



December 8, 2011

UN Working Group on Human Rights and  
Transnational Corporations and Other Business Enterprises  
By email: [wg-business@ohchr.org](mailto:wg-business@ohchr.org)

**Re: Work program for UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises**

Dear Working Group members:

We are writing in response to your request for input on establishing a work plan for the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises.<sup>1</sup>We commend the Working Group's initiative to engage stakeholder input on the work plan.

With approximately C\$5 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders and provide higher risk-adjusted returns to shareholders. Through our company evaluations, our active engagement with the companies in our funds, and our issues research, we have developed considerable understanding of good practices as well as challenges corporations face with respect to human rights, which we endeavour to share in the context of consultations on public policy and standards. We believe that actively incorporating the investor perspective is an important element for the successful implementation of the "Protect, Respect and Remedy" framework.<sup>2</sup>

We write to follow up on an issue that we raised in an earlier submission during the consultations on the Guiding Principles for the implementation of the UN "Protect, Respect and Remedy" Framework: namely, the need to add the concept of fiduciary duty to the list of influential areas of business law and policy that require review with a human rights lens.<sup>3</sup>

Principle 3 appropriately raises the need to ensure that laws and policies governing business enterprises do not constrain but rather enable corporate respect for human rights. In addition, Principle 8 helpfully identifies various stakeholders that shape business practice and have a role to play in creating an enabling environment for corporations to respect human rights. However, the Guiding Principles do not address directly the special position of influence held by investors, as the owners of

---

<sup>1</sup>Office of the High Commissioner for Human Rights. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11567&LangID=E>

<sup>2</sup>United Nations (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>

<sup>3</sup>NEI Investments (2011). Re: Guiding Principles for the implementation of the United Nations "Protect, Respect and Remedy" Framework. <https://www.neiinvestments.com/nei/files/PDFs/5.5%20Public%20Policy%20and%20Standards/Ruggie%20-%20HR%20Guiding%20Principles.pdf>

NEI INVESTMENTS

T: 604.633.0615 F: 604.633.0619  
NEIinvestments.com Toll Free: 1.866.888.0615  
500 - 1111 West Georgia Street Vancouver, British Columbia V6E 4T6



public companies, to either support or hinder the efforts of companies to implement robust human rights policies and due diligence processes. Nor do they emphasize that the responsibility of all businesses to respect human rights also applies to investment institutions. We believe these are significant gaps.

Traditionally, the fiduciary duty of investment institutions has been interpreted as an obligation to focus on the immediate financial interests of their beneficiaries. More recently, with rapid growth in the number of institutions adopting responsible investment principles, there is increasing acceptance of the position that fiduciaries can and should take into account all factors that may be material to the performance of assets under their control – including long-term environmental, social and governance (ESG) factors. The UN Environment Program Finance Initiative (UNEP-FI) and the UN Principles for Responsible Investment (PRI) have played an important role in mainstreaming these ideas. The Freshfields study, conducted under the auspices of UNEP-FI, is widely regarded as the most authoritative argument in support of the legality of considering ESG issues in investment decisions.<sup>4</sup> The report, and its 2009 follow-up, recognized that the definitions of moral and legal standards of behaviour are in constant evolution.<sup>5</sup>

Companies with poor performance on human rights may face operating restrictions, litigation, reputational damage, and erosion of the social license to operate. Many investors now identify human rights issues as material risks to the value of companies, and accept that good fiduciaries should take them into account in investment decision-making. However, this does not equate to a universal corporate responsibility to respect human rights at all times. If it is not generally accepted that a duty to support the corporate responsibility to respect human rights extends to investment institutions, it is possible that human rights due diligence measures by management of a public company could be opposed by some or all of the company's shareholders, because they are seen as contrary to profit maximization, or because the risks the measures are intended to address are not considered to be material.

In summary, we encourage the Working Group to explore how the corporate responsibility to respect human rights applies to investment institutions, and how it can be integrated within the scope of fiduciary duty. We further suggest that the Working Group could liaise with the UN Principles for Responsible Investment and the UNEP Finance Initiative to further this exploration. If you have any questions regarding this letter, please contact Michelle de Cordova, Manager, Corporate Engagement & Public Policy, NEI Investments ([mdecordova@NEIinvestments.com](mailto:mdecordova@NEIinvestments.com) 604-742-8319).

Sincerely,

**NEI Investments**

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

Robert Walker  
Vice President, ESG Services & Ethical Funds

CC: Board of Directors, NEI Investments

---

<sup>4</sup> UNEP FI (2009). Fiduciary Responsibility II: Legal and practical aspects of integrating environmental, and social and governance issues into institutional investment. Accessed December 1, 2011 from: <http://www.unepfi.org/fileadmin/documents/fiduciaryII.pdf>

<sup>5</sup> Freshfields (2005). A legal framework for the integration of environmental, social and governance issues into institutional investment. Accessed December 1, 2011 from: [http://www.unepfi.org/fileadmin/documents/freshfields\\_legal\\_resp\\_20051123.pdf](http://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf)