

August 23, 2019

**INVESTOR SUBMISSION TO EQUATOR PRINCIPLES ASSOCIATION
ON ITS EP4 DRAFT AND RIGHTS OF INDIGENOUS PEOPLES**

We, the undersigned investors, are writing to provide comments to the public review draft of the Equator Principles (EP4) released in June 2019 and represent \$2.92 trillion assets under management or advisement.

We support the increased emphasis on respecting human rights in EP4. In line with that commitment we recommend that EP4 be strengthened to recognize that Indigenous Peoples have a fundamental right to provide or withhold their free, prior and informed consent (FPIC) as set out in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), and this right exists in all countries – Designated or Non-Designated. We also recommend that UNDRIP be specifically referenced in EP4.

We commend the Equator Principles Association (EPA) for providing the opportunity to submit comments on the consultation draft of EP4. Many of the undersigned investors also co-signed an October 2017 investor statement to the EPA (see attached). It contained recommendations to improve EP III, the current version of the Equator Principles, to ensure that Equator Principles Financial Institutions (EPFIs), have the tools necessary to address the pressing environmental and human rights challenges facing today's financial institutions. It was prompted, in part, by the Dakota Access Pipeline controversy where 13 of the 17 banks that financed the project were then signatories to the Equator Principles (EPs). In addition, we support the Equator Principles' reflection of the important implications of the Paris Agreement and the Financial Stability Board's Task Force on Climate-Related Financial Disclosure recommendations with the enhancements in EP4 to the Preamble and Principle 2, introducing a Climate Change Risk assessment which includes the evaluation of physical and transition risks.

We support the increased focus on respecting human rights as evidenced by the inclusion in the Preamble to EP4 of the statement that EPFIs will “fulfill their responsibility to respect Human Rights in line with the *United Nations Guiding Principles on Business and Human Rights* (UNGPs).” While the enhancements to EP4 partially address this ambition, they fall short of providing a strong, global standard for social and environmental risk assessment in the financial sector that protects the Rights of Indigenous Peoples. EP4 does not presently align with UNDRIP, the international standard for Indigenous Peoples Rights, nor does it meet the goal of alignment with the UNGPs set out in the preamble. As a result, EP4 does not provide EPFIs with a sufficiently robust and coherent risk management framework to ensure human rights and the rights of Indigenous Peoples are protected in reviewed transactions, which could ultimately cause future reputational risk and harm for EPFIs and the projects they finance. Corporate projects can experience costly delays and disruptions when proper consultations with Indigenous communities have not been undertaken, and their valid consent has not been obtained.

We believe the following recommendations would strengthen EP4 and address some of the concerns investors have previously raised:

- **Principle 3, Applicable Environmental and Social Standards:** EP4 perpetuates an unhelpful distinction between Designated and non-Designated Countries. While we acknowledge the additional guidance in EP4 that EPFIs can choose to implement specific performance standards in Designated Countries based on the project circumstances, the discretion built into this

approach means that a future project like the Dakota Access Pipeline could still run into the exact same problems. We urge the EPA to ensure the same rigorous environmental and social expectations are applied to projects in all jurisdictions. Specifically, Principle 5, with the inclusion of a strengthened commitment to FPIC, should apply in all instances where EPFIs are considering financing related to a project that may impact Indigenous Peoples or their culture, lands, territories or resources.

- **Principle 5, Stakeholder Consultation:** We recommend the adoption of a strengthened Option 2. While neither option presented addresses Indigenous Peoples' right to FPIC as it is enumerated in UNDRIP, Option 2 comes the closest and is much preferred over Option 1. Option 1 conflates consultation with consent and is weaker than the existing standard set by the International Finance Corporation. Option 2, by contrast, does require demonstration of actual FPIC. However, this expectation, as drafted, does not apply to the full scope of circumstances envisioned in UNDRIP and fails to account for the ongoing relational nature of FPIC over the lifetime of a project. The draft EP4's current options for FPIC do not remedy the gaps that led to the controversy surrounding the Dakota Access Pipeline - the event which prompted the revisions to the Equator Principles in the first place. We recommend that a more robust Option 2 be adopted which clearly reflects the approach to FPIC set out in UNDRIP and that UNDRIP be referenced in the Equator Principles.
- **Principle 6, Grievance Mechanism:** Investors recommended in 2017 that the EPs establish a robust and effective grievance mechanism through which EPFIs can facilitate the resolution of adverse human rights impacts resulting from possible breaches of the applicable environmental and social standards. The essential components for such grievance mechanism are set out in Principles 29-31 of the UNGPs. The grievance mechanism in EP4 does not meet the effectiveness criteria for grievance mechanisms articulated in the UNGPs. We recommend further revision to the mechanism to align with those criteria; and,
- **Principle 10, Reporting and Transparency:** Disclosure on human rights due diligence is a core component of adherence to the UNGPs and a critical tool for investors and other stakeholders to understand the scope and content of the due diligence conducted. EP4 does not add any new transparency requirement around human rights or Indigenous Peoples' rights nor does it provide any specificity regarding the application of the existing reporting requirements to human rights and Indigenous Peoples' rights. We recommend the EP4 reporting expectations be revised to align with the standards laid out in the UNGPs. Specifically, reporting should include information on how EPFIs identify and address human rights impacts in their risk assessment process and the actions they have taken to provide remedy where they have caused or contributed to adverse human rights impacts.

In conclusion, we are encouraged that the Equator Principles Association is helping its members improve how they handle environmental and social risks in project finance. We recommend that EP4 be strengthened to recognize the right of Indigenous Peoples to FPIC regardless of jurisdiction and to fully align with the UNGPs.

We welcome the opportunity to discuss our concerns and recommendations further with the Equator Principles Association and its signatory banks and financial institutions in the coming months. Should you wish to speak with investors signatories to this letter please contact Steven Heim, Managing Director of Boston Common Asset Management, at sheim@bostoncommonasset.com.

Investor Submission to Equator Principles Association on Its EP4 Draft and Rights of Indigenous Peoples

Signatories, as of August 23, 2019:

Steven Heim
Managing Director
Boston Common Asset Management, LLC

Marcie Frost
Chief Executive Officer
California Public Employees' Retirement System

Thomas P. DiNapoli
New York State Comptroller
New York State Common Retirement Fund

New York City Comptroller Scott M. Stringer

Jamie Bonham
Manager, Corporate Engagement
NEI Investments

Kevin Thomas
Executive Director
Shareholder Association for Research and Education (SHARE)

John Streur
President and CEO
Calvert Research and Management

Matthew Smith
Head of Sustainable Investments
Storebrand Asset Management

Hanna Roberts
Director, Engagement Services
Sustainalytics

Marilyn Llanes
Chair, Adrian Dominican Sisters, Portfolio Advisory Board
Adrian Dominican Sisters, Portfolio Advisory Board

Dalit Baum
Director, Economic Activism
American Friends Service Committee

Andrew Behar
CEO
As You Sow

Colette Murphy
Executive Director
Atkinson Foundation

Delwin Yung
Treasurer and CFO
British Columbia Teachers' Federation

Joanne Yelle
Executive Director
Canadian Religious Stewardship

Karen Watson, CFA
Chief Investment Officer
Congregation of St. Joseph

Corey Klemmer
Director of Engagement
Domini Impact Investments LLC

Valerie Heinonen
Director, Shareholder Advocacy
Dominican Sisters of Hope

Jeff Pym
Executive Director
ELFEC

Sister Jean Sliwinski
Provincial Sustainability Coordinator
Leadership Team of the Felician Sisters of North America

Lisa Cooper
President
Figure 8 Investment Strategies

Becky L Albert-Breed
Executive Director
First Nations Community Financial

Jeffery W. Perkins
Executive Director
Friends Fiduciary Corporation

Liz Simmie
Co-Founder
Honeytree Investment Management

Winona LaDuke
Executive Director
Honor the Earth

Renee Morgan
Impact Director
Impact Investors

Elin Goulden
Social Justice and Advocacy
Investment Committee, Anglican Diocese of Toronto

Rini Banerjee
President
Jessie Smith Noyes Foundation

Fr. Ted Penton, SJ
Secretary
Jesuit Committee on Investment Responsibility

Pat Zerega
Senior Director of Shareholder Advocacy
Mercy Investment Services, Inc.

John Sealey
Provincial Assistant, Social and International Ministries
Midwest Province of the Society of Jesus

Board of Trustees
Community Trust
Mississaugas of the Credit First Nation Community Trust

Mark Sevestre
President
National Aboriginal Trust Officers Association

Michael Kramer
Managing Partner
Natural Investments

Brent Truttmann
Financial Analyst
Oneida Trust Enrollment Committee - Oneida Nation of Wisconsin

Beth-ann Roth
Shareholder
R|K Invest Law, PBC

Patricia Jurewicz
Vice President
Responsible Sourcing Network

Cecilia Mary Hudec
Canonical Treasurer
Sisters of Charity - Halifax

Patricia A. Daly OP
Corporate Responsibility Representative
Sisters of St. Dominic of Caldwell NJ

Denece Millesberger, sej
Treasurer
Sisters of the Instruction of the Child Jesus

John F. Swift
President
Swift Foundation

Sr. Jean Gove, CSJ
President
The Daly Foundation

Kurt Barnes
Treasurer & CFO
The Episcopal Church (DFMS)

Mary Beth Gallagher
Executive Director
Tri-State Coalition for Responsible Investment

Jonas Kron
Senior Vice President
Trillium Asset Management

Andrew McGeorge
Treasurer / Chief Financial Officer
Unitarian Universalist Association

Valerie Heinonen
Director, Shareholder Advocacy
Ursuline Sisters of Tildonk, US Province

Fr. Bryan Pham,
Provincial's Delegate (JCIR)
USA West Province of the Society of Jesus

Patricia Farrar Rivas
CEO
Veris Wealth Partners

Pat Tomaino
Director of Socially Responsible Investing
Zevin Asset Management