



ICGN

International Corporate Governance Network
Inspiring good governance & stewardship

Mr. Rodrigo Buenaventura, Chairman
CNMV
Comisión Nacional Del Mercado De Valores
Calle de Edison 4
28006, Madrid, Spain

September 16th, 2022

Dear Chairman Buenaventura,

Re: Code of Good Practice for Institutional Investors, Asset Managers and Proxy Advisors in relation to their duties in respect of assigned assets or services provided (“Code of Good Investor Practice” or the “Code”)

The International Corporate Governance Network (ICGN) welcomes the request for comments by the Comisión Nacional Del Mercado De Valores (CNMV) on the proposed “Code of Good Practice for Institutional Investors, Asset Managers and Proxy Advisors in relation to their duties in respect of assigned assets or services provided” (“Code of Good Investor Practice” or the “Code”).

Led by investors responsible for assets under management of around \$70 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship to support long-term value creation, contributing to sustainable economies, societies, and the environment. Headquartered in London, our membership is based in over 40 countries and includes companies, advisors, and other stakeholders. ICGN offers an important international investor perspective on corporate governance and investor stewardship to help inform public policy development and the encouragement of good practices by capital market participants. For more information on the ICGN, please visit www.icgn.org.

There has been a rise in the creation of national stewardship codes. In recognition of this, ICGN created a Global Stewardship Codes Network¹ in 2016 for all those responsible for developing and implementing national codes. Many such codes have drawn inspiration from the publication of the ICGN Global Stewardship Principles (“ICGN GSP 2020”). The ICGN GSP has been developed over 20 years based on the inaugural ICGN Statement on Institutional Shareholder Responsibilities published in 2003. ICGN elaborated on this seminal work with the creation of the ICGN GSP to provide a framework for investors to implement stewardship practices in fulfilling their fiduciary obligations to beneficiaries or clients.

The CNMV’s decision to create new stewardship responsibilities for investors based in Spain is an important step in affirming the role that investors play in holding companies accountable through high standards of governance to support long-term value creation, contributing to sustainable economies, societies and the environment. In the Introduction, CNMV noted:

¹ [Global Stewardship Codes Network | ICGN](#)

The Code is structured under a principles approach. The clarifications or expectations included after each Principle should not be considered exhaustive prescriptions, which all entities must comply with, but rather, in application of the proportionality criterion, it will be the entities that determine how best to apply each principle, taking into consideration such clarifications or expectations, but adapting them to their particular circumstances and conditions.²

ICGN appreciates that the proposed Code is structured under the principles-based approach. So, too, are the ICGN GSP, which are aspirational principles demonstrating stewardship activities for investors, whilst acknowledging that investors have their own investment strategies and beneficiaries, to whom they owe fiduciary duties. A principles-based approach to stewardship application can be very effective as demonstrated in many markets.

ICGN supports CNMV's intention to apply the Code to investors, "regardless of their size and the percentage of capital they have invested or have under management, or the number of clients they serve."³ This provides a level playing field for all investors, not just those that have the resources to comply. Indeed, it could open the Spanish capital market to more investors who are based outside of Spain. Since the Code is voluntary, it may attract investors who would like to participate in the Spanish market, and for whom it could provide more business opportunities.

ICGN recommends that CNMV clarifies the proportionality criterion set out in the Code and the degree to which it could be used by some to avoid applying the Principles. We understand that the proportionality criterion will allow investors to take into account the "complexity, size and resources for the engagement of the entities in which they invest."⁴ The Code provides, however, that entities with assets, such as short-term vehicles, or whose relative weight in insignificant, may decide to apply the Principles relating to voting activities and/or engagement to a lesser degree. We believe that most investors do so now; some of it is a resource issue for smaller investors and others have assets placed with fund managers that are required to follow the investors' requirements.

We understand the need to clarify how the Principles might impact investors with smaller assets under management. However, many ICGN Members have made a commitment to embrace stewardship principles as part of their business model even with limited resources. They believe that these practices provide better governance within the fund and help to create a sustainable investment plan and this sustainable returns for their beneficiaries.

We also note that whilst this Code of Good Practice has its own unique features and provisions, the CNMV has provided a level of consistency in the requirements with other international codes and standards, including ICGN's Global Stewardship Principles. This will help overseas investors apply the Code in an efficient manner aligned with globally consistent policies and practices. This also serves to ease the level of annual stewardship reporting requiring significant resources.

² CNMV Proposed Code, Introduction, p. 4

https://www.cnmv.es/DocPortal/DocFaseConsulta/CNMV/CP_Codigo_buenas_practicas.pdf

³ Ibid, CNMV Proposed Code, p. 5.

⁴ Ibid, CNMV Proposed Code, p. 5.

ICGN also appreciates the transition period of three years, from the approval of the Code, “during which the entities that decide to adhere to it may apply the principle of “comply or explain” in their annual report, indicating which principles applied, and, if so, in what sense, during the reporting period.”⁵ Thereafter, the Code requires that, “if the Code is not applied in its entirety, using the principle of “apply and explain”, the entity must declare it as such and may not continue to express its adherence to the Code.”⁶ ICGN agrees that there must be flexibility in this regard. Some investors may not be able to apply each of the Principles to their operations due to fiduciary obligations, however, they are working within the spirit of and towards the good practices set out in the Code.

It is the requirement of “apply and explain” in this and other proposed codes for which ICGN has expressed concerns in other comment letters. The ICGN GSP acknowledge that what has become the prevalent corporate standard of “comply or explain” requires investors to actively monitor their investee companies to determine whether they comply with the relevant codes in their region and challenge them, if necessary, to provide more detailed explanations if they cannot presently comply.

We recognise that the proposed Code’s “apply and explain” approach after the transition period is similar to the UK Stewardship Code and the more recent Malaysia Stewardship Code. Signatories will be required to report on their progress toward applying the Code’s Principles in a manner that is aligned with their own business model and strategy. This is where the proposed transition period can be helpful as investors discern the level of reporting that will be required. As such, ICGN suggests that the CNMV provide a degree of flexibility to the Code’s reporting and disclosure regime for investors who have a large number of companies in their portfolios. Otherwise, the standard for investors, set at “apply and explain” is at a higher level than companies, which have a “comply or explain” standard.

Finally, we would note the requirement that proxy advisors, based or established in Spain, are considered to be under the potential scope of the Code. We agree with CNMV that proxy advisors who decide to join must adapt the principles to the activities and functions that have been entrusted to them. We would call your attention to the work of the Best Practice Principles (BBP) Oversight Committee⁷, which just released its annual report, noting the progress that proxy advisors are making in attaining compliance with the Best Practice Principles. According to a media release, “All five of the world’s leading proxy voting advisors have become more transparent about the way they operate, according to an analysis of their second-year reporting of compliance against industry Best Practice Principles.”⁸ The Oversight Committee noted there is more transparency that is needed. Proxy advisors provide vital services for the investors that utilize them. An annual reporting requirement does not appear to be overly burdensome in such a way to cause proxy advisors to pass the expenses on to their clients. What proxy advisors do need, and appears to be incorporated into the Code, is the flexibility to meet the needs of their clients, thereby using their professional judgment to determine what to include in their reports and to what degree they are able to apply the Principles to their business model.

⁵ CNMV Proposed Code, p. 7.

⁶ CNMV Proposed Code, p. 7.

⁷ [Microsoft Word - Media release on IOC annual report 1 September 2022 \(bppgrp.info\)](#), [Best Practice Principles \(BPP\) Oversight Committee | Best Practice Principles for Shareholder Voting Research \(bppgrp.info\)](#)

⁸ Ibid.

Our more detailed response to the proposed Code is set out in each of the Principles. As the predominant sources to our comments, ICGN has referred to the ICGN Global Stewardship Principles and the ICGN Guidance on Investor Fiduciary Duties.⁹ The ICGN Guidance on Investor Fiduciary Duties was adopted by the membership in 2018 and provides an “investor perspective of how fiduciary duties and responsibilities take shape when applied to the management of financial assets.”¹⁰

Principle 1: *Investors and managers will guide their actions towards the long-term profitability of their investments for the benefit of their clients and beneficiaries, and will integrate, to the extent they deem appropriate, as part of their fiduciary obligations, environmental, social and of governance, as well as the associated risks, in its strategies, policies and investment decisions.*

ICGN appreciates the recognition that as fiduciaries, investors, regardless of the assets under management, must assess their own actions and integrate sustainability considerations into their activities whilst keeping in mind what is in the best interests of their beneficiaries. In some ways, the adoption of sustainability standards is even more important for smaller investors, who have less risk tolerance.

The language in Principle 1 is supported by ICGN, with a caveat related to the use of the words, “environmental, social and of governance” within the Principle. Given that ESG factors are not covered under any global standard at present, investors need to decide how they will facilitate their stewardship responsibilities within the environmental, social and governance pillars. We have been increasingly utilising the term, “sustainability” to frame the environmental, social and governance issues that face both investors and companies. We have called for the integration of sustainability factors during the entire investment process and subsequent reporting, in financial and non-financial matters.

ICGN GSP Principle 6 addresses similar sustainability considerations. It calls for investors to “promote the long-term performance and sustainable success of companies and should integrate material environmental, social and governance (ESG) factors in investment decision-making and stewardship activities.”¹¹

Reporting on the sustainability considerations that investors, are focusing on is critically important. Sustainability reporting is no longer a ‘nice’ to have – it really is a ‘must’ have. As well as reducing the reporting burden on companies, harmonised standards will equip investors with rigorous, consistent, comparable, and verifiable sustainability information, backed (we hope) by regulation and enforcement. This will enable the proper assessment and pricing of climate-related risk, opportunity, and resilience in investee companies. More broadly it provides a tool for assessing progress towards achieving corporate transition plans and carbon neutral investment portfolios as we collectively advance towards a net-zero global economy by 2050.

In 2020, ICGN revised and updated its Global Stewardship Code, in which we included language for “investors to recognise that systemic risks, including those relating to climate change, wealth inequality and anti-corruption, can affect the sustainable value creation of

⁹ [ICGN Guidance on Investor Fiduciary Duties](#)

¹⁰ [ICGN Guidance on Investor Fiduciary Duties](#), Preamble, p. 3.

¹¹ [ICGN Global Stewardship Principles 2020](#)

individual companies as well as the health of economies and financial markets”.¹² CNMV may wish to add to the language in Principle 1 that institutional investors should also consider ways to identify and respond to “market-wide and systemic risks and promoting well-functioning financial markets.”¹³

Principle 2: *Investors and managers must monitor and acquire adequate knowledge of the companies in which they invest and to what extent these companies contribute to the objective indicated in Principle 1 above and must have available means and resources in their monitoring work. Sufficient resources.*

ICGN agrees that investors should monitor investee companies and provides expansive guidance in the ICGN GSP. The ICGN GSP Principle 3 states, “Investors should exercise diligence in monitoring companies held in investment portfolios and in assessing new companies for investment.”¹⁴

With respect to the “Sufficient resources” comment, ICGN observes that smaller investors are subject to greater resource constraints as they must balance administrative expenses for carrying out their work, particularly those who have share ownership in hundreds of companies. The oversight of governance practices, the exercise of effective proxy voting and monitoring their investee companies may require that some of this activity be outsourced to fund managers and proxy advisors.

With regard to stewardship activities that are outsourced, CNMV may wish to consider how investors explain what steps have been taken to ensure that the investment activities are carried out in line with their own approach to stewardship. ICGN refers CNMV to the recently revised ICGN-GISD Model Mandate as a resource that is publicly available for use. The Model Mandate’s primary purpose is “to provide guidance to asset owners to ensure that their stewardship and sustainability objectives are fully reflected in investment management agreements (IMAs) and contract terms with the managers they have selected to manage their assets, and to provide practical assistance to enable them to do so.”¹⁵ The Model Mandate may be useful as a reference point and resource under this Principle.

Principle 3: *Based on their knowledge of the companies in which they invest, investors and managers will develop, publish and keep updated an engagement policy, focused on contributing to the business strategy of the companies in which they invest and the generation of a return, consistent with that indicated in Principle 1.*

ICGN agrees that investors should have engagement policies to guide their targeted strategies to enhance their funds’ value and promote long-term growth. It is axiomatic that the returns generated are primarily utilized to provide beneficiaries with their earned benefits, from the funds and returns for which these investors have been entrusted. Such policies should be disclosed as set out in the ICGN GSP.

ICGN agrees that investors should engage with investee companies and collaborate with other investors. This provision is similar to the ICGN GSP Principle 4, which states, “Investors should engage with investee companies with the aim of preserving or enhancing value on behalf of

¹² [ICGN Global Stewardship Principles 2020](#), p. 7.

¹³ See also the UK Stewardship Code, Principle 4, [UK Stewardship Code \(frc.org.uk\)](#).

¹⁴ [ICGN Global Stewardship Principles 2020](#), p. 17.

¹⁵ ICGN-GISD Model Mandate, revised June 2022. [ICGN GISD Model Mandate 2022](#), p. 6.

beneficiaries or clients and should be prepared to collaborate with other investors to enhance engagement outcomes.”¹⁶

There are several tools available for investors to support their stewardship responsibilities when escalation is required. One important mechanism is the filing of a shareholder proposal, if warranted. ICGN issued a Viewpoint on “Shareholder Proposals – An Essential Instrument for Ensuring Corporate Accountability”, in which we noted, “shareholder proposals can be an important management and board oversight mechanism.”¹⁷

With respect to reporting on the results of engagements, ICGN notes that many investors prefer to utilize “quiet diplomacy” as they engage with companies until the engagement activity is resolved one way or another. One of the tenets of a quiet diplomacy strategy is to maintain discretion on the engagement in order to facilitate trust. In such cases, the ongoing negotiations may not be widely announced or reported until investors are able to report on the results. This type of engagement may continue over the course of more than one proxy season.

Principle 4: Investors and managers will actively exercise their rights as shareholders in the companies in which they invest, participating and exercising their right to vote responsibly at general meetings of shareholders, in the interest of their clients and beneficiaries, in accordance with their policies of engagement and vote.

ICGN notes that investors have a fiduciary obligation to make voting decisions in the best interests of their beneficiaries. The ICGN Guidance on Investor Fiduciary Duties calls for investors to develop and use “bespoke proxy voting guidelines and corporate governance principles to adequately manage shareholder rights. The investor fiduciary should take care to ensure votes are cast in the interests of beneficiaries or clients and that shareholder voice is appropriately exercised.”¹⁸

ICGN has provided for a similar disclosure in the ICGN GSP, Principle 5.1, which states:

Investors should publicly disclose clear voting policies which should be reviewed periodically. The voting policy should outline the principles guiding voting decisions, highlight scope for derogation in specific cases and make clear any differences in approach between domestic and international holdings. Where an investor chooses not to vote in specific circumstances, for example where holdings are below a certain threshold, this should be disclosed.¹⁹

We note that many investors hold large portfolios and cast their votes prior to the AGMs of many companies. In such cases the provision for written explanations in all votes can seem burdensome. While some voting platforms have the functionality to do this electronically with the submission of voting instructions, this can be a very difficult criterion to satisfy for investors without these platforms. Many codes have required that investors publish their voting history and explain when votes are against management.

ICGN noted that the Code refers to shares on loan in this provision, with which we agree. ICGN has issued guidance on situations when shares are out on loan. In the Guidance on Securities

¹⁶ [ICGN Global Stewardship Principles 2020](#), p. 19.

¹⁷ [ICGN Shareholder Proposals - An Essential Instrument for Ensuring Corporate Accountability](#), p. 2.

¹⁸ [ICGN Guidance on Investor Fiduciary Duties](#), p. 18.

¹⁹ [ICGN Global Stewardship Principles 2020](#), p. 21.

Lending, ICGN has recommended that investors provide a mechanism to recall shares prior to voting as a way to preserve the value in proxy voting.²⁰ The Guidance states:

Institutional investors should disclose their approach to stock lending and voting in a clear policy which should clarify the types of circumstances when shares would be recalled to vote. The policy should be communicated to relevant agents in the chain of the vote execution, and, in respect of shares out on loan, to the agent lender.²¹

For many investors, the votes are posted on their public-facing website and available for review. In addition, the voting policy or guidelines may contain the rationale why votes are cast against, or an investor chooses to abstain. There are times that information is not made available prior to the AGM and investors are not able to confidently vote for an item on the ballot or a director. A considered course is to abstain or vote against a management proposal because management did not provide the requisite amount of time or information to cast an informed vote. Sensitive votes or votes cast in collaboration with other investors may be publicly announced under the terms of the arrangement.

Principle 5: *Investors and managers will publish an annual report on how they have applied the engagement and voting policies in the immediately preceding financial year, which will include an evaluation of the actions carried out and an explanation of how the previous policies have contributed to the achievement of the business strategy of the companies in which they invest and the objectives established in Principles 1, 2 and 3.*

This provision aligns well with the ICGN GSP Principle 7, which mentions reporting as an additional element to transparency, says:

Meaningful transparency, disclosure and reporting. Investors should publicly disclose their stewardship policies and activities and report to beneficiaries or clients on how they have been implemented so as to be fully accountable for the effective delivery of their duties.²²

ICGN suggests that CNMV make it clear that these policies should be disclosed on a platform that is *publicly available*. In our experience, the platform should not be placed behind a firewall or only available to certain people or organisations, even though individual client reporting can be bespoke. In the ICGN GSP, ICGN has recommended that disclosure should also include an annual reporting to beneficiaries of stewardship activities as a way to show progress towards the Principles and sustainable practices that will lead to comparable stewardship reporting.²³

Principle 6: *The conflict of interest management policy of investors and managers must be focused on prioritizing the interests of their clients and beneficiaries.*

ICGN also has a strong interest in encouraging investors to manage conflicts of interest and disclose them accordingly. In the ICGN GSP, Principle 1.8, we state:

Conflicts of interest. Investors should have robust policies to minimise or avoid conflicts of interest, covering identification, assessment, escalation, mitigation, and disclosure of real or potential conflicts of interest. These policies should address how matters are

²⁰ [ICGN Guidance on Securities Lending](#), p.12

²¹ *Ibid*, p. 9.

²² [ICGN Global Stewardship Principles 2020](#), p. 24.

²³ [ICGN Global Stewardship Principles 2020](#), Principle 7, p. 24.

handled when interests with clients or beneficiaries diverge and make it clear that the interest of the client or beneficiary should be prioritised. Policies should identify specific cases where conflicts might arise. Investors should rigorously review their investment activities and their client interests to identify and appropriately manage real or potential conflicts of interest. Such conflicts of interest should be disclosed, along with the remedies to mitigate them.²⁴

It is inherent that institutional investors communicate with any service providers on the importance of managing potential conflicts of interest and well as mitigate potential conflict of interest, if possible.

Conflicts of interest can create critical governance situations for investors; but they are not the only ones. ICGN's GSP, Principle 1 focuses on investor governance more broadly— including, but not limited to, conflicts of interest. In addition, the Model Mandate provides several clauses for use between investors and managers to minimise conflicts of interest.²⁵

Principle 7: Investors and managers must maintain, periodically review and update, where appropriate, their internal governance practices and structures to ensure that they are consistent with the principles of this Code, as well as that they have the necessary capacity to act in an appropriate manner, as fiduciary responsables of the investments, in the best interest of their clients and beneficiaries.

In this context, the remuneration policy will publicly establish what part of the variable remuneration of the executive directors and senior managers of the investors and managers will be linked to the fulfillment of objectives related to their strategies and how their effective application has been carried out during the year and will be oriented towards achieving long-term performance by such investors and managers.

ICGN recognises that the CNMV would like its signatories to periodically review and update their governance practices and policies to ensure they are consistent with these Principles, or are reviewed for future application, over a time horizon for full application, if possible. We agree and have encouraged ICGN Members to review their governance, stewardship and other policies on an annual basis, if possible. Indeed, the investor's own governance structure is the first of ICGN's 7 Global Stewardship Principles. If one does not get the governance right, the effect of the stewardship agenda may be ineffective and unfocused.

We also agree to a certain degree that an investor's remuneration policy should contain aspects of achieving long-term performance for its beneficiaries. In the ICGN GSP 1.10, it states:

Appropriate remuneration. Investors should set fee and remuneration structures that provide appropriate alignment with the interests of beneficiaries or clients over relevant time horizons. Investors should disclose to their beneficiaries or clients how their remuneration structures and performance horizons for individual staff members advance such alignment.²⁶

With respect to the requirement that a remuneration policy should be publicly disclosed and include aspects of the variable remuneration of executive directors and senior managers, we

²⁴ [ICGN Global Stewardship Principles 2020](#), p. 14.

²⁵ [ICGN GISD Model Mandate 2022.pdf](#), several pages.

²⁶ [ICGN Global Stewardship Principles 2020](#), p. 14.

would suggest that the Code be clear that the methodology and alignment be subject to disclosure, not the actual remuneration itself. Some of our members have expressed concern in previous circumstances that the full disclosure of such information could put them at a disadvantage with respect to recruitment and retention.

Thank you for the opportunity to comment on the proposed Code of Good Practice, which should serve to help investors advance their stewardship roles in such ways to facilitate a strong capital market in Spain, assist in carrying out their fiduciary duties to beneficiaries and help companies create long-term plans for sustainable business practices. If you would like to follow up with questions or comments, please contact me or Carol Nolan Drake at: carol.nolandrake@icgn.org

Yours faithfully,



Kerrie Waring

Chief Executive Officer, ICGN

CC: George Dallas, ICGN Policy Director
Catherine McCall, Chair of the ICGN Global Stewardship Committee