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It's Commonsense to Have a U.S. Corporate Governance Code

*Posted by Gary Larkin, The Conference Board, on
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More from: Gary Larkin, The Conference Board

Gary Larkin is a Research Associate at The Conference Board Governance Center. This post is based on a Conference Board publication. Additional posts on the Commonsense Governance Principles are available [here](#).

Over the summer, one of the most interesting pieces of corporate governance literature was the [Commonsense Corporate Governance Principles](#).

The publication was the result of meetings between a group of leading executives of public companies, asset managers, a public pension fund, and a shareholder activist. The principles themselves may not have broken new ground—they addressed such basic issues as director independence, board refreshment and diversity, the need for earnings guidance, and shareholder engagement. But the fact that such a publication was released at a time when some in Congress to roll back Dodd-Frank corporate-governance-related regulations is impressive.

It's impressive because of who was in the meetings. It's impressive because the meetings took place without any government or third-party instigation. It's impressive because it might be the beginning of a new strategy for overseeing corporate governance in the United States. It shows that sometimes industry can lead by example without rules and regulations to tell them how to govern their own companies and boards.

Maybe these principles could be the start of the first true US corporate governance code, something that our brethren in the UK have had for years. Even smaller markets such as South Africa and Singapore have codes that are used to guide corporate governance.

Granted, those at the meetings, some of who included J. P. Morgan Chase CEO Jamie Dimon, Berkshire Hathaway chief Warren Buffett, General Motors head Mary Barra, BlackRock Chair and CEO Larry Fink, and Canada Pension Plan Investment Board President and CEO Mark Machin might not have envisioned themselves as U.S. corporate governance pioneers. But it's a first step toward a true principles-based

approach to good corporate governance in a country that is used to following rules and hiring attorneys to find the loopholes.

If you look at the main points made in the Commonsense Principles, you can see the foundation for such a code:

- Every board should meet regularly without the CEO present, and every board should have active and direct engagement with executives below the CEO level.
- Directors should be elected by a majority of either “for” or “against/withhold” votes (with abstentions and non-votes not be counted)
- Board refreshment should always be considered in order that the board’s skillset and perspectives remain current.
- Every board should have members with complementary and diverse skills, backgrounds and experiences.
- If the board decides on a combined CEO/Chair role, it is essential that the board have a strong independent director.
- Institutional investors that make decisions on proxy issues important to long-term value creation should have access to the company, its management, and, in some circumstances, the board.
- Companies should only provide earnings guidance to the extent they believe it is beneficial to shareholders.

Microsoft, a Governance Center member, is satisfied with the Commonsense Principles because it aligns with what it has in place, according to a [blog](#) from Microsoft Corporate Secretary John Seethoff. “For example, we’ve made a concerted effort to assure board refreshment occurs with a focus on diversity in skillsets, backgrounds, and experiences,” he wrote. “The Principles agree with this emphasis, asserting, ‘Diversity along multiple dimensions is critical to a high-functioning board. Director candidates should be drawn from a rigorously diverse pool.’ Board tenure receives similarly thoughtful consideration, with the Principles underscoring the need to temper ‘fresh thinking and new perspectives’ with ‘age and experience.’”

Seethoff concluded: “At Microsoft, we’ve long believed that good corporate governance encourages accountability and transparency, as well as promotes sound decision-making to support our business over time. The ultimate goal is to create a system that provides appropriate structure for the company at present, allows flexibility to change in the future, and has a long-term perspective that matches our business objectives and strategy. As part of this open, constructive mindset, we applaud the leaders for outlining these Principles and look forward to continued dialogue on this important effort.”

If you ask me, the Commonsense Principles can definitely be the US Corporate Governance Code Version 1.0. They could be treated like climate change agreements (i.e. the 2015 Paris Climate Change Agreement) where countries come together and sign on. The original group of executives could hold a follow-up meeting or convention that would allow US companies to promise to follow the principles, similar to [The Giving Pledge](#) started by Buffet and Microsoft founder Bill Gates.