



## THE INVESTOR FORUM

Paul Bannister  
Business Frameworks Directorate  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street, 1<sup>st</sup> Floor  
London SW1H 0ET

11 June 2018

Dear Sir or Madam,

### **Consultation on Insolvency and Corporate Governance**

#### **Introduction**

The Investor Forum was created by leading institutional investors in UK equities to facilitate collective engagement between investors and companies. It is a not-for-profit entity which is funded by asset managers and asset owners to complement and enhance their stewardship activities. Our 41 members include domestic and international investors who together represent over 30% of the FTSE All Share.

We welcome the opportunity to respond to this consultation, directing our comments to the corporate governance framework and, in particular, topics related to the role of investors (Q12). These comments represent our perspective as investment practitioners and seek to address the questions raised in the consultation document around the Investor Forum's future activities. In preparing this response we have surveyed our Members and spoken to representatives of The Investment Association and the GC100.

#### **The need for change**

There is much that can be improved in the relationship between owners and boards of UK-listed companies to ensure that directors fulfil their responsibilities effectively and that the interests of all stakeholders are considered. While the UK has a long history of interaction between companies and investors, much of the dialogue is private by nature and so more can be done to:

- demonstrate the breadth of engagement activity;
- enhance the effectiveness of engagement; and
- recognise the limits of engagement.

We believe that there is a desire to enhance the dialogue between investors and companies, and in particular, to focus the conversation on the things that matter to the long-term success of businesses.

**Facilitate dialogue | Create long-term solutions | Enhance value**



## **UK Corporate Governance and Investor Stewardship Framework**

Much of the success of the UK corporate governance framework has been achieved through careful drafting and thoughtful input over many years. In developing a perspective on the need for change to the current governance architecture, we are mindful of maintaining a focus to the debate given the overlapping nature of a number of reviews, either recently completed or underway by multiple bodies.

The Forum provided a response to the FRC's consultation on the future direction of the Stewardship Code<sup>1</sup>. As a relatively new code coming up for its first review, we feel that the role of the Stewardship Code needs some clarification. Revisions should take into account how investors can be encouraged to work with companies to solve complex issues; provide impetus to the development of an informed market for stewardship services; enhance the global attractiveness of investing in the UK; and take into account the global nature of investment by UK asset managers and owners.

Given the complexity of the investment chain and a fragmented legal and regulatory structure, it may be that some of the enhancements required to improve investor stewardship fall outside of the scope of the Stewardship Code itself or the jurisdiction of the FRC.

It will be important to step back and take a holistic view of the various consultations and proposals for change in order to "join up the dots" effectively. As BEIS considers revisions to the framework for UK corporate governance and investor stewardship, we hope that the Forum can continue to contribute a practitioner's perspective.

### **The Investor Forum's role**

The Forum's purpose is to position stewardship at the heart of investment decision-making by facilitating dialogue, creating long-term solutions and enhancing value. We believe that if boards are well informed of, and focused on, the priorities of their long-term shareholders there will be a stronger level of trust and understanding. Ultimately this will lead to improved long-term returns for savers.

Our approach is governed by our Collective Engagement Framework, which was created with support from a group of leading law firms to provide a safe legal environment for collective engagement by both domestic and international investors with UK companies. Further details on the background to, and role of, the Investor Forum are provided in Annex 1.

The formation and growth of the Forum provides evidence of how seriously many institutional investors take their stewardship responsibilities. The Forum has enjoyed strong support from investment institutions and established itself as an effective platform for collective engagement with UK-listed companies. Membership of, and active participation in, the Forum's engagements demonstrates a commitment to the highest standards of stewardship activity.

Our experience is that all types of investor - domestic and international, active and index-tracking, large and small, asset owner and asset manager - can participate in collective engagement.

In order to inform and provide context for the Forum's response, we surveyed our Members to understand their views on the role of the Investor Forum and on the questions raised by BEIS in the consultation document:

---

<sup>1</sup> [Investor Forum response to FRC Consultation on the future direction of the UK Stewardship Code](#)



- Members support the Forum's activities and more than half expect to increase their level of interaction with the Forum.
- Members emphasised the importance of a focus on quality over quantity of engagement.
- 76% of respondents would like the Forum to increase its collective engagement activity.
- 82% of respondents support expansion of the Stewardship & Strategy Forum initiative.
- 75% of respondents support an expansion of Stewardship 360 activities which seek to build on insights gained from collective engagement and share lessons learned (further details are provided in Annex 2).

### **Strengthening the dialogue between investors and companies**

To create long-term sustainable value, we believe that it is important for companies to address key strategic issues holistically. A comprehensive understanding of a company's value requires a clear articulation of strategic direction, culture and the ambitions of the business as well as a keen awareness of broader stakeholder perspectives and considerations. Balancing these often competing needs presents an extremely complex challenge for Boards which, under the Companies Act 2006, are responsible for running a company's affairs and managing risks and opportunities to promote long-term success.

Direct engagement has been encouraged by the Stewardship Code, but investors can provide more evidence of the extent and quality of their stewardship activities.

One of the Principles of the Stewardship Code is that institutional investors should "be willing to act collectively with other investors as appropriate." Collective engagement is an escalation mechanism, and the Investor Forum provides an important platform to focus engagement and create a sense of urgency at board level regarding the need for change. We have engaged directly with the boards of 21 companies since the beginning of 2015. We report the results of our completed engagements in our annual review to highlight engagement activity and to share best practice and lessons learned.

Engagement is an important but resource-intensive activity which is widely undertaken on a bilateral basis by investors and companies. The decision to engage sits alongside the exercise of voting rights and the decision to buy or sell shares in furtherance of their fiduciary duties. While long-term shareholders do scrutinise company behavior and provide external challenge, such engagement cannot guarantee that companies might not enter insolvency; indeed corporate failure is often cited as an important part of the market mechanism.

### **Stewardship & Strategy Forums**

#### Background

There are many conduits for listed companies to communicate with investors, mostly undertaken by executives engaging directly with analysts and fund managers. Much has been written about the short-term focus of many of these discussions.

While many companies also hold some form of annual governance event, the agenda can be dominated by remuneration discussions rather than the long-term strategic ambitions of the company and the skillset of the board. In our conversations with company Chairs, many feel that it can be hard to engage with investors unless there is a specific issue or a deteriorating situation.



The effectiveness with which boards communicate the role they play varies hugely. Some investors believe that too often companies are in “broadcast” rather than “listening” mode.

There is an opportunity to improve the effectiveness of these events. While the Forum’s core focus is collective engagement, our work to enhance dialogue between investors and boards led us to develop the “Stewardship & Strategy Forum” (SSF) concept.

### Purpose

Stewardship & Strategy Forums bring together the board and the executive management with investment teams and governance professionals to discuss key issues that have been raised by shareholders. We believe that SSFs are an effective way to ensure, and demonstrate, that important conversations happen between companies and investors.

SSFs are designed to increase confidence in the strategic direction and governance of companies. These events help directors demonstrate that they can rise to the heightened expectations being placed upon them, and encourage investors to work collaboratively to empower Directors. Board members have indicated that an SSF meeting can create a clearer and more consistent message from investors to companies.

### Value

We sought feedback from Investor Forum members on the consultation comment *“More could also be done to encourage effective stewardship through a commitment by FTSE companies to hosting periodic strategy and stewardship forum meetings...”*.

- All respondents agreed that SSFs can contribute to improved communication between boards and investors.
- 80% of respondents agree that FTSE 100 companies should host a SSF event at least once every 3 years.
- BUT some members stressed the importance of the events being occasional and focused, investor-led and prioritised.
- 87% of respondents thought that the most effective way to encourage companies to host a SSF would be through a request from the Investor Forum.
- Less than half of respondents felt that a requirement in the Corporate Governance Code or a public register would be effective ways to encourage companies to host SSFs.

It is important to recognise that a SSF can be valuable for any company, and engagement with the Investor Forum can be effective for companies that are performing strongly as well as those which have challenges to address. We hope that, over time, experience will convince companies that involvement in collective engagement or a SSF via the Investor Forum should not be seen as a stigma but rather as a positive development and evidence of best practice.

### Future development of Stewardship & Strategy Forums

We believe that the Forum’s framework for Stewardship & Strategy Forums represents “a gold standard” for board and investor engagement that can be more widely utilised. We would like to explore further:

- the potential value of establishing an Investor Forum “kitemark” for these events;
- the creation of a market-wide platform for investors and companies to signal to each other a desire for an SSF;



- how to report on SSFs held each year, in order to provide evidence to broader society of the focus and depth of dialogue between boards and investors; and
- whether large listed companies should consider holding such an event at least once every three years, as part of their programme of engagement and communication with shareholders.

Our members believe that companies should be encouraged to host these meetings and we believe that the Stewardship & Strategy Forum concept should be rolled out more widely, albeit on a targeted basis. The Forum welcomes, and on behalf of our members, encourages companies to make contact to explore opportunities to collaborate.

### **Stewardship Oversight Group**

We note the consultation's suggestion for a possible "stewardship oversight group." When asked, only 43% of our members agreed with the suggestion, while 57% disagreed, with a strong negative reaction from some large institutions. Key to forming an effective group would be defining clear objectives, avoiding unnecessary duplication, and ensuring a forward-looking focus. Given the already complex architecture of governance and stewardship oversight, careful thought is required. If there is broad support for a group, we would be happy to contribute to discussions alongside other interested parties and explore if there is role that the Investor Forum might play.

### **The future of the Investor Forum**

Formed as a result of the Kay Review commissioned by BEIS, and encouraged by HM Treasury, the Investor Forum provides evidence that actions taken by government can stimulate effective market-led initiatives. As the Investor Forum's work increasingly attracts interest from several other jurisdictions, as well as leading academics, the development of this flexible and practical model can contribute to maintaining the UK's leading global reputation in corporate governance.

Our model represents an effective, practitioner-led response to a series of complex issues. It is important to recognise that we are still a young institution and that our membership continues to grow. We are pleased that our members have expressed confidence in us and have indicated that they expect to use us more in the future. As we grow, we will continue to strive to facilitate enhanced dialogue, create practical solutions and focus on protecting and building sustainable long-term value for the end investor.

We believe that the Investor Forum provides an effective mechanism for collective engagement with UK companies. In line with the clear mandate from our members, the Forum will continue to focus on developing our collective engagement activity.

We have seen a number of investors making increased commitments to stewardship activity and taking steps to embed stewardship in their core investment activities. We believe this represents the early stage of a change in investor behaviour to embrace a broader agenda in delivering investment returns and discharging their fiduciary duties.



In terms of future developments, we would welcome discussion as to how BEIS, or others, might further stimulate stewardship practice through:

- the promotion and wider adoption of the Stewardship & Strategy Forum concept by UK-listed companies; and
- recognition of an institution's membership, and participation in the activities, of the Investor Forum as an active signal of its commitment to collective engagement and the quality of its stewardship activity.

We very much welcome this opportunity to comment and will continue to play an active role in discussions to enhance the effectiveness of collective engagement.

Yours faithfully,

Simon Fraser, **Chairman**



## **ANNEX 1: Background and Role of The Investor Forum**

The Investor Forum (the “Forum”) was established following the Kay Review<sup>2</sup> commissioned by the Rt Hon Dr Vince Cable, then Secretary of State for Business, Innovation and Skills. The Review cited a number of obstacles to collective engagement including the fragmentation and internationalisation of ownership, misaligned incentives and regulatory barriers. Leading institutional investors, both asset managers and asset owners, collaborated to establish the Forum as an independent entity in late 2014.

The Forum’s objectives are to facilitate collective engagement with UK-listed companies and to make the case for long-term investment approaches. We work with companies at the request of our members, often when the company is experiencing challenges that require the board to consider changes and build investor support for their long-term strategy and implementation plans. The Forum listens to investor concerns and explains these to boards in a constructive manner. We identify, and facilitate dialogue on, material issues that impact the long-term success of businesses.

We have worked with investors, companies, and regulators to build a comprehensive, practitioner-based approach to collective engagement.

- Investors retain their fiduciary rights and responsibilities. They choose to opt in or opt out of an engagement at any time, and also retain the option to buy or sell shares at any time.
- In consultation with a Legal Panel of leading law firms, the Forum has put into place a structure which helps to meet our members’ objectives whilst minimising legal and regulatory risk. Our “Collective Engagement Framework”<sup>3</sup> enhances confidence that investors can engage collectively with companies via the Forum in a manner which is compliant with applicable laws and regulations, such as the Takeover Code and the Market Abuse Regime.
- As each collective engagement requires a significant investment of time, the Forum provides an efficient mechanism to leverage resource and impact whilst preserving member independence and freedom of action. It is a centre of expertise and works to develop best practice.

The Forum’s framework and experienced investment team provide a platform that encourages investors to invest the time and resource to engage collectively with companies.

We believe that the growth of our membership and engagement activity, supported by our Collective Engagement Framework, shows that there are no legal or regulatory impediments to collective engagement in the UK.

Company Chairs have also welcomed our contribution in creating mechanisms to encourage dialogue with investors on long-term, strategic issues. At the outset, government and regulatory support was key to encouraging investors and companies to work with a new and untested concept. Now that we are established, membership and active participation in the engagements of the Forum can be viewed as evidence of high quality stewardship.

---

<sup>2</sup> [Kay Review](#)

<sup>3</sup> [Collective Engagement Framework Summary](#)



## **ANNEX 2: Extending the benefits of lessons learned and Stewardship 360 Activities**

### **Lessons Learned**

The Investor Forum is committed to communicating with a range of stakeholders and to drawing out lessons learned from engagements through the publication of an annual review and other thought pieces. Our 2017 Review<sup>4</sup> highlighted the following lessons learned from engagements:

- The expression of corporate governance concerns frequently indicates broader shareholder dissatisfaction; what may look like a single issue often signals significant erosion of support.
- Effective succession is vital to maintain, or restore, investor confidence; poorly handled leadership changes can create significant tension between shareholders and companies.
- Shortcomings in management information and control systems continue to be a source of major problems, and misaligned incentives can create the wrong outcomes.
- Investors appreciate a framework for capital allocation decisions, and believe clear communication can help companies manage competing perspectives and demands in this respect.
- As concerns harden, investors look for evidence of Board oversight and effectiveness. Demonstrating the effectiveness of NEDs is vital to enhance shareholder confidence.
- Focusing on long-term value creation is a challenge for both companies and investors. It is important to find the space and a framework for high quality dialogue, something which the SSF format has helped to support.
- Events that crystallise value such as major transactions are critical moments for boards to demonstrate their contribution. Evidence of process, including commissioning professional advice where appropriate, can build confidence that directors are fulfilling their responsibility to provide scrutiny and challenge.

### **Stewardship 360**

The Forum's Stewardship 360 (S360) activities were set up to develop insights gained from collective engagements to extend the impact of lessons learned. Projects typically arise out of a company specific engagement when members are interested in seeing how lessons learned could apply more widely. S360 projects take a closer look at key engagement issues with experts, facilitate dialogue and present practical outcomes for Members. This includes developing toolkits with key observations and recommendations and helping Members incorporate the conclusions into their long-term investment decision making.

Stewardship 360 engagement formats include:

- Key issue engagements undertake research and provide practical recommendations on issues that emerge from company collective engagements (for example: "Working Practices in the Apparel Sector").
- Long-term franchise value engagements focus on projects that support long-term investment approaches (for example: BankingFutures).
- Stakeholder engagements are events that help to position stewardship at the heart of investment decision-making (for example: Chair & Investor breakfast round tables).

---

<sup>4</sup> 2017 Annual Review