September 26, 2023

UN Working Group on Business and Human Rights
Thematic Engagement, Special Procedures and Right to Development Division
Special Procedures Branch
UNOG-OHCHR
CH-1211 Geneva 10, Switzerland
Email: hrc-wg-business@un.org

Re: ESG And BHR Questionnaire

Dear Members of the Working Group on Business and Human Rights,

NEI Investments is a Canadian asset manager specializing in responsible investing, with approximately CAD$11 billion in assets under management. Our approach to investing incorporates the thesis that companies can mitigate risk and take advantage of emerging business opportunities by integrating best environmental, social and governance (ESG) practices into their strategies and operations. As part of our investment process, we utilise sustainability-related financial information to better inform our investment decisions and guide our corporate proxy voting and engagement activities.

We appreciate the opportunity provided by the Working Group on Business and Human Rights to provide input to this consultation, as it shapes its recommendations for the Report to be presented to the 56th session of the Human Rights Council in June 2024.

We have chosen to focus our comments on the questions noted below. Our responses are defined by our perspective as an asset manager. Through our responses we have sought to highlight that we believe that investors have a responsibility to integrate human rights in their investment decision. Currently, investors can consider human rights in various ways such as: in decisions around eligibility for investment, to inform voting decisions at annual meetings, with respect to their public policy efforts and in shaping agendas for dialogues with companies. We believe an effective approach to human rights issues will include a firmwide commitment to analysing human rights issues in investment decision making. That said, at this point investors are currently lacking consistent, comparable information on human rights issues that affect companies within their portfolio. This limits investors' ability to make informed decisions on human rights issues. In light of these issues, we have encouraged global standard setters, like the International Sustainability Standards Board (ISSB), to prioritize human rights issues.

General: Question #1

What do you understand Environmental, Social, and Governance (ESG) in finance to mean? How are human rights standards and frameworks considered by investors, if at all, in ESG?

Environmental, social and governance (ESG) issues are generally a series of material, non-financial factors that affect corporate performance and define the business' impacts on multiple stakeholders and the environment. We believe ESG factors are inextricably connected to how a business generates long-term sustainable value. Though there are a breadth of issues that are considered ESG issues, for any given company there will be certain ESG issues that are more material to the business given its business model, where it operates, the products/services it provides etc. This is also true for human rights issues which will manifest differently at different businesses. For example, concerns around digital rights are especially material for big tech companies, and ensuring workers rights are upheld with suppliers is especially material for companies with expansive supply chains.

Investors rely on human rights standards and frameworks such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct ('OECD Guidelines') and a series of other international laws and conventions[1] in allowing them to 1) define a responsible investment approach that meets their responsibilities as investors to integrate human rights issues in their decision making and 2) to in turn define their expectations of companies in their portfolio when it comes on to identifying, assessing, mitigating and remedying human rights risks.

Corporate responsibility to respect human rights: Question #2

How effective are international instruments, institutions and guidance that promotes HRDD, such as by the UN Global Compact, Equator Principles, Principles of Responsible Investment, Investor Alliance for Human Rights, Business for Social Responsibility and other entities, effective in increasing awareness of human rights impacts among investors and other businesses? Please provide examples of participation, integration, or adherence of investors in these instruments and bodies.

International instruments, institutions and guidance that promote HRDD are very important as they support investors in defining a core set of responsibilities and expectations that can be advanced with portfolio companies on human rights issues. In addition to this role, Institutions such as the ones detailed in the question, can help to facilitate a forum for investors to be engaged in policy discourse on human rights issues. Institutions can also connect investors with civil society organizations, and rights affected stakeholders. For example, as an active member of the Investor Alliance for Human Rights – we have found this to be a very effective forum for us to further our understanding of the perspectives of civil society organizations. In doing so we are more informed about human rights issues in global and high-risk contexts such as: risks in certain conflict-affected regions, emerging risks from new technologies, remedies sought by rights affected stakeholders etc. This information can inform our perspective on how effectively a company is mitigating human rights risk. As an asset manager with

[1] NEI's Responsible Investment Policy states that "NEI supports the principles contained in the Universal Declaration of Human Rights, the Geneva Conventions on International Humanitarian Law, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, the UN Declaration on the Rights of Indigenous Peoples, and the eight fundamental International Labour Organization conventions. We recognize that human rights issues include issues such as digital rights, and free, prior and informed consent of Indigenous peoples."

151Yonge Street, Suite 1200
Toronto, ON M5C 2W7

hundreds of names in our portfolio across markets around the world, we would otherwise be limited in our ability to form these connections independently.

Corporate responsibility to respect human rights: Question #4

To what extent do investors assess human rights risks and adverse impacts using a risk to right-holders lens as being separate from ESG materiality considerations or as part of a double materiality assessment? [11] Are these integrated into an ESG approach and, if so, how? Please provide examples of practices.

We do not believe that risks to rights-holders are separate from ESG materiality considerations. In fact, a fulsome approach to considering human rights issues as an ESG issue must consider risks to rightsholders. We perceive risks that affect rightsholders from a human rights perspective to be material for the business as risks could crystallize in the short, medium or long term. Where there may be a disconnect with the interpretation of materiality would be in the timeframe those risks may manifest, as some human rights risks may not have immediate financial implications but may instead lead to impacts in the long term that could even be systemic in nature, creating material risks to the investor, its portfolio and the company specifically. Understanding the nature of these risks is important in understanding the appropriate investor actions to take in response.

As an example, we will consider a manufacturer's relationship with the community it operates in, and with the Indigenous Peoples of the region. As another example, we will consider labour practices in a retailer's supply chain and whether there are concerns around how that business responds to labour rights risks. Though risks related to these examples may not have immediately notable financial implications for the business, we consider what these risks may mean for the long-term growth and successful operations of the business. Aside from considering whether the company has appropriate policies and processes in place to prevent adverse human rights impacts, we will also look for external signs of controversy or alleged harms. As noted in our response to question #5 (below), where company performance falls below our expectations it may impact our decision to invest.

Corporate responsibility to respect human rights: Question #5

What does appropriate investor action entail in the event that a client or portfolio company causes or contributes to a potential or actual adverse human rights impact?

Appropriate investor action to a finding that a portfolio company causes or contributes to a potential or actual adverse human rights impact is grounded in international frameworks and standards such as the UNGPs and the OECD Guidelines (please note our response to general question #1). What constitutes

151Yonge Street, Suite 1200
Toronto, ON M5C 2W7

appropriate action is further informed by the consideration of additional, company-specific factors such as the type of investment made, the size of the stake in the business, the existing relationships that can be leveraged, and other contextual factors that can enable or constrain investor ability to influence corporate action. With that context in mind, we would note that our response to this question is informed by our perspective as an asset manager. NEI holds a minority stake in any given portfolio company, with exposure across sectors, products, services, markets etc.

We believe that appropriate investor action begins prior to the decision to invest in a company. It is important for investors to analyze whether companies have the appropriate policies and processes in place to address human rights risk, as these act as the foundation for understanding future risks. NEI integrates human rights in assessing eligibility for investment – recognizing that human rights issues are often connected to other ESG issues such as climate and nature. Companies that do not meet our expectations for adequate due diligence in the face of severe human rights risks are not considered eligible for investment. Further, ongoing monitoring and investor due diligence is required in order to identify the presence of potential or actual adverse human rights impacts in the portfolio. This is an active process that is critical to understanding the appropriate action for investors to take, since we would argue that being ignorant of the human rights impacts in your portfolio does not absolve you of the indirect contribution to the adverse impact.

Once a company is in our portfolio and we have identified potential or actual human rights risks, we determine the appropriate action to take based on the nature of the risk. That assessment could lead us to prioritize a company for engagement – where we make clear to companies our expectation that they identify, address, mitigate and remedy the issues, and disclose accordingly. We may pursue continued engagement with companies across a sector where we have identified a sector wide risk. In this light, investors should assess whether the risks that have surfaced in the context of an individual company may be symptomatic of a broader portfolio risk. Oftentimes we will collaborate with other aligned investors to seek to amplify the nature of our asks and expectations with a company.

Engagement is a very important tool for investors in understanding the nature of the human rights risks faced by a company, and in fostering a better understanding of the outcomes of the processes employed by a company in relation to that risk. It is also a key tool for articulating investor expectations in regard to the protection or respect of human rights. Companies' public disclosure on most ESG issues, including human rights, is often inadequate to meet our needs. Though we typically have a better understanding of companies' human rights commitments, we usually have less information on the efficacy of their processes and their approach to human rights due diligence. We often refer to a series of third party, expert benchmarks for more nuanced information on human rights issues but still lack the necessary scale of information we need for companies across sectors.

151Yonge Street, Suite 1200
Toronto, ON M5C 2W7

In addition to engaging companies, investors can advance human rights issues through other means. If we are not satisfied with a company's approach to human rights risk we may seek to withhold votes from directors at annual meetings, to support applicable shareholder proposals, or to file or co-file a shareholder proposal ourselves in relation to the applicable human rights issue. Ultimately, we reserve the right to divest from a company where we remain dissatisfied with their approach to human rights risk management. NEI also believes it is also important for investors to integrate human rights issues in their policy efforts – this has led to our suggestion for example that the ISSB elevate social issues on its agenda.

Thank you again to the Working Group for the opportunity to respond to this consultation. We would be pleased to discuss any of our comments in further details, as is helpful to the Working Group.

Sincerely,

Jamie Bonham
Head of Stewardship
NEI Investments

Michela Gregory
Director, Responsible Investing
NEI Investments

Cc:

Adelaide Chiu, CPA CA CFA, Vice President, Head of Responsible Investing, NEI Investments

151Yonge Street, Suite 1200
Toronto, ON M5C 2W7