



THE INVESTOR FORUM

COLLECTIVE ENGAGEMENT FRAMEWORK

SUMMARY

The Investor Forum CIC
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This document describes the Collective Engagement Framework utilised by the Investor Forum and is being made available for information. Nothing in this document is intended to constitute, nor should it be regarded as a substitute for, legal advice. Specific advice should always be taken from an appropriately qualified person.

Foreword

The Investor Forum has two key objectives: to make the case for long-term investment and to create an effective model for collective engagement with UK companies. As Professor Kay pointed out in his report on long-term decision-making¹, this has become increasingly important in the UK as the shareholder register of our largest companies has become more fragmented and the number of intermediaries between the ultimate owners of our businesses and the companies themselves has grown substantially.

Making collective engagement work effectively is challenging given this diversity of ownership, the varying investment strategies of investors and the complexity of the regulatory environment. This is why we felt it critically important that we create a comprehensive framework for collective engagement. This is intended to ensure that all participants are clear what the boundaries are and feel comfortable that they are operating in a safe and secure environment.

We would like to acknowledge the vital contribution made by the panel of law firms who have assisted in preparing and reviewing the Investor Forum's governance and operational procedures: Nora Jordan, Will Pearce, Luigi L. De Ghenghi, Eric McLaughlin and Matthew Hart of Davis Polk & Wardwell LLP; Jonathan Baird of Freshfields Bruckhaus Deringer LLP; Harry Coghill, Charles Martin, Gareth Jones and Mark Slade of Macfarlanes LLP; Jonathan Herbst and Imogen Garner of Norton Rose Fulbright LLP; and Scott Hopkins, Michael Hatchard and Leo Rifkind of Skadden, Arps, Slate, Meagher & Flom (UK) LLP.

We hope this framework will help professionalise collective engagement and will ultimately further develop the UK as a global leader in governance and engagement practices.

Simon Fraser

Chairman

The Investor Forum

London, October 18, 2016

¹ The Kay Review of UK Equity Markets and Long-Term Decision Making, Final Report, July 2012.

Introduction

The Investor Forum (the "Forum") was established in October 2014 by investment industry practitioners with a core objective of creating an effective model for collective engagement by institutional investors with UK-listed companies. Its purpose is to position stewardship at the heart of investment decision-making by facilitating dialogue, creating long-term solutions and enhancing value.

The Forum's structure and approach is designed to create a safe and secure environment in which to facilitate collective engagement under the auspices of the Forum ("Engagements") between institutional investors worldwide and UK-listed companies ("Companies"). In particular, these procedures are intended to encourage the participation of international investors.

The Forum has been established as a not-for-profit Community Interest Company. The Forum's board of directors (the "Board") oversees the work of the Forum's executive officers (the "Executive") and is drawn from members and other key stakeholders.

Full membership of the Forum (each full-member being a "Member") is open to any institutional investor in a UK-listed company, irrespective of where that investor is located, including both asset managers and asset owners. The Forum may also admit other persons as associate members on the basis that they do not have the right to participate in Engagements.

One of the key challenges in fostering collective engagement by institutional investors has been a concern to prevent inadvertent violation of legal or regulatory requirements. This has been complicated by the increasingly global nature of share ownership and management, with the possibility of multiple jurisdictions being involved in cross-border investment decisions. This is a complex and ever-evolving topic, and no one simple set of rules or procedures can guarantee full compliance.

The Forum's approach has been to seek guidance from a panel of law firms which has worked with the Board and the Executive to put in place a coherent framework for the management of Engagements (the "Collective Engagement Framework"). This has included putting in place a legal, operating and governance structure which helps to meet the Forum's objectives whilst minimising risk to participants; framing the key legal and regulatory risks; and flagging key points or circumstances during Engagements which might require heightened attention.

In particular, the Collective Engagement Framework has been designed to take into account the need to safeguard against dissemination and creation of inside information, inadvertently or otherwise; the creation of concert parties under the City Code or triggering group filing requirements under Section 13 of the U.S. Securities Exchange Act; and the creation of concert parties or acquisition of control of, including by exercising a controlling influence over, any Company under the U.S. Bank Holding Company Act of 1956 (the "BHC Act").

The Collective Engagement Framework and the Forum's procedures will be reviewed on an on-going basis to enhance best-practice and to reflect the changing regulatory and legal environment.

The Investor Forum Collective Engagement Framework

10 Key Features

There are **10 key features** of the Collective Engagement Framework:

1. **Trusted facilitator, not an adviser** – The Forum acts as a trusted facilitator for, and not an adviser to, Members, as agreed in their Membership application. Members retain full voting and other investment rights in respect of their shareholdings. No control is ceded to the Forum or other Members.
2. **Opt In/opt out** – A Member actively chooses to participate in an Engagement involving a Company in which it is a shareholder. It can also choose to opt out of an Engagement at any time.
3. **Complementary to Member's direct** engagement – Members may, and are actively encouraged to, continue their direct interaction with Companies outside the Forum's auspices. However, in unusual circumstances where its individual actions may be inconsistent with, or prejudicial to, the Engagement and other Members, a Member could be asked to leave an Engagement.
4. **Confidentiality** – Members must agree to comply with confidentiality obligations during an Engagement. Disclosure of identities and public statements must be agreed by participants during an Engagement. For avoidance of doubt this does not restrict the Forum from disclosing information to regulators when required.
5. **Nominated gatekeeper** – Members name a nominated gatekeeper. They retain full control as to whether or not they receive information, who receives that information, whether they want to participate in an Engagement, which individuals participate, and their option to withdraw from an Engagement.
6. **Hub & spoke model** – A "hub & spoke" (bilateral) model is the usual method of communication between the Executive and Members involved in Engagements.
7. **No inside information** – The Forum is not intended to be a means of facilitating the exchange of inside information between Companies and Members or among Members themselves. Participation in an Engagement will not exempt any person from any law or regulation governing the use and dissemination of inside information.

The Forum will actively seek to avoid obtaining inside information from Companies and Members without its prior consent and will actively seek to avoid passing on any inside information that it may receive to Members without their prior consent. In the event that inside information is, or may possibly have been,

received or generated by the Forum, the Executive will follow specific procedures to identify and quarantine this information and take specialist advice when required. Any person proposing to disclose inside information in the context of an Engagement will be responsible for ensuring that disclosure complies with applicable law and regulation.

8. **No-concert party and no-group** – Members must agree that they will not, while participating in an Engagement under the auspices of the Forum, form a concert party in respect of the relevant Company, including by requisitioning or threatening to requisition the consideration of a board control-seeking proposal or seeking to obtain control of the relevant Company, or otherwise form a group that could trigger regulatory reporting or other regulatory requirements.

Each Member participating in an Engagement will be required to confirm that it will adhere to the Forum's no-concert party and no-group undertaking contained in Appendix II (the "No-Concert Party and No-Group Undertaking") in respect of the Company which is the subject of the Engagement. Engagements are monitored and Members can be asked to leave (or if necessary, expelled) from an Engagement if their behaviour compromises the Forum's activities. The Executive will engage with the Takeover Panel and seek specialist advice when required.

9. **Heightened procedures** – At various points in an Engagement heightened procedures may be deemed necessary, including seeking specialist advice. Particular attention will be paid to the case of Engagements involving Companies with dual U.S. or other foreign listings and Companies or Members that are subject to the BHC Act.

10. **Conflict of interest avoidance** – The Forum maintains control procedures to avoid conflict of interests which could impact either its own governance or individual Engagements, encompassing policies and procedures for the Executive and the Board. Members are reminded of their own obligations to manage conflicts of interest and should note that participation in an Engagement is not a substitute for, and does not release them from, those obligations.

Engagement Proposal Phase

The decision whether or not to formally initiate an Engagement normally follows the steps summarised below, presented in detail in Chapter 1:

- **Step 1: Engagement Proposals by Members** – Members of the Forum can propose an Engagement with a UK-listed company under the auspices of the Forum (a "Proposal").

OR

- **Engagement Proposals by Companies** – Any UK-listed company can propose an Engagement.

- **Step 2: Engagement Proposal evaluation** – The Engagement Proposal will be evaluated by the Executive against the following criteria:

1. **Principles** – Is the proposed Engagement consistent with the Forum's principles?

- Is it proactive and grounded in economic rationale;
- Is there a long-term focus; and
- Is there likely to be a constructive solution?

2. **Prospect of support** – Is there a reasonable prospect of securing sufficient support among the Company's largest shareholders to foster a meaningful dialogue with the Company?

3. **Safe and secure** – Is there a reasonable expectation of conducting the Engagement in accordance with the Forum's policies and procedures and all applicable laws and regulations?

- **Step 3: Engagement Proposal consultation** – Once the Executive has determined that the proposed Engagement is consistent with the criteria above, it will undertake a consultation with major shareholders of the Company to determine the level of Member support for the proposed Engagement.

- **Step 4: Engagement Proposal decision** – After consultation with Members, and taking note of any particular risks which could require heightened procedures and of the Forum's own resourcing constraints, the Executive will decide whether or not to proceed with the proposed Engagement.

Engagement Management

Once the decision has been taken to proceed, an Engagement will typically follow the process summarised below, and presented in more detail in Chapter 2:

- **Step 1: Engagement Initiation** – All Members will be canvassed to determine whether they are shareholders and, if so, if they would like to participate in the Engagement. Non- Members who are key shareholders in the relevant Company may be invited to join an Engagement. Upon entering an Engagement, all participants will be required to agree or re-affirm their agreement to abide by the Forum's Code of Conduct, No-Concert Party and No-Group Undertaking and any specific procedures of the Engagement (including any heightened procedures). Members can exit an Engagement at any time by notifying the Forum in writing.
- **Step 2: Engagement Strategy formation** – The Executive will typically communicate on a bilateral basis with Members who have joined the Engagement to develop a range of constructive outcomes that are consistent with long-term, strategic objectives and an indicative timetable for the Engagement (the "Engagement Strategy"). This process helps to foster an open dialogue in which opinions are robustly presented to the Executive. Communicating on a bilateral basis also provides an extra layer of protection against unintended receipt, communication or generation of inside information and the creation of a concert party (under the City Code) or group (for SEC or other legal or reporting requirements). A strategy will be developed in an iterative fashion which is intended to impartially describe the range of views, but does not seek to form agreement between Members, in particular in relation to their investment or voting decisions.
- **Step 3: Procedures for Company contact** – Communication with the Company will be undertaken by the Executive in a constructive manner, with the aim of helping the Company to understand the range of views of participants regarding the Company's long-term potential and obstacles to realising this potential. The goal is to collaborate to frame positive solutions and to cope with real issues, and to invite participation of the Company's entire board in these discussions. In so far as within its control, the Forum will seek to keep communication between itself and the Company confidential with the Members participating in the Engagement. However, escalation strategies will be considered and agreed with Engagement participants when necessary, which could involve public communications.
- **Step 4: Engagement monitoring** – Engagements will be monitored for consistency with the Forum's principles and Code of Conduct and with the objective of maintaining a safe and secure environment. Heightened procedures can be invoked if necessary, and specialist advice or regulatory guidance sought as required. An Engagement can be altered or terminated at any time.

- **Step 5: Engagement conclusion** – Conclusion of an Engagement will be considered if the outcome(s) specified in the strategy are achieved; it is determined that they are unlikely to be achieved; there is no longer sufficient Member support to pursue the Engagement; the Engagement is determined by the Executive to be inconsistent with or to exceed the remit of the Forum; or continuation of the Engagement may be prejudicial to the Forum or its Members as a whole or any other reason in the Forum's sole discretion. A communication strategy will be agreed, including the possibility of public statements if a satisfactory outcome is not achieved.
- **Step 6: Engagement evaluation** – The Forum will undertake a review of each Engagement to better understand the reasons for success and failure and lessons to be learned. As far as is practicable and agreed by participants, aspects of finished Engagements will be made public, typically in an annual report, so that they contribute to the wider discussion of stewardship and corporate governance. Periodic review of lessons learned, in discussion with wider stakeholders, will be undertaken to see how the process of engagement can be enhanced.

The full Collective Engagement Framework document:

- outlines the procedures which the Forum will typically follow to propose and manage Engagements;
- discusses key regulatory and legal considerations taken into account when drawing up these procedures;
- provides the Investor Forum Code of Conduct and the No-Concert Party and No-Group Undertaking letter;
- includes the Takeover Panel Rule 9.1, Note 2 and Practice Statement 26 for completeness.

The Forum's procedures for conducting Engagements will be regularly reviewed in light of practical experience, as well as to take into account changes to law and regulation, where applicable. The Forum hopes that the publication of its policies and procedures contribute to the professionalisation and development of best practice in collective engagement and stewardship.



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