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By email: elodie.feller@unep.org

Principles for Responsible Investment
Consultation on Fiduciary Duty in the 21st Century

Dear Ms. Feller,

Thank you for inviting the International Corporate Governance Network (“ICGN”) to provide peer review feedback on comment on the Principles for Responsible Investment’s (PRI) report on Fiduciary Duty in the 21st Century.

ICGN was founded 20 years ago and is an investor-led membership organisation of more than 650 individuals based in 47 countries from around the world. Our mission is to inspire and promote effective standards of corporate governance to support the sustainable value creation of companies and to advance efficient markets and economies world-wide. Our members represent institutional investors with global assets under management in excess of US\$26 trillion. Accordingly, ICGN's members offer a source of practical knowledge and experience with regard to governance and investment issues. For more information on the ICGN, please visit www.icgn.org.

While ICGN’s focus on fiduciary duties extends beyond the consideration of environmental, social and governance (ESG) factors, we certainly believe that integration of ESG issues in the investment process is an important component of fiduciary responsibility in the context of an institutional investor’s obligation to ensure sustainable returns for beneficiaries-- which include pensioners, holders of life insurance policies and private investors saving for the long-term. We also share the PRI’s view that fiduciary responsibility with regard to ESG factors is not understood well by investors in many jurisdictions around the world. Hence we think the PRI report is both useful and timely.

As you may be aware, the membership of ICGN has vetted and adopted a series of guidance principles and best practice documents that bear on the question of fiduciary responsibility. In particular, the ICGN Global Governance Principles, the ICGN Statement of Principles for Institutional Investor Responsibilities and ICGN’s Model Contract Terms between Asset Owners and Managers are particularly relevant to this topic. We have also responded to specific consultations on the question of fiduciary responsibility, including our 2014 response to the UK Law Commission’s consultation on fiduciary duty, and, more recently, to the UK’s

Department of Work & Pension's 2015 consultation on changes to investment regulations.

ICGN policy committees have also developed reports and policy statements on a range of ESG themes, including, anticorruption, political donations and lobbying, tax policy and human rights, which reflect their importance both as matters of good corporate governance for companies and responsible investment practices for asset owners and asset managers. Our policy work in the area of integrated reporting emphasises the importance of integrating qualitative factors, including material ESG themes, in the overall reporting of corporate operational and financial performance.¹ Moreover, ICGN has established a training programme, which we have operated for several years to provide investors and other market participants with tools to integrate ESG factors into investment analysis and company engagement.²

We would like to congratulate PRI on this well-researched and important study on fiduciary duty for institutional investors. The Executive Summary does a good job of reflecting the paper's core messages, and we support the report's findings, which are consistent with our own views. We believe PRI report is a welcome addition to the literature in making the case for inclusion of ESG factors. There are no major omissions or inaccuracies in this report we have identified, and the PRI's conclusions are broadly consistent with the policy positions adopted by ICGN.

We would like elaborate on a few points in the PRI report for your consideration:

- For many investors, particularly those not explicitly investing in investment strategies focusing on ethical, environmental or social performance, ESG factors might be regarded as a means to better understanding risk and opportunity in individual companies—rather than as ends unto themselves. This raises the question of financial materiality of individual ESG factors. In our view investor fiduciary responsibility with regard to ESG is primarily focused on those ESG factors which may be considered by investors as material in terms of a company's long-term operational and financial performance.
- We agree that there is scope for building the evidence base with regard to how ESG factors may affect sustainable corporate performance. This will be important in shaping perspectives in jurisdictions such as the US, where there remains considerable scepticism about the economic relevance of ESG factors in long-term company performance. Complicating this question is the fact that ESG itself is not a fixed set of issues for each company. The PRI study may wish to reflect that sectoral differences will give rise to the differing importance of ESG factors in terms of materiality; this is particularly true with

¹ All these policy documents can be found on the ICGN website at www.icgn.org

² In this vein ICGN has recently announced an executive education partnership with the French business school INSEAD to train investors and corporate on how ESG factors impact long-term value. See: https://www.icgn.org/images/ICGN/ICGN_INSEAD_Press_Release_Final.pdf

regard to social and environmental issues. Building the evidence base to capture how ESG factors may reflect differently in a range of sectors is a challenge we all face in better understanding their relevance in an investment context.

- On page five of the paper, an important point is raised, not only about looking at ESG factors in individual companies, but also with regard to the financial system more broadly. We all are exposed to systemic risk, as a shifting tide can raise or lower all boats, and this warrants more attention in terms of ESG factors and investor responsibility. The report does not dwell on this question, and there may be scope for further reflection, perhaps in this or in future studies.
- We strongly agree that a key component of promoting inclusion of ESG factors in the investment process will link to the inclusion of this consideration in investment management agreements between asset managers and asset owners. We believe that ICGN Model Mandate project, referred to earlier in this submission can contribute significantly to the process of “hardwiring” ESG considerations into the investment process, and would welcome PRI to make use of, and reference to, this project in its findings.
- The paper focuses primarily on ESG factors in the context of investment analysis. This is clearly an important area, where much work needs to be done to integrate ESG issues more substantively in company valuations or assessment of management or credit quality. However PRI might also wish to make broader reference to the consideration of ESG factors in other dimensions of investor stewardship including engagement and informed voting practices. This is particularly important in regard to aggregated, long-term and systemic effects of investment practices that might not be evident when viewed from an individual, short-term perspective.
- We think the country analyses are very useful and demonstrate how ESG and fiduciary responsibilities are viewed differently in a range of jurisdictions around the world, reflecting both legal and cultural differences. While ICGN’s purview is a global one, and encompasses all the countries reviewed in this report, we would like to make one specific observation regarding the UK. While this PRI report rightly focuses on the UK Law Commission’s findings and related pension regulations, we would suggest also making reference to UK Company Law. Specifically, Section 172 of the UK Company Act of 2006 frames director duties in promoting the long-term success of the company to include stakeholder – and ESG-related – factors in terms of “having regard” to employees, suppliers, customers, the environment and the community more broadly. If these factors fall within the purview of directors duties, it would

seem logical that they also should be within the purview of investors in their assessment of board quality and effectiveness.

- It might also be useful to explicitly summarize how fiduciary duty principles in each country can be applied to specific key ESG considerations. For example, this could include consideration of: (a) long-term vs. short-term view of performance; (b) systemic and aggregate effects of investment practices; (c) whether obligations run solely to maximization of the inanimate pool of fund assets or extend to consideration of the interests of fund beneficiaries and/or stakeholders; (d) application of impartiality and inter-generational fairness implications; (e) identification and management of conflicts in the service provider supply chain; (f) flexibility in selection of performance benchmarks and (g) how management of risks and uncertainties are treated.

We hope that these comments are useful in your deliberations and the ICGN Policy Director, George Dallas (george.dallas@icgn.org), would be happy to elaborate on any of the points raised in this letter. Thank you for your consideration.

Yours truly,

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