review, advocacy, familiarity and intimidation." The audit committee or an equivalent body . . . should . . . be charged with overseeing the overall relationship with the external auditor . . . . (Annotation to Principle V.C) *See* Annotation to Principle V.C (A number of countries are tightening audit oversight through an independent entity . . . acting in the public interest [that] provides oversight over the quality and implementation, and ethical standards used in the jurisdiction . . .).

[21] The Sarbanes-Oxley Act directs the SEC to require that the audit committee of a listed company be responsible for appointing and compensating the company's independent auditor. In addition, the audit committee must approve all audit services, and the independent auditor is prohibited from providing any nonaudit services (to the extent nonaudit services may permissibly be provided by an independent auditor) without prior approval of the audit committee.

KEY AGREED PRINCIPLES

V. INDEPENDENT BOARD LEADERSHIP

Governance structures and practices should be designed to provide some form of leadership for the board distinct from management.

The board provides oversight of management and holds it accountable for performance. This requires that the board function as a body distinct from management, capable of objective judgment regarding management's performance. Therefore, some form of independent leadership is required, either in the form of an independent chairman or a designated lead or presiding director. (Rotation of the leadership position among directors or committee chairs on a per-meeting or quarterly basis is not favored because it does not promote accountability for the independent leadership role.) Boards should evaluate the independent leadership of the board annually.

The decision as to the form of independent leadership should be made by the independent directors. If the independent directors determine that it is in the best interests of the company to have independent board leadership in the form of an independent lead director, with the CEO or other non-independent director serving as the board chair, the independent directors should explain why that form of leadership is preferable and also provide the independent lead director with authority for setting the board agenda, determining the board's information needs, and convening and leading regular executive sessions without the CEO or other members of management present.

V.A. Separation of Chairman & CEO[22]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
The roles of a non-executive chairman or board leader have been under consideration for some years. The independent board leader concept continues to grow in acceptance, according to current surveys. The purpose of creating these positions is not to add another layer of power but instead to ensure organization of, and accountability for, the thoughtful execution of certain critical independent director functions. The board should ensure that someone is charged with: organizing the board's evaluation of the CEO and providing continuous ongoing feedback; chairing executive sessions of the board; setting the agenda with the CEO; and leading the board in anticipating and responding to crises. . . . Boards should consider formally designating a nonexecutive chairman or other independent board leader. If they do not make such a designation, they should designate, regardless of title, independent members to lead the board in its most critical functions . . . . (pp. 3-4) *See* Topic Heading V.B, *below*.	There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision. (Main Principle A.2) The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board. (Code Provision A.2.1) The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role. (Main Principle A.3) The chairman should on appointment meet the independence criteria . . . A chief executive should not go on to be chairman of the same company. If, exceptionally, a board decides that a chief executive should become chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the next annual report. (Code Provision A.3.1) *See* Topic Heading V.B, *below*.	French law offers an option between a unitary formula (Board of Directors) and a two-tier formula (Supervisory Board and Management Board) for all corporations, including listed corporations. In addition, corporations with Boards of Directors have an option between separation of the offices of chairman and chief executive officer and maintenance of the aggregation of such duties. The statute does not favour either formula and allows the Board of Directors to choose between the two forms of exercise of executive management. It is up to each corporation to decide on the basis of its own specific constraints. French public limited companies (sociétés anonymes) accordingly can choose from among three forms of organisation of management and supervisory powers. (¶ 3.1) Without seeking to determine whether one form [of Board leadership] should be preferred over another, it should be emphasized that the main form of regulation should come from transparency: transparency between the management team and the Board of Directors, transparent management in relation to the market, and transparency in relations with shareholders, in particular at the time of the General Meeting. In this respect, it is essential for the shareholders and third parties to be fully informed of the choice made between separation of the offices of chairman and chief executive officer and maintenance of these positions as a single office. In addition to the forms of disclosure required by regulations, the annual report is the medium for the disclosure to which shareholders are entitled, and the Board should report to them the grounds and justifications for its decisions. (¶ 3.2) *See also* Topic Heading V.B, *below*.	*The two-tier board envisioned by the German Code has a chairman of the Supervisory Board separate from the chairman of the Management Board (CEO).* Elections to the Supervisory Board shall be made on an individual basis. . . . Proposed candidates for the Supervisory Board chair shall be announced to the shareholders. (§ 5.4.3) *See* § 5.4.4 (Management Board members may not become members of the Supervisory Board of the company within two years after the end of their appointment unless they are appointed upon a motion presented by shareholders holding more than 25% of the voting rights in the company. In the latter case appointment to the chairmanship of the Supervisory Board shall be an exception to be justified to the General Meeting.). *See also* Topic Heading V.B, *below*.	In a number of countries with single-tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and chairman, or, if these roles are combined, by designating a lead nonexecutive director to convene or chair sessions of the outside directors. Separation of the two posts may be regarded as good practice, as it can help to achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management. (Annotation to Principle VI.E) *See* Topic Heading V.B, *below*.

[22] On December 16, 2009, the SEC amended its rules to require disclosure of board leadership structure, such as whether the same person serves as CEO and chairman of the board, or whether two individuals serve in those positions, and why the company has determined that its leadership structure is appropriate given the company's specific characteristics and circumstances. *See* 2011 ABA Guidebook at 46 ("In many U.S. public companies, the CEO of the corporation also serves as chair of the board. A growing number of public companies have chosen to separate the two functions with the chair position held by an independent director who provides leadership to the board, often serving as a liaison between the board and the CEO, and sometimes serving as a mentor to the CEO."); 2011 Spencer Stuart Board Index at 22 (201 S&P 500 companies split the CEO and chair roles, representing 41% of the total, up from 33% in 2006. Of these, 21% have an independent chair, a number that has risen each year since 2004. 18 companies have a formal policy requiring separation of the roles (up from 6 in 2010).); 2011 NACD Survey at 10 (42.3% of respondents reported having separate roles for the CEO and board chair. This includes 28.8% which have a separate CEO and independent chair; 9.8% which have a separate CEO and affiliated outside chair; and 2% which have no chairman but have a separate lead director.).

V.B. "Presiding" or Lead Director[23]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
The roles of a non-executive chairman or board leader have been under consideration for some years. The independent board leader concept continues to grow in acceptance, according to current surveys. The purpose of creating these positions is not to add another layer of power but instead to ensure organization of, and accountability for, the thoughtful execution of certain critical independent director functions. The board should ensure that someone is charged with: organizing the board's evaluation of the CEO and providing continuous ongoing feedback; chairing executive sessions of the board; setting the agenda with the CEO; and leading the board in anticipating and responding to crises. . . . Boards should consider formally designating a nonexecutive chairman or other independent board leader. If they do not make such a designation, they should designate, regardless of title, independent members to lead the board in its most critical functions, including: agenda setting with the CEO; CEO and board evaluation; executive sessions; and anticipating or responding to crises . . . A designated director or directors should work with the CEO to create board agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting. (pp. 3-4) *See* Topic Heading V.A, *above*.	The board should appoint one of the independent non-executive directors to be the senior independent director to provide a sounding board for the chairman and to serve as an intermediary for the other directors when necessary. The senior independent director should be available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or other executive directors have failed to resolve or for which such contact is inappropriate. (Code Provision A.4.1) The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders. (Code Provision E.1.1) The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors. (Code Provision B.6.3) *See* Topic Heading V.A, *above*.	*Not covered directly, but see* ¶ 9.3 ([F]ormal [board] evaluation . . . could be implemented . . . under the leadership of an independent director. . . .). *See also* Topic Heading V.A, *above*.	*Not covered directly, but see* § 5.4.6 (Compensation of the members of the Supervisory Board . . . takes into account . . . the exercising of the Chair and Deputy Chair positions on the Supervisory Board. . . .). *See also* Topic Heading V.A, *above*.	In a number of countries with single tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and chairman, or, if these roles are combined, by designating a lead nonexecutive director to convene or chair sessions of the outside directors. . . . The designation of a lead director is . . . regarded as a good practice alternative in some jurisdictions. Such mechanisms can also help to ensure high quality governance of the enterprise and the effective functioning of the board. (Annotation to Principle VI.E) *See also* Topic Heading V.A, *above.*

[23] On December 16, 2009, the SEC amended its rules to require companies with a combined CEO/chair to disclose whether the company has a lead independent director and what specific role the lead independent director plays in the leadership of the board. Under NYSE listing rules, domestic listed companies are required to disclose either the name of the director who will preside at executive sessions of the non-management directors (the "presiding" director) or, alternatively, the procedure by which a director will be selected to preside at each session. There is no comparable requirement for Nasdaq-listed companies. *See* 2011 ABA Guidebook at 46 ("Where the CEO or another non-independent director serves as board chair, the independent directors often formally designate an independent director to act as a presiding or lead director. The chair of the nominating/corporate governance committee or a senior director often acts in that capacity."); 2011 Spencer Stuart Board Index at 24 (92% of all S&P 500 companies (456) have reported a lead or presiding director. Of these 454 companies, 54% have lead directors and 46% have presiding directors, including those identified as "chair" of executive sessions. Since 2004, the number of boards designating lead directors has more than doubled from 114 to 247, while the number of boards designating presiding directors has decreased by almost 1/3, from 300 to 209.); 1994 NACD Report at 4 (discussing board appointment of a lead director for the CEO evaluation process); 2011 NACD Survey at 10 (65.4% of respondents' boards have a designated lead director.).

KEY AGREED PRINCIPLES

VI. ETHICS, INTEGRITY & RESPONSIBILITY

Governance structures and practices should be designed to promote an appropriate corporate culture of integrity, ethics, and corporate social responsibility.

The tone of the corporate culture is a key determinant of corporate success. Integrity, ethics, and a sense of the corporation's role and responsibility in society are foundations upon which long-term relationships are built with customers, suppliers, employees, regulators, and investors. The board plays a key role in assuring that an appropriate corporate culture is developed, by communicating to senior management the seriousness with which the board views the matter, defining the parameters of the desired culture, reviewing efforts of management to inculcate the agreed culture (including but not limited to review of compliance and ethics programs) and continually assessing the integrity and ethics of senior management.

Assessment of management performance and integrity are at the heart of effective governance, and should factor into all board decisions—not only in hiring and compensation matters. In particular, boards should assess management integrity and ethics when considering management proposals; assessing internal controls and procedures; reviewing financial reporting and accounting decisions; 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, for example, in addition to any proposed related-person transactions involving management, the conflicts inherent in compensation decisions and the use of corporate assets in the form of perquisites.

VI.A. Conflicts of Interest, Ethics & Confidentiality				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should seek only candidates who have demonstrated high ethical standards and integrity in their personal and professional dealings, and who are willing to act on–and remain accountable for–their boardroom decisions. (p. 7) Boards should require that director candidates disclose all existing business relationships between them or their employer and the board's company. Boards should then evaluate the extent to which, if any, a candidate's other activities may impinge on his or her independence as a board member, and determine when relationships are such that a candidate can no longer be considered independent. (p 10.) If, through the evaluation process or otherwise, it becomes apparent that a director is not meeting the standards established by the board (including ethical standards), where appropriate the governance committee should provide the director with feedback, additional education, or other reasonable means of guidance. If such attempts are either inappropriate or unsuccessful, the director's resignation should be accepted. (p. 18) [T]he board should . . . seek disclosure of any relationships that would appear to compromise director independence. (p. 20) Board disclosure of procedures is distinct from sharing the substance of such deliberations, which should be confidential. (p. 16) *See also* NACD, CORPORATE DIRECTOR'S ETHICS AND COMPLIANCE HANDBOOK (2003).	The board should set the company's values and standards . . . . (Supporting Principle A.1) The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action. (Code Provision C.3.4) Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest. (Supporting Principle D.2)	When a corporation is controlled by a majority shareholder (or a group of shareholders acting in concert), the latter assumes a specific responsibility to the other shareholders, which is direct and separate from that of the Board of Directors. The majority shareholder must take particular care to avoid possible conflicts of interest, to secure transparency of the information provided to the market, and to fairly take all interests into account. (¶ 7.2.1) The director is bound to report to the Board any conflict of interest, whether actual or potential, and abstain from taking part in voting on the related resolution. (¶ 17) [T]he director should: • abstain from engaging in transactions in securities of the corporation, including derivatives where (and insofar as) he or she, as a result of his or her duties, has information not yet made public; • disclose transactions entered into in the corporation's securities, as required by statute and regulation. (¶ 17) *See* ¶ 7.2.1 (When a corporation is controlled by a majority shareholder (or a group of shareholders acting in concert), … [t]hat shareholder must take particular care to avoid possible conflicts of interest, to secure transparency of the information provided to the market, and to fairly take all interests into account.). *See also* ¶ 7.2.2 (Rather than seeking to provide specific representation for minority shareholders, the best formula consists in appointing independent directors in controlled corporations in the proportions defined in this Code).	*<u>Supervisory Board</u>* No member of the Supervisory Board may pursue personal interests in his/her decisions or use business opportunities intended for the enterprise for himself/herself. (§ 5.5.1) Each member of the Supervisory Board shall inform the Supervisory Board of any conflicts of interest, in particular those which may result from a consultant or directorship function with clients, suppliers, lenders or other business partners. (§ 5.5.2) *See* § 5.5.4 ([S]ervice agreements and contracts . . . between a member of the Supervisory Board and the company require Supervisory Board approval.). *See generally* § 5.5, Conflicts of Interest. *<u>Management Board</u>* During their employment for the enterprise, members of the Management Board are subject to a comprehensive non-competition obligation. (§ 4.3.1) No member of the Management Board may pursue personal interests in his decisions or use business opportunities intended for the enterprise for himself. (§ 4.3.3) All members of the Management Board shall disclose conflicts of interest to the Supervisory Board without delay and inform the other members of the Management Board thereof. All transactions between the enterprise and the members of the Management Board as well as persons they are close to or companies they have a personal association with must comply with standards customary in the sector. Important transactions shall require the approval of the Supervisory Board. (§ 4.3.4) *See generally* § 4.3, Conflicts of Interest.	Insider trading and abusive self-dealing should be prohibited. (Principle III.B) Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation. (Principle III.C) Stakeholders, including individual employees and their representatives, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this. (Principle IV.E) The board should fulfill certain key functions including . . . [m]onitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. (Principle VI.D) Boards should consider assigning a sufficient number of nonexecutive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. (Principle VI.E.1) *See* Annotation to Principle III.B *(Abusive self-dealing, e.g., by controlling shareholders, and insider trading, are prohibited in most, but not all, OECD jurisdictions; such practices violate the principle of equitable treatment of shareholders.).* *See also* Principle II.F.2 *(Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest . . .).*

VI.B. The Role of Stakeholders[24]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
In consultation with the CEO, the board should clearly define its role, considering both its legal responsibilities to shareholders and the needs of other constituencies, provided shareholders are not disadvantaged. (p. 19)	*Not covered.*	French legislation has a double specific feature of involving representatives of the Works Council in proceedings of the Board in an advisory capacity, and providing for appointment of one or more directors from among employee shareholders if the employee shareholdings exceed 3% of the corporate capital, or the possibility of full participation of employee representatives on the Board. (¶ 7.1) *See* ¶ 7.1, footnote 3 ([T]he law limits to a maximum of three the number of directors bound to the corporation by contracts of employment….). *See also* ¶ 7 (It is not desirable to have within the Board representatives of various specific groups or interests, first because the Board could become a battleground for vested interests instead of representing the shareholders as a whole, and second because the presence of independent directors is sufficient to ensure that all appropriate interests have been taken into account.).	In enterprises having more than 500 or 2000 employees in Germany, employees are also represented on the Supervisory Board, which then is composed of employee representatives to one-third or to one-half respectively…. The representatives elected by the shareholders and the representatives of the employees are equally obliged to act in the enterprise's best interests. (Foreword) *See* Foreword ([The Code's] purpose is to promote the trust of international and national investors, customers, employees and the general public in the management and supervision of listed German stock corporations.).	The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. A. The rights of stakeholders that are established by law or through mutual agreements are to be respected. B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights. C. Performance-enhancing mechanisms for employee participation should be permitted to develop. D. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis. E. Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this. F. The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights. (Principle IV) *See* Millstein Report, 1.2.16 (Attending to legitimate social concerns should, in the long run, benefit all parties, including investors.).

[24] *See* 2011 ABA Guidebook at 14 ("A number of state corporation statutes expressly allow the board to consider the interests of employees, suppliers, and customers, as well as the communities in which the corporation operates and the environment. Of course, the board remains accountable primarily to shareholders for the performance of the corporation. Thus, non-shareholder constituency considerations are best understood not as independent corporate objectives but as factors to be considered in pursuing the best interests of the corporation.").

KEY AGREED PRINCIPLES

VII. ATTENTION TO INFORMATION, AGENDA & STRATEGY

Governance structures and practices should be designed to support the board in determining its own priorities, resultant agenda, and information needs and to assist the board in focusing on strategy (and associated risks).

In today's dynamic and volatile business and financial environment, a key challenge for boards comprised primarily of outside and independent directors is to develop their own sense of corporate priorities and their own view of the matters that are most important to the success of the company. Boards must develop their own viewpoints to provide management with meaningful strategic guidance and support and to focus their own attention appropriately. Therefore, the board must be actively engaged in determining its own priorities, agenda and information needs.

Directors need significant information about the company's business and its prospects based on an understanding of opportunities, capabilities, strategies, and risks in the competitive environment. While directors must—and should—rely on management for information about the company, they need to recognize that their ability to serve as fiduciaries depends on the degree to which they can bring objective judgment to bear. Therefore, directors cannot be unduly reliant on management for determining the board's priorities and related agenda, and information needs.

For most companies, the priority focus of board attention and time will be understanding and providing guidance on strategy and associated risk—based on the underlying understanding of the company's strengths and weaknesses, and the opportunities and threats posed by the competitive environment—and monitoring senior management's performance in both carrying out the strategy and managing risk. Management performance, corporate strategy, and risk management are the prime underpinnings of the corporation's ability to create long-term value. Directors should strive for a constructive tension in discussions with management about strategy, performance, and the underlying assumptions upon which management proposals are based. Directors should actively participate in defining the benchmarks by which to assess success, and then monitor performance against those benchmarks. They should also establish (and disclose to the extent practical in light of competitive realities) a very real and apparent link between the strategy, benchmarks for success, and compensation.

As emphasized by the Sarbanes-Oxley Act and related SEC regulations and listing standards, the board plays a critical role in oversight of compliance, financial reporting, and internal controls, as well as in organizing the board's own processes. However, these functions should follow naturally from an understanding of the importance of the board's objective judgment in its role as a fiduciary and a primary focus on corporate strategy and performance (within an appropriate framework of integrity and ethics as discussed above). In normal circumstances, compliance, oversight of financial reporting and controls, and governance issues should not demand the majority of board time and therefore should not overwhelm the board's agenda.

Information flow to the board should be sufficient to support understanding of the company's business and the critical issues the company faces, and enable participation in active, informed discussions at board meetings. It should not be so voluminous as to overwhelm. While the board must have access to any information that it wants, generally the board should assert discipline and not overwhelm management with requests for information outside the scope of what management uses to manage. The board and management should work together to define the type and quantity of information that is of most use, and to identify the timeframe in which information should be provided. (It is in the area of agenda and information flow that independent board leadership is particularly necessary.) Crisp reports distributed in advance of meetings should obviate the need for lengthy management presentations in most board and committee meetings, so that maximum time is preserved for discussion.

[T]he board should also strive to communicate with shareholders about corporate priorities.

VII.A. Board Meetings & Agenda[25]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Board and committee meetings are the settings in which most of the directors' decisions are made. Therefore, developing the agenda for such meetings is a critical element in determining and reinforcing board independence and effectiveness. Boards should ensure that members are actively involved with their CEO in setting the agendas for full board meetings. A designated director or directors should work with the CEO to create board agendas (incorporating other board members' input as provided) . . . . For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) . . . . (p. 4)	The board should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. (Code Provision A.1.1) [The annual report] should … set out the number of meetings of the board and its committees and individual attendance by directors. (Code Provision A.1.2) The chairman should also promote a culture of openness and debate by facilitating the effective contribution of non-executive directors in particular and ensuring constructive relations between executive and non-executive directors. (Supporting Principle A.3) The chairman is responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. (Supporting Principle A.3)	The frequency and duration of meetings of the Board of Directors should be such that they allow in-depth review and discussion of the matters subject to the board's authority. The same applies for meetings of the Board's committees. . . . Proceedings should be unambiguous. The minutes of the meeting should summarise the discussion and specify the decisions made. They are of particular importance since they provide, if necessary, a record of what the Board has done in order to carry out its duties. Without being unnecessarily detailed, they should mention briefly questions raised or reservations stated. (¶ 10)	*Supervisory Board Meetings* In Supervisory Boards with co-determination, representatives of the shareholders and of the employees should prepare the Supervisory Board meetings separately, possibly with members of the Management Board. (§ 3.6) The Chairman of the Supervisory Board coordinates work within the Supervisory Board and chairs its meetings and attends to the affairs of the Supervisory Board externally. (§ 5.2) The Supervisory Board can refer other factual issues to one or more committees for handling. They include the enterprise's strategy, the compensation of the members of the Management Board, investments and financings. (§ 5.3.4) The Supervisory Board can arrange for committees to prepare Supervisory Board meetings and to make decisions in place of the Supervisory Board. (§ 5.3.5) *Management Board Meetings* The Chairman of the Management Board coordinates the work of the Management Board. (Foreword)	*Not covered directly*, *but see* Topic Headings I.B, *above*, *and* VII.B, *below*.

[25] *See* 2011 ABA Guidebook at 48 ("Traditionally, management played a significant role in determining the matters to be presented to and acted on by the board, due to its greater knowledge of the day-to-day operations of the company. For the board to be effective and objective, however, it must control its own agenda. Thus, the trend is toward increasing independent director involvement in determining the board agenda . . . All directors should have the opportunity and feel free to request that an item be included on the agenda. Further, the board should satisfy itself of the overall annual agenda of matters requiring recurring and focused attention, such as the achievement (as well as periodic reexamination and updating) of operational and financial plans, the evaluation of the CEO and other executive management performance, the evaluation of board and committee performance and the adequacy and appropriateness of corporate systems and controls addressing legal compliance, risk management, corporate policy, financial controls, and financial reporting and other disclosures."); 2011 NACD Survey at 16 ("The average number of full board meetings increased slightly to 6 per year, up from 5.6 in 2010. However, the hours per in-person full board meeting decreased to 6.7 hours in 2011 from 9 hours in 2010."); 2011 Spencer Stuart Board Index at 26 (On average, S&P 500 company boards met 8.2 times in 2011, up from 8.0 in 2000. 54% of boards meet between 6 and 9 times a year, and 28% met at least 10 times.).

VII.B. Board Information Flow, Materials & Presentations[26]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Board and committee meetings are the settings in which most of the directors' decisions are made. Therefore, developing the agenda for such meetings is a critical element in determining and reinforcing board independence and effectiveness. A designated director or directors should work with the CEO to create board agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting. For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting. (p. 4)	The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. (Supporting Principle A.3) The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. (Main Principle B.5) The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. Management has an obligation to provide such information but directors should seek clarification or amplification where necessary. Under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required. The company secretary should be responsible for advising the board through the chairman on all governance matters. (Supporting Principle B.5)	[T]he chairman or the chief executive officer is bound to disclose to each director all the documents and information required for performance of his or her duties. The manner in which this right to disclosure is exercised and the related confidentiality duty should be set out in the internal rules of the Board of Directors, the Board being responsible, where necessary, for determining the relevance of the documents requested. Corporations must also provide their directors with the appropriate information throughout the life of the corporation between meetings of the Board, if the importance or urgency of the information so require… including criticism, relating to the corporation, such as articles in the press and financial analysts' reports. Conversely, the directors are bound to request the appropriate information that they consider as necessary to perform their duties…. The chairman or the chief executive officer is bound to disclose to each director all the documents and information required for performance of his or her duties. The manner in which this right to disclosure is exercised, and the related confidentiality duty, should be set out in the internal rules of the Board of Directors…. (¶ 11) [The audit committee's] operating reports to the Board of Directors should provide the Board with full information, thereby facilitating the latter's proceedings. (¶ 14.3) [The compensation committee's] operating reports to the Board of Directors should provide the Board with full information, thereby facilitating its proceedings. (¶ 16.2) The director is under a duty to obtain information. To that end, he or she should demand of the chairman in due time the information required for useful meeting participation with respect to the matters on the Board's agenda. (¶ 17) *See* ¶ 17 (*confidentiality of information*).	Providing sufficient information to the Supervisory Board is the joint responsibility of the Management Board and Supervisory Board. The Management Board informs the Supervisory Board regularly, without delay and comprehensively, of all issues important to the enterprise with regard to planning, business development, risk situation, risk management and compliance. The Management Board points out deviations of the actual business development from previously formulated plans and targets, indicating the reasons therefor. The Supervisory Board shall specify the Management Board's information and reporting duties in more detail. The Management Board's reports to the Supervisory Board are, as a rule, to be submitted in writing (including electronic form). Documents required for decisions, in particular, the Annual Financial Statements, the Consolidated Financial Statements and the Auditors' Report are to be sent to the members of the Supervisory Board, to the extent possible, in due time before the meeting. (§ 3.4) Good corporate governance requires an open discussion between the Management Board and Supervisory Board as well as among the members within the Management Board and the Supervisory Board. The comprehensive observance of confidentiality is of decisive importance for this. All Board members ensure that the staff members they employ observe the confidentiality obligation accordingly. (§ 3.5)	In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information. (Principle VI.F) Board members require relevant information on a timely basis in order to support their decision-making. Non-executive board members do not typically have the same access to information as key managers within the company. The contributions of nonexecutive board members to the company can be enhanced by providing access to certain key managers within the company such as, for example, the company secretary and the internal auditor, and recourse to independent external advice at the expense of the company. In order to fulfill their responsibilities, board members should ensure that they obtain accurate, relevant and timely information. (Annotation to Principle VI.F) *See* Principle IV.D (Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.).

[26] *See* 2011 ABA Guidebook at 20 ("When contemplating specific actions, directors should receive the relevant information far enough in advance of the board or committee meeting to be able to study and reflect on the issues. Important, time-sensitive materials that become available between meetings should be promptly distributed to directors. Directors should review carefully the materials supplied. If a director believes that information is insufficient or inaccurate, or is not made available in a timely manner, the director should request that action be delayed until appropriate information is available and can be studied. If expert advice would be needed for a decision, the director should request that the board seek such advice."); *Id.* at 51 ("[Board meetings] should balance management presentations with discussion among directors and with management. Appropriate reports and analyses furnished in advance facilitate discussion at the meeting.").

VII.C. Management Succession & Development[27]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should institute a CEO succession plan and selection process, through an independent committee or overseen by a designated director or directors. (p. 5) *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON CEO SUCCESSION (2000).	[Non-executive directors] have a prime role in …succession planning. (Supporting Principle A.4) The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board. (Supporting Principle B.2)	The appointments or nominations committee (or an ad hoc committee) should design a plan for replacement of corporate officers in order to be able to submit to the Board solutions for replacement in the event of an unforeseeable vacancy. This is one of the committee's main tasks, even though it may, if necessary, be entrusted by the Board to an ad hoc committee. (¶ 15.2.2) *See* ¶ 9.3 (It is recommended that the directors who are external to the company (i.e. are neither executive directors nor employees) meet periodically without the "in-house" directors. The internal rules of operation of the Board of Directors could provide for such a meeting once a year, at which time the evaluation of the chairman's, chief executive officer's and deputy chief executive's respective performance would be carried out, and the participants could reflect on the future of the company's executive management.).	The Supervisory Board appoints and dismisses the members of the Management Board. When appointing the Management Board, the Supervisory Board shall also respect diversity and, in particular, aim for an appropriate consideration of women. Together with the Management Board, it shall ensure that there is long-term succession planning. (§ 5.1.2)	The board should fulfill certain key functions, including . . . overseeing succession planning. (Principle VI.D.3) Independent board members . . . can play an important role in areas where the interests of management, the company and shareholders may diverge, such as . . . succession planning . . . . (Annotation to Principle VI.E)

[27] Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that address management succession. There is no comparable requirement for Nasdaq-listed companies. *See* 2011 ABA Guidebook at 13-14 ("State corporate statutes emphasize the board's responsibility to make major decisions on behalf of the corporation and to oversee the management of the corporation. Although these statutes do not specifically define board responsibilities, they generally include . . . developing, approving, and implementing succession plans for the CEO and top senior executives….); *id.* at 103 ("The nominating and governance committee often has the responsibility to recommend to the board a selection process or a successor to the CEO in the event of retirement or termination of service. The committee may also review and approve proposed changes in other senior management positions, with the understanding that the CEO should have considerable discretion in selecting, retaining, and reviewing members of the management team. In order to perform these functions, the committee, or another board committee should, at least annually, review the performance of the CEO and members of senior management. Succession planning is a continuous board activity that is closely related to management development. The board should be aware of, and regularly reassess, how long the current CEO is likely to continue, what developments may cause a change in that expectation (including a shift in strategy, a change in performance, or an emergency or crisis). The board should also consider what might cause the CEO or other senior executive officers to consider leaving the company. Although all of these factors are relevant, succession planning is in fact a continuous process and one that, by definition, rarely results in a hard and fast plan for a specific outcome. As a result, two key components of succession planning are assessing and developing other management talent and considering what steps the CEO and other senior executive officers can take to further develop their own leadership capabilities and those of their direct reports."); 1994 NACD Report at 3, 7 (the CEO's performance objectives should include an evaluation of the CEO's proposed succession plan; and "directors should provide for senior management succession"); 2011 NACD Survey at 9 (Survey respondents chose CEO succession fifth in a list of the highest priorities for their board in 2011); *id.* at 21 (Of the respondents who reported having a CEO succession plan: 77.1 have a plan for the development of internal candidates, 74.7% have plans to replace the CEO in an emergency, 57.7% have a long-term succession plan, outlining a process that begins three to five years before an expected transition, 51.8% have a plan for the identification of an interim CEO, and 31.1% have a plan that specifies the engagement of an executive search firm to identify external candidates.).

VII.D. Formal Evaluation of the Chief Executive Officer[28]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
The board should ensure that someone is charged with organizing the board's evaluation of the CEO and providing continuous ongoing feedback. (p. 4) There are three separate aspects to effective evaluation at the board level, each of which constitutes a critical component of board professionalism and effectiveness: CEO evaluation, board evaluation, and individual director evaluation. All three types of evaluation should be assessed vis-à-vis pre-established criteria to provide the CEO, the board as a whole, and each director with critical information pertaining to their collective and individual performance and suggested areas for improvement. Boards should regularly and formally evaluate the CEO, the board as a whole, and individual directors. Boards should ensure that independent directors create and control the methods and criteria for evaluating the CEO, the board, and individual directors. Such an evaluation practice will enable boards to identify and address problems before they reach crisis proportions. (p. 5) *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON PERFORMANCE EVALUATION OF CHIEF EXECUTIVE OFFICERS, BOARDS, AND DIRECTORS (1994).	The board should . . . review management performance. (Supporting Principle A.1) Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. . . . They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, executive directors . . . . (Supporting Principle A.4).	It is recommended that the directors who are external to the company (i.e. are neither executive directors nor employees) meet periodically without the "in-house" directors. The internal rules of operation of the Board of Directors could provide for such a meeting once a year, at which time the evaluation of the chairman's, chief executive officer's and deputy chief executive's respective performance would be carried out, and the participants could reflect on the future of the company's executive management. (¶ 9.3)	*Not covered directly, but see* § 4.2.2 (The total compensation of the individual members of the Management Board is determined by the full Supervisory Board at an appropriate amount based on a performance assessment, taking into consideration any payments by group companies. Criteria for determining the appropriateness of compensation are both the tasks of the individual member of the Management Board, his personal performance, the economic situation, the performance and outlook of the enterprise as well as the common level of the compensation taking into account the peer companies and the compensation structure in place in other areas of the company.). *See also* 4.2.3 (The total compensation of Management Board members comprises the monetary compensation elements, pension awards, other awards, especially in the event of termination of activity, fringe benefits of all kinds and benefits by third parties which were promised or granted in the financial year with regard to Management Board work. The compensation structure must be oriented toward sustainable growth of the enterprise. The monetary compensation elements shall comprise fixed and variable elements. The Supervisory Board must make sure that the variable compensation elements are in general based on a multiyear assessment. Both positive and negative developments shall be taken into account when determining variable compensation components. All compensation components must be appropriate, both individually and in total, and in particular must not encourage to take unreasonable risks.).	*Not covered directly, but see* Principle VI (The corporate governance framework should ensure . . . the effective monitoring of management by the board . . .). *See also* Principle VI.D.3 (The board should fulfill certain key functions, including . . . [s]electing, compensating, monitoring and, when necessary, replacing key executives . . .). *See also* Annotation to Principle VI.D.4 (In an increasing number of countries it is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives . . . specify[ing] the relationship between remuneration and performance, and includ[ing] measurable standards that emphasise the longer run interests of the company over short-term considerations.). *See also* Annotation to Principle VI.E (Independent board members . . . can bring an objective view to the evaluation of the performance of the board and management.).

[28] Under NYSE listing rules, the compensation committee is required to adopt and disclose a written charter that addresses evaluation of the CEO's performance in light of corporate goals and objectives. There is no comparable requirement for Nasdaq-listed companies. *See also* 2011 ABA Guidebook at 12-13 ("State corporate statutes emphasize the board's responsibility to make major decisions on behalf of the corporation and to oversee the management of the corporation. [B]oard responsibilities . . . generally include . . . selecting the CEO, setting goals for the CEO and other senior executives, reviewing their performance, evaluating and establishing their compensation, and making changes when appropriate…"); *id*. at 71 ("The principal functions of the compensation committee are to . . . review and approve corporate goals and objectives relevant to the CEO and senior executive compensation and annually evaluate executive performance in light of those goals and objectives . . . "); *id*. at 103 ("[The nominating and governance] committee, or another board committee, should at least annually review the performance of the CEO and members of senior management."); 1994 NACD Report at 1, 3 ("Formal performance reviews of the CEO are necessary. The process can take many different forms, depending on the company. Every board should consider developing a job description for the CEO. The CEO and the board should agree to performance objectives, established in advance of each fiscal year. Such objectives might include quantitative performance factors and qualitative ones, such as integrity, vision and leadership."); 2011 NACD Survey at 20 (88.4% of respondents reported conducting CEO evaluations annually).

VII.E. Executive Compensation & Stock Ownership[29]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Creating an independent and inclusive process for… remunerating . . . the CEO will ensure board accountability to shareholders and reinforce perceptions of fairness and trust between and among management and board members. Boards should involve all directors in all stages of the CEO . . . selection and compensation processes. (p. 4) A significant ownership stake leads to a stronger alignment of interests between directors and shareholders, and between executives and shareholders. Increasingly, compensation programs for directors and senior management are emphasizing stock over benefits. (p. 5) *See* Topic Heading II.C, *above*. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON EXECUTIVE COMPENSATION AND THE ROLE OF THE COMPENSATION COMMITTEE (2003, updated 2007).	A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance. (Main Principle D.1) The performance-related elements of executive directors' remuneration should be stretching and designed to promote the long-term success of the company. The remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in performance. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases. (Supporting Principle D.1) In designing schemes of performance-related remuneration for executive directors, the remuneration committee should follow the provisions in Schedule A to this Code. (Code Provision D.1.1) The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointment would entail in the event of early termination. The aim should be to avoid rewarding poor performance. They should take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss. (Code Provision D.1.4) There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. (Main Principle D.2) Shareholders should be invited specifically to approve all new long-term incentive schemes . . . and significant changes to existing schemes. . . (Code Provision D.2.4) *See* Schedule A: The design of performance-related remuneration for executive directors, p. 27.	Boards of directors and supervisory boards are responsible for determining the compensation of executive directors, based on proposals made by the compensation committee. In order to determine the said compensation, the relevant boards and committees must take into account the following principles: • Comprehensiveness: the compensation determined through this process must be complete. Fixed components, variable components (bonus), stock options, performance shares, directors' fees, pension terms and specific benefits must be taken into account when determining the overall compensation level. • Balance between the compensation components: each compensation component must be clearly substantiated and correspond to the general interest of the company. • Benchmark: the compensation must be assessed within the context of a business sector and the benchmark European or global market. • Consistency: the executive director's compensation must be determined in a manner consistent with that of the other officers and employees of the company. • Clarity of the rules: the rules must be simple, stable and transparent. The performance criteria used in order to determine the variable part of the compensation or where applicable the award of options or performance shares, must correspond to the company's objectives, and be demanding, explainable, and, to the greatest extent possible, long-lasting. • Reasonableness: the method of determining the compensation and award of stock options and performance shares must be balanced and take into account at the same time the company's general interest, market practices and officer performance. *See generally* 20.2 (Compensation policy applicable to executive directors and awards of share options and performance shares).	At the proposal of the committee dealing with Management Board contracts, the full Supervisory Board determines the total compensation of the individual Management Board members and shall resolve and regularly review the Management Board compensation system. The total compensation of the individual members of the Management Board is determined by the full Supervisory Board at an appropriate amount based on a performance assessment, taking into consideration any payments by group companies. Criteria for determining the appropriateness of compensation are both the tasks of the individual member of the Management Board, his personal performance, the economic situation, the performance and outlook of the enterprise as well as the common level of the compensation taking into account the peer companies and the compensation structure in place in other areas of the company. (§ 4.2.2) The compensation structure must be oriented towards sustainable growth of the enterprise. The monetary compensation elements shall comprise fixed and variable elements. The Supervisory Board must make sure that the variable compensation elements are in general based on a multiyear assessment. Both positive and negative developments shall be taken into account when determining variable compensation components. All compensation components must be appropriate, both individually and in total, and in particular must not encourage to take unreasonable risks. [S]hare or index-based compensation elements related to the enterprise may come into consideration as variable components. These elements shall be related to demanding, relevant comparison parameters. Changing such performance targets or the comparison parameters retroactively shall be excluded. (§ 4.2.3)	The board should fulfill certain key functions, including . . . [s]electing, compensating, monitoring and, when necessary, replacing key executives [and] [a]ligning key executive and board remuneration with the longer term interests of the company and its shareholders. (Principles VI.D.3 – VI.D.4) In an increasing number of countries it is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives. Such policy statements specify the relationship between remuneration and performance, and include measurable standards that emphasise the longer run interests of the company over short term considerations. Policy statements . . . often specify terms to be observed by board members and key executives about holding and trading the stock of the company, and the procedures to be followed in granting and repricing of options. In some countries, policy also covers the payments to be made when terminating the contract of an executive. It is considered good practice in an increasing number of countries that remuneration policy and employment contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors. There are also calls for a remuneration committee that excludes executives that serve on each others' remuneration committees, which could lead to conflicts of interest. (Annotation to Principle VI.D.4) *See* Topic Heading II.C, *above*.

[29] The Dodd-Frank Act requires companies to provide for an advisory shareholder vote on executive compensation, which must occur every one, two or three years (as determined by shareholders at least once every six years). *See* 2011 ABA Guidebook at 72 ("The compensation committee independence requirement is designed to promote objective judgment on the sensitive matter of management's compensation, and in particular, the compensation of the CEO. At a minimum, the compensation committee should create a thorough process to reach an informed decision that is something more than rubber-stamping somebody else's recommendations. How much more, of course, depends on the compensation committee's judgment, as well as the facts and circumstances of the situation."); 2011 NACD Survey at 19 (75.6% of respondents believe that the level of compensation for their company's CEO matches his or her performance, 16.1% believe that the compensation of their Company's CEO is below his or her performance and 8.3% believe the compensation of their CEO exceeds his or her performance.); *id.* at 18 (80.1% believe the company's executive compensation program has improved corporate performance.).

VII.F. Director Compensation & Stock Ownership[30]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
A significant ownership stake leads to a stronger alignment of interests between directors and shareholders . . . Increasingly, compensation programs for directors and senior management are emphasizing stock over benefits. The REPORT OF THE NACD BLUE RIBBON COMMISSION ON DIRECTOR COMPENSATION recommends the following best practices with respect to director compensation: • Boards should establish a process by which directors can determine the compensation program in a deliberative and objective way. • Boards should set a substantial target for stock ownership by each director and a time period during which this target is to be met. • Boards should define the desirable total value of all forms of director compensation. • Boards should pay directors solely in the form of equity and cash with equity representing a substantial portion of the total up to 100 percent; boards should dismantle existing benefit programs and avoid creating new ones. • Boards should disclose fully in the proxy statement the philosophy and process used to determine director compensation and the value of all elements of compensation. (p. 5) *See* Topic Heading II.C, *above*.	The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director: … has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme… (Code Provision B.1.1) Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. (Main Principle D.1) Levels of remuneration for non-executive directors should reflect the time commitment and responsibilities of the role. Remuneration for non-executive directors should not include share options or other performance-related elements. If, exceptionally, options are granted, shareholder approval should be sought in advance and any shares acquired by exercise of the options should be held until at least one year after the non-executive director leaves the board. Holding of share options could be relevant to the determination of a non-executive director's independence . . . (Code Provision D.1.3) No director should be involved in deciding his or her own remuneration. (Main Principle D.2) The board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors …. Where permitted … the board may … delegate this responsibility to a committee, which might include the chief executive. (Code Provision D.2.3)	[t]he method of allocation of directors' compensation, the total amount of which is determined by the meeting of shareholders, is set by the Board of Directors. It should take account, in such ways as it shall determine, of the directors' attendance at meetings of the Board and committees, and therefore include a variable portion. It seems natural that the directors' attendance at meetings of specialized committees should be rewarded with an additional amount of directors' fees. (¶ 18.1) The amount of directors' fees should reflect the level of responsibility assumed by the directors and the time that they need to apply to their duties. The new definitions of directors' duties and responsibilities ought to encourage all Boards to consider the adequacy of the level of directors' fees. (¶18.2) *See* ¶ 17 (The director should be a shareholder personally and hold – above and beyond the minimum provided for by the company charter – a fairly significant number of shares; if he or she does not hold them when assuming office, he or she should apply his or her attendance fees to acquiring them.).	*Supervisory Board* Compensation of the members of the Supervisory Board is specified by resolution of the General Meeting or in the Articles of Association. It takes into account the responsibilities and scope of tasks of the members of the Supervisory Board as well as the economic situation and performance of the enterprise. Also to be considered here shall be the exercising of the Chair and Deputy Chair positions in the Supervisory Board as well as the chair and membership in committees. Members of the Supervisory Board shall receive fixed as well as performance-related compensation. Performance-related compensation should also contain components based on the long-term performance of the enterprise. (§5.4.6) *Management Board* The total compensation of the individual members of the Management Board is determined by the full Supervisory Board at an appropriate amount based on a performance assessment, taking into consideration any payments by group companies. Criteria for determining the appropriateness of compensation are both the tasks of the individual member of the Management Board, his personal performance, the economic situation, the performance and outlook of the enterprise as well as the common level of the compensation taking into account the peer companies and the compensation structure in place in other areas of the company. (§ 4.2.2) *See* Topic Heading VII.E, *above*.	The board should fulfill certain key functions, including . . . aligning key executive and board remuneration with the longer term interests of the company and its shareholders. (Principle VI.D.4) In an increasing number of countries it is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives. Such policy statements specify the relationship between remuneration and performance, and include measurable standards that emphasise the longer run interests of the company over short term considerations. Policy statements generally tend to set conditions for payments to board members for extra-board activities, such as consulting. They also often specify terms to be observed by board members and key executives about holding and trading the stock of the company, and the procedures to be followed in granting and repricing of options. In some countries, policy also covers the payments to be made when terminating the contract of an executive. (Annotation to Principle VI.D.4) *See also* Topic Heading II.C, *above*.

[30] Under NYSE listing rules, domestic listed companies' corporate governance guidelines are required to address the matter of director compensation. There is no comparable requirement for Nasdaq-listed companies. *See* 2011 ABA Guidebook at 106 ("Directors nevertheless have the responsibility to determine their own compensation, so they must ensure they have considered the information necessary to reach a fair decision, including data on peer companies and an analysis of any factors relating to their particular circumstance, such as the complexity of the company and the expected time commitment. Director compensation programs should align the directors' interests with the long-term interests of the corporation. Director compensation may take a number of different forms, including annual stock or cash retainers, attendance fees for board and committee meetings, deferred compensation plans, stock options, and restricted stock grants…. The board should be sensitive to and avoid compensation policies or corporate perquisites that might impair the independence of its non-management directors."); 1994 NACD Report at 20 ("Each board must decide what plan best serves the needs of the company, its shareholders, and its directors. For companies that wish to increase stock ownership by directors, there is a range of possibilities, from restricted stock grants with prohibitions on resale, to stock options, to voluntary guidelines for stock purchases. Every board should develop clear and comprehensive criteria for director pay, making occasional exceptions when unforeseen events make this necessary. Also, each board must decide the most appropriate mechanics for disclosing its process for setting director compensation. Director pay should be set annually, but evaluated on an ongoing basis."); 2011 Spencer Stuart Board Index at 35 ("Across all industries, the average all-inclusive compensation for S&P 500 directors now exceeds $232,000. This represents an 8% rise from last year's average of $215,000 . . . . 58% of director compensation is paid in equity, with stock awards accounting for 48% and option grants for 10%. Within the equity component, the shift from stock option grants to stock awards continues. 77% of companies issue stock to directors in addition to retainers, up from 64% in 2006. Only 28% now offer stock options, versus 51% five years ago. Within the cash component, boards are moving away from meeting fees in favor of more substantial retainers for committee chairmen and members. 70% of boards have deferred compensation plans, the same as last year.").

VII.G. Internal Control System[31]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Among the most important missions of the board is ensuring that shareholder value is both enhanced through corporate performance and protected through adequate internal financial controls. Boards should seek candidates with expertise in financial accounting and corporate finance, especially with respect to trends in debt and equity markets. (p. 8) *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON RISK GOVERNANCE (2009) *and* REPORT OF THE NACD BLUE RIBBON COMMISSION ON RISK OVERSIGHT (2002).	[Non-executive directors] should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. (Supporting Principle A.4) The board is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems. (Main Principle C.2) The board should, at least annually, conduct a review of the effectiveness of the company's risk management and internal control systems and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls. (Code Provision C.2.1) The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the company's auditor. (Main Principle C.3) The audit committee should monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report. (Code Provision C.3.5)	Each listed company must be equipped with reliable procedures for the identification and assessment of its commitments and risks, and provide shareholders and investors with relevant information in this area. For such purposes: • the annual report should specify the internal procedures set up to identify and monitor off-balance-sheet-commitments, and to evaluate the corporation's material risks; • each company must develop and clarify the information provided to shareholders and investors regarding off-balance-sheet-commitments and material risks, and disclose the company's ratings by financial rating agencies as well as any changes occurred during the financial year. (¶ 2.2) The review of accounts by the audit committee should be accompanied by a presentation from the statutory auditors stressing the essential points not only of the results, but also of the accounting methods chosen, and a note from the chief financial officer describing the corporation's risk exposures and its material off-balance-sheet commitments. (¶ 14.2.1) As regards internal audit and risk review, the [audit] committee should review the material risks and off-balance-sheet commitments, interview the person in charge of internal audit, issue an opinion regarding that department's organisation, and be informed of its programme of work. It should receive internal audit reports, or a regular summary of those reports. (¶ 14.3.2)	The Management Board ensures that all provisions of law and the enterprise's internal policies are abided by and works to achieve their compliance by group companies (compliance). (§ 4.1.3) The Management Board ensures appropriate risk management and risk controlling in the enterprise. (§ 4.1.4) The Supervisory Board shall arrange for the auditor to report without delay on all facts and events of importance for the tasks of the Supervisory Board which arise during the performance of the audit. The Supervisory Board shall arrange for the auditor to inform it and/or note in the Auditor's Report if, during the performance of the audit, the auditor comes across facts that show a misstatement by the Management Board and Supervisory Board on the Code. (§ 7.2.3) *See generally* § 6 (Transparency) *and* § 7 (Reporting and Audit of the Annual Financial Statements).	The board should . . . [e]nsur[e] the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control . . . . (Principles VI.D.7-VI.D.8) Ensuring the integrity of the essential reporting and monitoring systems will require the board to set and enforce clear lines of responsibility and accountability throughout the organisation. The board will also need to ensure that there is appropriate oversight by senior management. One way of doing this is through an internal audit system directly reporting to the board. . . . Companies are also well advised to set up internal programmes and procedures to promote compliance with applicable laws, regulations and standards, including statutes to criminalise bribery of foreign officials . . . . (Annotation to Principle VI.D.7)

[31] Under NYSE listing rules, the CEO of each domestic listed company is required to certify to the NYSE annually that he or she is not aware of any violation by the company of NYSE listing standards. Upon finding a violation of a listing standard, the NYSE may issue a public reprimand letter to any listed company and ultimately suspend or de-list an offending company. NYSE- and Nasdaq-listed companies are required to promptly notify the relevant exchange if an executive officer becomes aware of any noncompliance with corporate governance listing standards. The Sarbanes-Oxley Act requires quarterly CEO and CFO certifications and disclosure in relation to internal control over financial reporting and disclosure controls and procedures, and provides "whistleblower" protections (which have been expanded by the Dodd-Frank Act).

VII.H. Risk Management and Oversight[32]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered. *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON RISK GOVERNANCE (2009) *and* REPORT OF THE NACD BLUE RIBBON COMMISSION ON RISK OVERSIGHT (2002).	[Non-executive directors] should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. (Supporting Principle A.4) The board is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems. (Main Principle C.2) The board should, at least annually, conduct a review of the effectiveness of the company's risk management and internal control systems and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls. (Code Provision C.2.1) The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the company's auditor. (Main Principle C.3)	Each listed company must be equipped with reliable procedures for the identification and assessment of its commitments and risks, and provide shareholders and investors with relevant information in this area. For such purposes: • the annual report should specify the internal procedures set up to identify and monitor off-balance-sheet-commitments, and to evaluate the corporation's material risks; • each company must develop and clarify the information provided to shareholders and investors regarding off-balance-sheet-commitments and material risks, and disclose the company's ratings by financial rating agencies as well as any changes occurred during the financial year. (¶ 2.2) The main tasks of the audit committee are . . . to monitor the effectiveness of the internal control and risk management systems. (¶ 14.2.1) As regards internal audit and risk review, the committee should review the material risks and off-balance-sheet commitments . . . . (¶ 14.3.2)	The Management Board informs the Supervisory Board regularly, without delay and comprehensively, of all issues important to the enterprise with regard to planning, business development, risk situation, risk management and compliance. The Management Board points out deviations of the actual business development from previously formulated plans and targets, indicating the reasons therefor. (§ 3.4) The Management Board ensures appropriate risk management and risk controlling in the enterprise. (§ 4.1.4) The Chairman of the Supervisory Board shall regularly maintain contact with the Management Board, in particular, with the Chairman or Spokesman of the Management Board and consult with him on strategy, business development and risk management of the enterprise. (§ 5.2) The Supervisory Board shall set up an Audit Committee which, in particular, handles issues . . . risk management. . . . (§ 5.3.2)	The board should fulfill certain key functions, including [r]eviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures. (Principle VI.D.1) An area of increasing importance for boards and which is closely related to corporate strategy is risk policy. Such policy will involve specifying the types and degree of risk that a company is willing to accept in pursuit of its goals. It is thus a crucial guideline for management that must manage risks to meet the company's desired risk profile. (Annotation to Principle VI.D.1) The board should fulfill certain key functions, including [e]nsuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards. (Principle VI.D.7) *See* Annotation to Principle V.A.6. (The Principles do not envision the disclosure of information in greater detail than is necessary to fully inform investors of the material and foreseeable risks of the enterprise. Disclosure of risk is most effective when it is tailored to the particular industry in question. Disclosure about the system for monitoring and managing risk is increasingly regarded as good practice.).

[32] On December 16, 2009, the SEC amended its rules to require disclosure of the extent of the board's role in risk oversight of the company, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure. Under NYSE listing rules, the audit committee is required to have a written charter that addresses, among other things, the discussion of policies with respect to risk assessment and risk management. Nasdaq-listed companies are not subject to a comparable requirement. 2011 NACD Survey at 26 (59.1% of companies have adopted a formal enterprise risk management program that provides a structured framework for assessing and responding to risks that affect the achievement of company objectives, and 35.5% have adopted an informal program with no structured frameworks in place but risks are still assessed and managed.), *id.* at 25 (The tasks directly related to risk management are assigned to the audit committee at 43.5% of companies, full board at 38.8% of companies, the risk committee at 9.8% and the nominating/governance committee at 2.5%.).

KEY AGREED PRINCIPLES

VIII. PROTECTION AGAINST BOARD ENTRENCHMENT

Governance structures and practices should encourage the board to refresh itself.

The board needs to ensure that it is positioned to change and evolve with the needs of the company. This requires that directorship never be viewed as a sinecure. Some boards rely on age limits and/or term limits to assist in moving directors off the board. Some boards also require directors to offer their resignation upon a significant change in job responsibility. These mechanisms do not substitute for evaluating the contributions of individual directors in the context of re-nomination determinations and, in appropriate circumstances, determining not to renominate based on the evolving needs of the company or underperformance by the director.

In addition, the board and its committees should conduct self-evaluations periodically in the interest of continual self-improvement. Such self-evaluations do not need to be unduly complicated, but should provide an opportunity for the board and its committees to reflect and should culminate in a significant discussion about areas for further effort and improvement. Board policies regarding the conduct of evaluations should be disclosed.

As fiduciaries, boards need the ability to negotiate regarding takeover approaches, and anti-takeover defenses are important in providing negotiating leverage. At the same, time boards should understand that many shareholders view anti-takeover devices as unduly protective of the status quo. Boards should give careful consideration to whether anti-takeover devices are in the best long-term interests of the company. If the board adopts an anti-takeover measure, it should take special care to communicate to shareholders the reasons why, in its considered viewpoint, the measure is in the best interests of the company, and it may wish to consider providing shareholders with the opportunity to ratify within a reasonable time frame.

VIII.A. Term Limits, Mandatory Retirement & Changes in Job Responsibility[33]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should consider whether a change in an individual's professional responsibilities directly or indirectly impacts that person's ability to fulfill his or her directorship obligations. To facilitate the board's consideration: Boards should require that the CEO and other inside directors submit a resignation as a matter of course upon retirement, resignation, or other significant change in their professional roles and responsibilities. Boards should require that all directors submit a resignation as a matter of course upon retirement, a change in employer, or other significant changes in their professional roles and responsibilities. If the board determines that a director continues to make a contribution to the organization, the Commission supports the continued membership of that director on the board. (p. 12) Until . . . processes are established [for a strong individual director evaluation process], boards should recognize that when certain predetermined criteria are met – for example, 10 to 15 years of service or a specified retirement age – it may be desirable to promote director turnover to obtain the fresh ideas and critical thinking that a new director can bring to the board. However – for the sake of continuity – some directors' tenures should survive that of the CEO. Unless boards have a process to evaluate the performance of individual directors, they should establish tenure conditions under which, as a matter of course, directors should submit a resignation for consideration or offer to withdraw from consideration for renomination. (p. 12)	Non-executive directors should be appointed for specified terms subject to re-election and to statutory provisions relating to the removal of a director. Any term beyond six years for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. (Code Provision B.2.3) All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. (Main Principle B.7) All directors of FTSE 350 companies should be subject to annual election by shareholders. All other directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. Non-executive directors who have served longer than nine years should be subject to annual re-election. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election. (Code Provision B.7.1) The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected. The chairman should confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. (Code Provision B.7.2) *See* Code Provision B.1.1 (The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director: …has served on the board for more than nine years from the date of their first election.) *See also* Provision D.1.5 (Notice or contract periods should be set at one year or less. If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce to one year or less after the initial period.).	Without affecting the duration of current terms, the duration of directors' terms of office set by the company charter (statutes) should not exceed a maximum of four years, so that the shareholders are called to express themselves through elections with sufficient frequency. Terms should be staggered so as to avoid replacement as a body and to favour a smooth replacement of directors. (¶ 12) *See* ¶ 8.4 (The criteria to be reviewed by the committee and the Board in order to have a director qualify as independent and to prevent risks of conflicts of interest between the director and the management, the corporation, or its group, are the following:… [n]ot to have been a director of the corporation for more than twelve years.) *See also* ¶ 12, footnote 6 (Under French law, the duration of directors' terms of office is set by the by-laws, and may not exceed six years.).	*__Supervisory Board__* The Supervisory Board shall . . . take into account . . . an age limit to be specified for the members of the Supervisory Board. . . . (§ 5.4.1) Material conflicts of interest and those which are not merely temporary in respect of the person of a Supervisory Board member shall result in the termination of his mandate. (§ 5.5.3) *__Management Board__* For first time appointments [to the Management Board], the maximum possible appointment period of five years should not be the rule. A re-appointment prior to one year before the end of the appointment period with a simultaneous termination of the current appointment shall only take place under special circumstances. An age limit for members of the Management Board shall be specified. (§ 5.1.2)	*Not covered.*

[33] *See* 2011 ABA Guidebook at 84 ("Boards handle the sensitive issue of board succession, including underperforming directors, in a variety of ways. Many boards attempt to deal with the issue indirectly through the adoption of mandatory retirement policies, but these policies can create an expectation that board service continues until retirement. In fact, a well-functioning nominating committee should be able to decline to nominate incumbents for reelection as individual situations dictate."); 2011 NACD Survey at 27 (The average tenure of a board member is 7.5 years, an increase from 6.8 years in 2010. When asked how boards renew or replace their membership, 5.9% reported the use of term limits, while 48.4% use age limits. 52.4% of respondents reported requiring directors to resign upon a change of professional status.); 2011 Spencer Stuart Board Index at 16 (4% of S&P 500 boards specify term limits in their corporate governance guidelines. 65% say they do not have term limits and 31% do not mention term limits at all. Of the 19 boards that do specify term limits (versus 24 last year), 5 set the cap at 15 years, 4 at 12 years and 3 at 10 years. Term limits on other boards range from 9 to 30 years.).

VIII.B. Evaluating Board Performance[34]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
There are three separate aspects to effective evaluation at the board level, each of which constitutes a critical component of board professionalism and effectiveness: CEO evaluation, board evaluation, and individual director evaluation. All three types of evaluation should be assessed vis-à-vis pre-established criteria to provide the CEO, the board as a whole, and each director with critical information pertaining to their collective and individual performance and suggested areas for improvement. Boards should regularly and formally evaluate the CEO, the board as a whole, and individual directors. Boards should ensure that independent directors create and control the methods and criteria for evaluating the CEO, the board, and individual directors. Such an evaluation practice will enable boards to identify and address problems before they reach crisis proportions. (p. 5) *See* Ch. 4, Evaluation: How Boards and Directors Should Be Judged, pp. 14-18; *and* Summary and Conclusion, pp. 20-21. *See also* Appendix E, Board Evaluation Practicalities: Creating a Board Self-Assessment Methodology. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON BOARD EVALUATION (2001) *and* REPORT OF THE NACD BLUE RIBBON COMMISSION ON PERFORMANCE EVALUATION OF CHIEF EXECUTIVE OFFICERS, BOARDS, AND DIRECTORS (1994).	The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. (Main Principle B.6) The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors. Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). (Supporting Principles B.6) The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. (Code Provision B.6.1) Evaluation of the board of FTSE 350 companies should be externally facilitated at least every three years. A statement should be made available of whether an external facilitator has any other connection with the company. (Code Provision B.6.2) The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors. (Code Provision B.6.3) The chairman should confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. (Code Provision B.7.2)	[T]he Board of Directors should [review] from time to time its membership, organisation and operation (which implies a corresponding review of the Board's committees)…. Accordingly, each Board should think about the desirable balance in its membership and that of the committees created from among its members, and consider from time to time the adequacy of its organisation and operation for the performance of its tasks. (¶ 9.1) The evaluation should have three objectives: • assess the way in which the Board operates; • check that the important issues are suitably prepared and discussed; • measure the actual contribution of each director to the Board's work through his or her competence and involvement in discussions. (¶ 9.2) The evaluation, which should preferably be conducted on an annual basis, should be performed in the following manner: • Once a year the Board should dedicate one of the points on its agenda to a debate concerning its operation; • There should be a formal evaluation at least once every three years. It could be implemented, possibly under the leadership of an independent director, with help from an external consultant…. (¶ 9.3) *See* ¶ 8.3 (*regular reevaluation of independent director status*).	*Supervisory Board* The Supervisory Board shall examine the efficiency of its activities on a regular basis. (§ 5.6) *Management Board* The total compensation of the individual members of the Management Board is determined by the full Supervisory Board . . . based on a performance assessment . . . [of] tasks of the individual member of the Management Board. . . . (§ 4.2.2) *See* § 5.1.3 (The Supervisory Board shall issue Terms of Reference [indicating Management Board responsibilities].). *See also* Topic Heading VII.E, *above*.	Independent board members . . . can bring an objective view to the evaluation of the performance of the board and management. (Annotation to Principle VI.E) In order to improve board practices and the performance of its members, an increasing number of jurisdictions are now encouraging companies to engage in board training and voluntary self-evaluation that meets the needs of the individual company. (Annotation to Principle VI.E.3)

[34] Under NYSE listing rules, domestic listed companies' boards are required to address annual performance evaluation in their corporate governance guidelines and the charters of the audit, compensation and nominating/corporate governance committees are required to provide for annual performance evaluations of these committees. There are no comparable requirements for Nasdaq-listed companies. *See* 2011 ABA Guidebook at 54-55 ("Board and board committee self-evaluations are most effective when planned in advance, with participants having a clear idea of the purpose of the self-evaluation and the issues to be addressed…. The nominating/corporate governance committee generally conducts or supervises individual director evaluations. . . . "); 1994 NACD Report at 13-14 ("Directors should evaluate board performance as a whole. Each board should consider developing goals for the board as a whole and for each of its committees . . . The board can then measure board, chairmen, and committee performance against these goals, position descriptions, and responsibilities, making any appropriate recommendations for improvement . . . The board should evaluate not just its process for nominating director candidates, but also its process for educating and renominating new directors. It should evaluate the evaluation process itself. The focus of the evaluation should also include some evaluation of individual director performance."); 2011 NACD Survey at 15 (91.1% of survey respondents conduct full board evaluations, 82.7% conduct committee evaluations, and 44.9% conduct individual director evaluations.); 2011 Spencer Stuart Board Index at 31 (2% of S&P 500 boards (versus 10% in 2008) do not conduct some kind of annual performance evaluation. More than 50% of those that undertake annual evaluations examine both the full board and individual committees, 15% evaluate only the full board and 29% (up from 24% in 2010) review performance of the full board, committees and individual directors.).

VIII.C. Classified Boards, Cumulative Voting, Right to Call Special Meeting & Right to Act by Written Consent[35]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered.	The new Code recommends that, in the interests of greater accountability, all directors of FTSE 350 companies should be subject to annual reelection. As with all other provisions of the Code, companies are free to explain rather than comply if they believe that their existing arrangements ensure proper accountability and underpin board effectiveness, or that a transitional period is needed before they introduce annual re-election. The boards of smaller companies are also encouraged to consider their policy on director re-election. (p. 3) All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. (Main Principle B.7) All directors of FTSE 350 companies should be subject to annual election by shareholders. All other directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. Non-executive directors who have served longer than nine years should be subject to annual re-election. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election. (Code Provision B.7.1)	Terms [of directors] should be staggered so as to avoid replacement as a body and to favour a smooth replacement of directors. (¶ 12)	In principle, each share carries one vote. There are no shares with multiple voting rights, preferential voting rights (golden shares) or maximum voting rights. (§ 2.1.2)	Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. . . . [C]ommon provisions to protect minority shareholders, which have proven effective, include . . . the possibility to use cumulative voting in electing members of the board. (pp. 41-42)

[35] *See* 2011 NACD Survey at 28 ("Classified boards are used by 51% of public companies.").

VIII.D. Poison Pills & Other Takeover Defenses				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered.	*Not covered*.	*See* ¶ 5.2 (The shareholders' meeting is a decision-making body. Its sessions must be not only the occasion when the managing bodies report on the corporation's business and on operation of the Board of Directors and the specialized committees (audit, compensation, etc.), but also an opportunity for a genuine and open discussion with the shareholders. The Board of Directors must take care not to infringe upon the specific powers of the shareholders if the transaction that it proposes is such as to modify, in fact or in law, the business purposes of the company, which is the very basis of the contract founding the corporation. Even when no change in the business purposes of the company as defined by the by-laws of the company is involved, the Board of Directors must refer the matter to the meeting of shareholders if the transaction relates to a material part of the group's assets or business.) *See also* ¶ 14.3.2 (The [audit] committee should review consolidation scope of companies, and if applicable, the reasons for excluding certain companies.).	In the event of a takeover offer, the Management Board and Supervisory Board of the target company must submit a statement of their reasoned position so that the shareholders can make an informed decision on the offer. After the announcement of a takeover offer, the Management Board may not take any actions outside of the ordinary course of business that could prevent the success of the offer unless the Management Board has been authorized by the General Meeting or the Supervisory Board has given its approval. In making their decisions, the Management Board and Supervisory Board are obliged to act in the best interests of the shareholders and of the enterprise. In appropriate cases the Management Board should convene an extraordinary General Meeting at which shareholders discuss the takeover offer and may decide on corporate actions. (§ 3.7) *See* § 2.2.1 ([T]he General Meeting resolves on the Articles of Association, the purpose of the company, amendments to the Articles of Association and essential corporate measures such as, in particular, inter-company agreements and transformations, the issuing of new shares and of convertible bonds and bonds with warrants, and the authorization to purchase own shares.).	Markets for corporate control should be allowed to function in an efficient and transparent manner. 1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class. 2. Anti-takeover devices should not be used to shield management and the board from accountability. (Principle II.E) In some countries, companies employ anti-takeover devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-takeover devices may be a serious impediment to the functioning of the market for corporate control. (Annotation to Principle II.E.2) *See* Annotation to Principle II.G ([C]o-operation among investors could also be used . . . to obtain control over a company without being subject to any takeover regulations. . . . For this reason, in some countries, the ability of institutional investors to cooperate on their voting strategy is either limited or prohibited.). *See also* Principle II.B (Shareholders should have the right to participate in, and to be sufficiently informed on . . . extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.).

KEY AGREED PRINCIPLES

IX. SHAREHOLDER INPUT IN DIRECTOR SELECTION

Governance structures and practices should encourage meaningful shareholder involvement in the selection of directors.

Voting procedures for director elections should be designed to promote accountability to shareholders by providing shareholders a meaningful ability to elect or decline to elect directors in uncontested elections. Companies should adopt majority voting through appropriate provisions in articles of incorporation or bylaws (to the extent consistent with state law). In an uncontested election, a candidate who fails to win a majority of the votes cast should be required to tender his or her resignation, and the nominating/governance committee should recommend to the board whether to accept or reject the resignation, depending on the circumstances. (Any board decision not to accept the resignation of a director who has failed to receive a majority of the votes cast should be carefully thought out, and the explanation for such decision should be fully disclosed to shareholders.) In contested elections, directors should be elected by plurality voting.

Shareholders should have meaningful opportunities to recommend candidates for nomination to the board. The nominating/governance committee should disclose a process for considering shareholders' recommendations. Particular attention should be paid to a process for obtaining the views of long-term shareholders who hold a significant number of shares.

IX.A. Selecting & Inviting New Directors[36]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Boards should establish a wholly independent committee that is responsible for . . . nominating directors for board membership. . . . (p. 3) Creating an independent and inclusive process for nominating . . . both directors and the CEO will ensure board accountability to shareholders and reinforce perceptions of fairness and trust between and among management and board members. (p. 4) Boards should involve all directors in all stages of the CEO and board member selection and compensation processes. (p. 4) Boards should institute as a matter of course an independent director succession plan and selection process, through a committee or overseen by a designated director or directors. (p. 5) In selecting members, the board must assure itself of [their] commitment to: • Learn the business of the company and the board • Meet the company's stock ownership requirements • Offer to resign on change of employment or professional responsibilities, or under other specified conditions, [and] • Devote the necessary time and effort. (p. 20) *See generally* Chapter 3, Selection: Who Directors Should Be, pp. 7-13.	There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. (Main Principle B.2) The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board. (Supporting Principle B.2) A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director. (Code Provision B.2.4)	[The appointments or nominations] committee is in charge of submitting proposals to the board [for achieving a] desirable balance in the membership of the Board having regard to the make-up and changes in ownership of the corporation's stock, balance between men and women within the board, identification and evaluation of potential candidates [and] desirability of extensions of terms. In particular, it should organise a procedure for the nomination of future independent directors. (¶¶ 15.2.1 - 15.2.2)	<u>*Supervisory Board*</u> The Supervisory Board shall form a nomination committee composed exclusively of shareholder representatives which proposes suitable candidates to the Supervisory Board for recommendation to the General Meeting. (§ 5.3.3) *See* Foreword (The members of the Supervisory Board are elected by the shareholders at the General Meeting. In enterprises having more than 500 or 2000 employees in Germany, employees are also represented on the Supervisory Board, which then is composed of employee representatives to one-third or to one-half respectively. . . . The representatives elected by the shareholders and the representatives of the employees are equally obliged to act in the enterprise's best interests.). *See also* Topic Heading III.A, *above*. <u>*Management Board*</u> The Supervisory Board appoints and dismisses the members of the Management Board. . . . The Supervisory Board can delegate preparations for the appointment of members of the Management Board, as well as for the handling of the conditions of the employment contracts including compensation, to committees. (§ 5.1.2) The Chairman of the Supervisory Board shall also chair the committees that handle contracts with members of the Management Board. . . . (§ 5.2)	Basic shareholder rights should include the right to . . . elect and remove members of the board . . . . (Principle II.A) The board should fulfill certain key functions, including . . . ensuring a formal and transparent board nomination and election process. (Principle VI.D.5) For the election process to be effective, shareholders should be able to participate in the nomination of board members and vote on individual nominees or on different lists of them. To this end, shareholders have access in a number of countries to the company's proxy materials which are sent to shareholders, although sometimes subject to conditions to prevent abuse. With respect to nomination of candidates, boards in many companies have established nomination committees to ensure proper compliance with established nomination procedures and to facilitate and coordinate the search for a balanced and qualified board. It is increasingly regarded as good practice in many countries for independent board members to have a key role on this committee. (Annotation to Principle II.C.3)

[36] On December 16, 2009, the SEC amended its rules to require disclosure, for each director and nominee, of the specific experience, qualifications, attributes or skills that led the board to conclude that the person should serve as a director of the company, in light of the company's business and structure, as well as whether and, if so, how the nominating committee considers diversity in identifying nominees for director. If the nominating committee or the board has a policy with regard to the consideration of diversity in identifying director nominees, the new rules require disclosure of how this policy is implemented and how the nominating committee or the board assesses the effectiveness of its policy. Under NYSE Listing Rules, domestic listed companies (subject to certain exemptions for "controlled companies") are required to have an independent nominating/corporate governance committee with a written charter setting forth the committee's purpose, which must include (i) identifying individuals who are qualified to become board members consistent with criteria that were approved by the full board, and (ii) selecting, or recommending that the board select, the director nominees for election at the next annual meeting of shareholders. Directors of Nasdaq-listed companies are required to be selected or recommended for the Board's selection either by independent directors constituting a majority of the board's independent directors or an independent nominations committee. *See* <u>2011 ABA Guidebook</u> at 100 ("The nominating and governance committee approves and selects, or recommends that the board select, director nominees, including both incumbent directors and new candidates. The committee also recommends candidates to the board to fill interim director vacancies."); <u>1994 NACD Report</u> at 10 (The Nominating Committee should evaluate the profile of the board and discuss it with the CEO and the rest of the board, forming a consensus on the number of additional directors to be added at the time and the ideal set of job skills. The Nominating Committee, with input from the entire board, should make a list of candidates. The CEO should have input into the process as well. Once a list of candidates has been established, the members of the Nominating Committee, the Chairman and CEO should meet with each candidate to evaluate his or her suitability. The Nominating Committee can recommend a candidate to the board, or the board as a whole make the selection, based on the Nominating Committee's advice.); <u>2011 NACD Survey</u> at 29 (Respondents gave their views on what they considered to be the most important attributes and experiences when recruiting directors: Leadership Experience – 61.9%; Specific Industry Experience – 54.2%; Financial Expertise – 46.6%; Strategy Development – 28.8%; International/Global Experience – 17.9%; Risk Assessment – 7.4%; Medical/Scientific/Technological Expertise – 5.9%; Information Technology – 5.5%; Government Experience – 4.2%; Marketing - 4.1%; Human Resources – 2.1%; Legal Expertise – 1.6%.).

IX.B. Majority Voting in Director Elections / Proxy Access / Advance Notice Bylaws[37]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered.	*Not covered.*	*Not covered.*	*Not covered.*	*Not covered.*

[37] Section 971 of the Dodd-Frank Act gave the SEC express discretionary authority to issue proxy access rules. On August 25, 2010, the SEC adopted rules requiring companies to, at their own expense, include in the company's proxy materials director nominees selected by a shareholder or a group of shareholders meeting certain eligibility requirements and to include information about such nominees in company proxy statements. The principal eligibility standards included continuous ownership, for at least 3 years, of at least 3% of the total voting power of a company's securities entitled to vote in the election of directors. Proxy access was to be available for nominees for 25% of board positions. On October 5, 2010, the SEC granted a stay in the effectiveness of its proxy access rules, pending review of the rulemaking by the U.S. Court of Appeals for the D.C. Circuit pursuant to a petition filed by BRT and the U.S. Chamber of Commerce. On July 22, 2011, the U.S. Court of Appeals for the D.C. Circuit struck down the SEC's proxy access rules in an opinion that called the SEC's rulemaking arbitrary and caprcious. *See* 2011 ABA Guidebook at 112 ("Plurality voting is gradually losing ground as the predominant standard for uncontested director elections, as many boards, including a significant percentage of the Fortune 100, have adopted a majority voting standard."); 2011 NACD Survey at 28 (When asked whether their companies have adopted some form of majority voting in uncontested elections, 48.5% of the respondents indicated that they had not, 40.7% had, and 10.8% indicated that it was under board discussion.); RiskMetrics Group, Risk & Governance Weekly (April 2, 2010) at 2 (59% of S&P 500 companies now have a majority vote standard for uncontested board elections and 15% have adopted only a director resignation policy while continuing to maintain a plurality vote standard.).

KEY AGREED PRINCIPLES

X. SHAREHOLDER COMMUNICATIONS

Governance structures and practices should be designed to encourage communication with shareholders.

Shareholders have a legitimate interest in the governance of their companies. The fundamental role of shareholders in corporate governance is to elect directors capable of directing management in the best interests of the company and its shareholders. Receptivity to shareholder communications on topics relevant to board quality and accountability may prove beneficial in helping to improve mutual understanding while avoiding needless confrontation.

The board should carefully consider critical non-binding proxy proposals that attract significant support from shareholders. The board should take special care to ensure that it fully understands the issue and should communicate both with the proponent and the shareholders at large regarding the board's thinking on the matter. Such communication can be had through the proxy statement, annual report, annual meeting, and other meetings and correspondence with the proponent and other shareholders (subject to compliance with Reg FD).

Boards should also consider reaching out and developing stronger relationships with investors through candid and open dialogue. In particular, boards should consider ways to engage large long-term shareholders in dialogue about corporate governance issues and long-term strategy issues, recognizing that the board's fiduciary duties with respect to these issues mandate that the board exercise its own judgment.

Board communications with shareholders on these issues should involve one or more independent members of the board—usually the board chair, the lead director, or the appropriate committee chairs. In most instances, the CEO or other members of management should also participate. The board should establish processes for communications to ensure that any communications with shareholders are authorized by the board.

Executive compensation is an issue of particular concern for many shareholders. The board and the compensation committee should consider ways for shareholders to communicate their views and concerns regarding executive compensation, and should take these views and concerns into account, again recognizing that ultimately the board as fiduciary must make compensation decisions. Some boards may wish to consider seeking advisory shareholder votes on executive compensation, while some boards may explore other means of obtaining shareholder viewpoints.

The board should also consider ways to enhance the communication opportunity provided by the annual meeting, taking into account shareholders' expense and convenience when selecting the time, location, and mode of meetings (i.e. in-person meetings, meetings via electronic communication, or both). All directors should attend the annual meeting, and shareholders should have the opportunity to ask questions, subject to appropriate procedural rules (for example, those designed to ensure that a variety of shareholders can be heard from in the limited time available).

X.A. Board Interaction/Communication with Shareholders, Press, Customers, etc.[38]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered. *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON BOARD-SHAREHOLDER COMMUNICATIONS (2008).	The chairman should ensure effective communication with shareholders. (Supporting Principle A.3) [On] joining the board . . . directors should avail themselves of opportunities to meet major shareholders. (Code Provision B.4.1) The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration. (Supporting Principle D.2) There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place. (Main Principle E.1) Whilst recognising that most shareholder contact is with the chief executive and finance director, the chairman should ensure that all directors are made aware of their major shareholders' issues and concerns. The board should keep in touch with shareholder opinion in whatever ways are most practical and efficient. (Supporting Principles E.1) The chairman should ensure that the views of shareholders are communicated to the board as a whole. The chairman should discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend scheduled meetings with major shareholders and should expect to attend meetings if requested by major shareholders. The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders. (Code Provision E.1.1) *See also* Topic Heading II.B, *above*.	It is up to each Board of Directors to define the company's financial disclosure policy. (¶ 2.1.1) Each corporation should have a very rigorous policy for communications with analysts and the market. Certain practices of "selective disclosure", intended to assist analysts with their forecasts of results, should be dropped. The normal method for communication is a press release, which makes the same information available to all at the same time. (¶ 2.1.2) *See* Topic Heading II.B, *above*.	The company shall send notification of the convening of the General Meeting together with the convention documents to all domestic and foreign financial services providers, shareholders and shareholders' associations by electronic means if the approval requirements are fulfilled. (§ 2.3.2) The company's treatment of all shareholders in respect to information shall be equal. All new facts made known to financial analysts and similar addressees shall also be disclosed to the shareholders by the company without delay. (§ 6.3) The company shall use suitable communications media, such as the Internet, to inform shareholders and investors in a prompt and uniform manner. (§ 6.4) Any information which the company discloses abroad, in line with corresponding capital market law provisions, shall also be disclosed domestically without delay. (§ 6.5) *See* Topic Heading II.B, *above*.	The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated. (Principle II.F) Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users. (Principle V.E) The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice. (Principle V.F) *See* Principle II.G (Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.).

[38] *See* 2011 ABA Guidebook at 28 ("Although a public company director may receive inquiries from major shareholders, the media, analysts, or friends to comment on sensitive issues, individual directors should avoid responding to such inquiries, particularly when confidential or market-sensitive information is involved. Instead, they should refer requests for information to the CEO or other designated spokesperson."); *id.* at 110-111 ("Boards may . . . want to develop communication policies or protocols to promote dialogue with or facilitate receipt of input from shareholders. For example, shareholder groups may request an audience with the lead director, the independent directors, or an independent board committee to discuss various corporate governance issues and concerns. Boards need to consider appropriate policies to respond to such requests."); 2011 NACD Survey at 32 (When asked how frequently board representatives should meet with institutional investors, 38.5% of survey participants said these meetings should occur at least once a year, if not more often. 30.6% of respondents said boards should "never" meet with institutional investors. 92.5% of board members surveyed agree or strongly agree that the board has a satisfactory relationship with long-term investors.).

X.B. Shareholder Meetings				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered.	Shareholders should be invited . . . to approve all new long-term incentive schemes . . . and significant changes to existing schemes . . . . (Code Provision D.2.4) The board should use the AGM to communicate with investors and to encourage their participation. (Main Principle E.2) The chairman should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM and for all directors to attend. (Code Provision E.2.3) The company should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 20 working days before the meeting. (Code Provision E.2.4) *See also* Topic X.C, *below*.	The shareholders' meeting is a decision-making body. Its sessions must be not only the occasion when the managing bodies report on the corporation's business and on operation of the Board of Directors and the specialised committees (audit, compensation, etc.), but also an opportunity for a genuine and open discussion with the shareholders. The Board of Directors must take care not to infringe upon the specific powers of the shareholders if the transaction that it proposes is such as to modify, in fact or in law, the business purposes of the company, which is the very basis of the contract founding the corporation. Even when no change in the business purposes of the company as defined by the by-laws of the company is involved, the Board of Directors must refer the matter to the meeting of shareholders if the transaction relates to a material part of the group's assets or business. (¶ 5.2) When the meeting of shareholders is asked to appoint a director or extend his or her term, the annual report, and the notice for the corresponding meeting of shareholders, must contain a biographical notice outlining his or her curriculum vitae, in addition to the items required by statute. (¶ 12) [D]irectors should attend the meetings of shareholders. (¶ 17)	To the extent provided for in the Articles of Association the shareholders exercise their rights before or during at the General Meeting and, in this respect, vote. (§ 2.1.1) The Management Board submits to the General Meeting the Annual Financial Statements and the Consolidated Financial Statements. The General Meeting resolves on the appropriation of net income and the discharge of the acts of the Management Board and of the Supervisory Board and, as a rule, elects the shareholders' representatives to the Supervisory Board and the auditors. Furthermore, the General Meeting resolves on the Articles of Association, the purpose of the company, amendments to the Articles of Association and essential corporate measures. . . . (§ 2.2.1) Each shareholder is entitled to participate in the General Meeting, to take the floor on matters on the agenda and to submit materially relevant questions and proposals. (§ 2.2.3) At least once a year the shareholders' General Meeting is to be convened by the Management Board giving details of the agenda. A quorum of shareholders is entitled to demand the convening of a General Meeting and the extension of the agenda. The convening of the meeting , as well as the reports and documents, including the Annual Report and the Postal Vote Forms, required by law for the General Meeting are to be published on the company's internet site together with the agenda. (§ 2.3.1) The company should make it possible for shareholders to follow the General Meeting using modern communication media (e.g., Internet). (§ 2.3.4) *See generally* § 2 (Shareholders and the General Meeting). *See also* Topic Heading X.D, *below*.	Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings: 1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. 2. Shareholders should have the opportunity to ask questions . . . to place items on the agenda . . . and to propose resolutions . . . . 4. Shareholders should be able to vote in person or in absentia . . . . (Principle II.C) Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes. (Principle III.A.5)

X.C. Proxy Proposals				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered.	At any general meeting, the company should propose a separate resolution on each substantially separate issue, and should, in particular, propose a resolution at the AGM relating to the report and accounts. For each resolution, proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote. The proxy form and any announcement of the results of a vote should make it clear that a 'vote withheld' is not a vote in law and will not be counted in the calculation of the proportion of the votes for and against the resolution. (Code Provision E.2.1)	*Not covered.*	*Not covered.*	Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings: . . . 2. Shareholders should have the opportunity to ask questions . . . to place items on the agenda . . . and to propose resolutions . . . . 3. Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known on the remuneration policy . . . . The equity component of compensation schemes . . . should be subject to shareholder approval. (Principle II.C)

X.D. Shareholder Voting Powers & Practices (Confidential Voting, Broker Non-Votes, One Share/One Vote)[39]				
US (NACD Report)	UK	France	Germany	OECD Principles/Millstein Report
Not covered.	For each resolution, proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote. The proxy form and any announcement of the results of a vote should make it clear that a 'vote withheld' is not a vote in law and will not be counted in the calculation of the proportion of the votes for and against the resolution.) (Code Provision E.2.1). For each resolution, proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote. The proxy form and any announcement of the results of a vote should make it clear that a 'vote withheld' is not a vote in law and will not be counted in the calculation of the proportion of the votes for and against the resolution. (Code Provision E.2.1) The company should ensure that all valid proxy appointments received for general meetings are properly recorded and counted. For each resolution, where a vote has been taken on a show of hands, the company should ensure that the following information is given at the meeting and made available as soon as reasonably practicable on a website which is maintained by or on behalf of the company: • the number of shares in respect of which proxy appointments have been validly made; • the number of votes for the resolution; • the number of votes against the resolution; and • the number of shares in respect of which the vote was directed to be withheld. (Code Provision E.2.2) *See also* Topic Headings X.B *and* X.C, *above*.	*Not covered directly, but see* ¶ 7.2.1 (When a corporation is controlled by a majority shareholder (or a group of shareholders acting in concert), the latter assumes a specific responsibility to the other shareholders, which is direct and separate from that of the Board of Directors.). *See also* Topic Headings X.B *and* X.C, *above*.	To the extent provided for in the Articles of Association the shareholders exercise their rights before ore during at the General Meeting and, in this respect, vote. (§ 2.1.1) When new shares are issued, shareholders, in principle, have pre-emptive rights corresponding to their share of the equity capital. (§ 2.2.2) The company shall facilitate the personal exercising of shareholders' voting rights. The company shall also assist the shareholders in the use of postal votes and proxies. The Management Board shall arrange for the appointment of a representative to exercise shareholders' voting rights in accordance with instructions; this representative should also be reachable during the General Meeting. (§ 2.3.3) Elections to the Supervisory Board shall be made on an individual basis. An application for the judicial appointment of a Supervisory Board member shall be limited in time to the General Meeting. Proposed candidates for the Supervisory Board chair shall be announced to the shareholders. (§ 5.4.3) *See* § 6.2 (As soon as the company becomes aware of the fact that an individual acquires, exceeds or falls short of 3, 5, 10, 15, 20, 25, 30, 50 or 75% of the voting rights in the company by means of a purchase, sale or any other manner, the Management Board will disclose this fact without delay.). *See* Topic Heading VIII.D, *above*.	The corporate governance framework should protect and facilitate the exercise of shareholders' rights. A. Basic shareholder rights . . . include . . . : 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant and material information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect and remove board members; 6) share in the profits of the corporation. B. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes . . . . C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings . . . (Principle II) The corporate governance framework should ensure the equitable treatment of all shareholders…. All shareholders should have the opportunity to obtain effective redress for violation of their rights. (Principle III) 1. All shareholders of the same series of a class should be treated equally. 2. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders . . . and should have effective means of redress. 3. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares. 4. Impediments to cross border voting should be eliminated. 5. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes. (Principle III.A) *See generally* II (The Rights of Shareholders and Key Ownership Functions), III (The Equitable Treatment of Shareholders), *and* Annotations on II, III.

[39] The Dodd-Frank Act requires companies to provide for an advisory shareholder vote on executive compensation, which must occur every one, two or three years (as determined by shareholders at least once every six years). For the 2010 proxy season, the NYSE eliminated broker discretionary voting in uncontested director elections, as it had done some years earlier on compensation plans involving share issuances. The Dodd-Frank Act requires national securities exchanges to prohibit member brokers from voting customer shares without instructions from the beneficial owner with respect to director elections (other than uncontested elections at registered investment companies), executive compensation and any other "significant matter," as determined by the SEC.

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