

An Update to the 2017 Investor Statement to Banks Financing the Dakota Access Pipeline

Investor Statement to the Equator Principles Association

The undersigned investors, with over \$2.67 trillion total assets under management or advisement, are writing to the Equator Principles Association (EPA). Many of us signed an earlier investor statement to banks financing the Dakota Access Pipeline (DAPL). We remain concerned about the construction of DAPL despite objections from the Standing Rock Sioux Tribe (SRST), as well as other communities and landowners along its route.

Thirteen of the seventeen banks that participated in the original project loan to DAPL are signatories to the Equator Principles “EPs”, an environmental and social risk management framework utilized by ninety-one banks in thirty-seven countries. We are writing to request that measures be taken by the EPA to maintain the credibility of the EPs and ensure banks have the tools necessary to respond to situations like DAPL in the future.

Since the earlier investor statement to banks financing DAPL, a federal court ruled partially in favor of the SRST, determining that the US Army Corps of Engineers approved DAPL without adequately considering the impacts of an oil spill on hunting and fishing rights. The UN Special Rapporteur on the Rights of Indigenous Peoples’ country visit to the US found that the SRST was “denied access to information and excluded from consultations at the planning stage of the project” and that the environmental assessment for DAPL “dismissed the risks to the reservation and failed to mention any of the other tribes that traditionally used the territory.” The Foley Hoag report *Good Practice Guidance for Managing the Social Impacts of Oil Pipelines in the United States*—which was commissioned by banks financing DAPL—affirms that there may be inconsistencies between US federal law and international industry good practice. Indigenous Peoples have flagged concerns about the capacity for in-country laws to adequately protect their rights in relation to other proposed projects financed by EP’s signatory banks, such as the Keystone XL Pipeline and the Trans Mountain Pipeline.

In the wake of these developments, we reiterate our stance that banks must take measures to protect their reputation and consumer base, as well as communities impacted by their lending. We recognize that several of DAPL’s lenders are already considering various actions to enhance their due diligence for projects that impact Indigenous Peoples. However, we believe that DAPL demonstrates need for industrywide changes, and recommend that measures be taken to strengthen the ability of the EPs to identify, manage, and mitigate social risks across the banking sector.

Our first recommendation is in relation to the “Designated Country Rule” of the EPA. Designated Countries are countries “deemed to have robust environmental and social governance, legislation systems, and institutional capacity designed to protect their people and the natural environment.” The Designated Country Rule states that projects in Designated Countries may be subject to an assessment process that relies on in-country laws as an acceptable substitute for the IFC Performance Standards. We request the EPA to align the assessment process for all countries with the IFC Performance Standards, and echo requests from ten EPs signatory banks to ensure that projects in Designated Countries are developed to comply with the same environmental and social standards as in non-Designated Countries, in addition to applicable local standards. We are aware that the EPA has formed a “Designated Countries Working Group” to reexamine the distinction between Designated and non-Designated Countries.

Our second recommendation seeks to address the limited ability of banks to respond to the SRST’s request for a reroute of DAPL that avoided their treaty territory. This demonstrates the need for better alignment of the EPs with the terms and conditions of the loans that EPs signatory banks employ to

finance projects. We request the Equator Principles Association to establish a mechanism through which EPs signatory banks can facilitate the resolution of issues resulting from possible breaches of the applicable environmental and social standards. This request has also been put forth by ten EPs signatory banks, in a statement to the EPA dated May 22, 2017.

Our third recommendation is in relation to reporting on human rights and Indigenous Peoples. Principle 10 of the EPs obligates EPs signatory banks “to report publicly, at least annually, on transactions that were subject to the EPs and have reached Financial Close; and on its EPs implementation processes and experience, taking in account appropriate confidentiality considerations.” In order to protect your shareholders from risks, and meet the expectations associated with the UN Guiding Principles on Business and Human Rights, we request all EPs signatory banks to report specifically on their due diligence processes regarding human rights and Indigenous Peoples for EPs transactions.

In conclusion, we reiterate our support for the EPA’s efforts to improve the quality of projects financed by its members and encourage the EPA to adopt our recommendations. Doing so would reinforce the EPs’ position as industry best practice for environmental and social risk management, mitigate risk to EPs signatory banks, and strengthen protections for the rights of Indigenous Peoples and other local communities in countries around the world.

Date: October 23, 2017

See attached list of signatories as of October 23, 2017

2017 Investor Statement to the Equator Principles Association

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