

Part I of the Key Components in the Commonsense Principles 2.0 – Issuer Responsibilities

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The Business Roundtable (BRT) and the Council of Institutional Investors (CII) have found common ground in supporting the revised Commonsense Principles 2.0, updated from 2016 and led once again by Warren Buffett and Jamie Dimon, along with several new CEO signatories, including some of the largest asset managers.

The [open letter](#) accompanying the principles acknowledges similar works by other groups, including the investor-led Investor Stewardship Group, the BRT's Principles of Corporate Governance and The New Paradigm from the International Business Council of the World Economic Forum. All those frameworks are endorsed, although the letter hopes that the many sets of principles can be harmonized and consolidated.

There is recognition in the letter that not every principle “will be applied in the same fashion (or at all) by every company, board or institutional investors,” but the signatories to the letter appeal to other companies to adopt the principles, and [this website](#) will maintain a list of additional companies that agree.

This post examines a few of the key structural principles that apply to issuers generally. Updated items, largely as noted in the [press release](#), are highlighted:

Board Duties, Composition and Internal Governance

- Directors' performance should be evaluated through the company's long-term performance, financial or otherwise, and be “shareholder-oriented.” A director should not serve unless he or she is committed for at least three years. (*new*)
- Directors “should be” elected by majority voting, and directors who fail to receive majority support “should” offer to resign, which the board “should” ordinarily accept. (*resignation clarified*)
- Requiring annual elections “may” promote accountability, and staggered boards “should” explain their rationale for not having annual elections. (*new*)
- Long-term shareholders should recommend potential directors for the board's consideration if they know the individuals well and believe they would be additive.
- Boards should consider periodic rotation of leadership roles like lead independent director and committee chairs.
- A board should have a robust process to evaluate itself and the “fortitude to replace ineffective directors.”

Board Responsibilities

- Direct communication with shareholders may be warranted on issues like board governance and CEO compensation. (*clarified*)
- Board's agenda should include performance standards, including maintaining and strengthening the company's culture and values.
- A company that receives a shareholder proposal should consider engagement with the proposing shareholders early in the process. If the proposal receives majority support, the company should consider further engagement and either

implementing it or promptly explain why doing so is not in the best interest of the company. A company should consider further engagements with shareholders to discuss proposals that receive “significant but less than majority support.” (*new*)

- Directors should have unfettered access to management, as authorized by the board.
- A board should seek information from a variety of sources to be continually educated on the company and the industry, including research reports, audit reports and regulatory pronouncements where relevant. (*clarified*)

Shareholder Rights

- Public companies should allow for some form of proxy access. (*new*)
- Written consent and special meeting provisions “can be” important mechanisms for shareholder action.
- Poison pill and anti-takeover measures can diminish board and management accountability, and the board “ordinarily should” put the item to a vote if adopted. (*new*)

Public Reporting

- A company should frame its required quarterly reporting in the broader context of its strategy and provide an outlook for “trends and metrics” on long-term goals. Long-term goals should be disclosed and explained in a specific and measurable way.

Board Leadership (including Lead Independent Director’s Role)

- The board should periodically review its leadership structure. (*new*)

The principles promote “diversity of thought” rather than more affirmative standards, and advocate for alternative forms of strong board leadership, including a lead independent director with robust responsibilities.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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