



Collective Engagement Framework 2019 Update

24 September 2019

LEGAL & COMPLIANCE TOPICS

A key objective of the Investor Forum is to facilitate an effective model for collective engagement with UK-listed companies. Our *Collective Engagement Framework* has been developed to ensure that all participants are clear about engagement objectives (and the boundaries) and feel confident that they are operating in a safe and secure environment.

The Framework is a step-by-step guide which we use in all engagements. It is reviewed regularly to ensure best practice and to reflect the changing regulatory and legal environment.

The complete Framework is available to Members in the [Members' area](#) of our website and includes background material on key legal & compliance issues relating to collective engagement.

A [summary of the Framework](#) is available to non-members.

We would like once again to thank our Legal Panel for their support: Davis Polk & Wardwell; Hogan Lovells; Macfarlanes; and Skadden, Arps, Slate, Meagher & Flom.

Why are we updating the Framework?

- We published the Framework in 2016 and committed to keeping it up-to-date. We regularly review the procedures in light of changing practice and legal and regulatory developments. This is the first published update.
- **Our Members consistently tell us that the Framework plays a key role in encouraging collective engagement.**
- **The Framework remains fit for purpose** – to provide a safe and secure environment in which to undertake collective engagement.
- Concerns relating to **Information Exchange** and **Common Ownership** have gained greater prominence in the last few years. Given the heightened focus on competition law in the asset management industry, **this update allows us to stay at the forefront of best practice.**

What has been updated?

- We have included more detail on how we consider our practices relating to competition law. We outline the steps the **Forum takes to ensure that it does not become a vehicle for anticompetitive conduct.**
- We have conformed wording to align more closely to that in the Market Abuse Regime.

Competition Law: key concerns and developments

- Competition is an area where law and practice in the investment management industry is developing:
 - In its *March 2017 Asset Management Market Study Final Report*, the FCA reported that “our...market study has indicated a possible lack of awareness of competition law in some areas of the sector... We remind firms of the importance of ensuring their business activities are undertaken in compliance with competition law.”
 - In 2019 The FCA announced its first enforcement action relating to its competition enforcement powers.
 - The topic of common ownership has received heightened regulatory attention (particularly in the U.S. and the EU), even though the academic research has been challenged.
- **Investors will need to continue a dialogue with regulators so that competition concerns do not impede the effectiveness of collective engagement.**



Competition Law considerations in the Framework

- Competition laws are designed to protect businesses and consumers from anticompetitive behaviour. The laws safeguard effective competition in order to deliver open, dynamic markets and enhanced productivity, innovation and value for customers.
- The Forum, and its members, must consider how they are affected by competition laws generally, and in the context of financial services regulation. Particular attention is required given the risks of coordination, both between themselves (since members should remain free to determine their own commercial strategies) and between the companies in which they invest.
- The Forum's mandate to organise and facilitate dialogue between shareholders and companies brings together market participants that may have (or have interests in) competing commercial interests. Consequently, it is important to ensure that the Forum is not used as, or perceived to be, a channel for cartel activity. Key considerations would include:
 - information exchange regarding members' own business and commercial strategy, business models and pricing/profitability; and
 - concerted action deriving from common stock ownership which leads to de facto coordination between competing companies in which investments are held.
- In practice, members' individual competition compliance policies are designed to address well understood sensitivities to issues relating to information exchange.
- The Forum adheres to a set of operational policies designed to prevent it from becoming an unintentional conduit for the exchange of information which could lead to competition concerns.
- Chapter 6 in the updated Framework provides more background and detail as to how competition law compliance considerations have shaped the Framework and the Forum's relationships with its members, and how it specifically seeks to avoid becoming a vehicle for anticompetitive conduct.