

Institutional Shareholders' Committee

Updated September 2005

THE RESPONSIBILITIES OF INSTITUTIONAL SHAREHOLDERS AND AGENTS – STATEMENT OF PRINCIPLES

1. Introduction and Scope

This Statement of Principles has been drawn up by the Institutional Shareholders' Committee¹. It develops the principles set out in its 1991 statement "The Responsibilities of Institutional Shareholders in the UK" and expands on the Combined Code on Corporate Governance of June 1998. It sets out best practice for institutional shareholders and/or agents in relation to their responsibilities in respect of investee companies in that they will:

- set out their policy on how they will discharge their responsibilities - clarifying the priorities attached to particular issues and when they will take action – see 2 below;
- monitor the performance of, and establish, where necessary, a regular dialogue with investee companies – see 3 below;
- intervene where necessary - see 4 below;
- evaluate the impact of their engagement – see 5 below; and
- report back to clients/beneficial owners – see 5 below.

In this statement the term "institutional shareholder" includes pension funds, insurance companies, and investment trusts and other collective investment vehicles. Frequently, agents such as investment managers are appointed by institutional shareholders to invest on their behalf.

This statement covers the activities of both institutional shareholders and those that invest as agents, including reporting by the latter to their institutional shareholder clients. The actions described in this statement in general apply only in the case of UK listed companies. They can be applied to any such UK company, irrespective of market capitalisation, although institutional shareholders' and agents' policies may indicate *de minimis* limits for reasons of cost-effectiveness or practicability. Institutional

¹ In 1991 the members of the Institutional Shareholders' Committee were: the Association of British Insurers; the Association of Investment Trust Companies; the British Merchant Banking and Securities Houses Association; the National Association of Pension Funds; and the Unit Trust Association. In 2005, the members are: the Association of British Insurers; the Association of Investment Trust Companies; the National Association of Pension Funds; and the Investment Management Association.

shareholders and agents should keep under review how far the principles in this statement can be applied to other equity investments.

The policies of engagement set out below do not constitute an obligation to micro-manage the affairs of investee companies, but rather relate to procedures designed to ensure that shareholders derive value from their investments by dealing effectively with concerns over under-performance. Nor do they preclude a decision to sell a holding, where this is the most effective response to such concerns.

Fulfilling fiduciary obligations to end-beneficiaries in accordance with the spirit of this statement may have implications for institutional shareholders' and agents' resources. They should devote appropriate resources, but these should be commensurate with the benefits for beneficiaries. The duty of institutional shareholders and agents is to the end beneficiaries and not to the wider public.

2. Setting out their policy on how they will discharge their responsibilities

Both institutional shareholders and agents will have a clear statement of their policy on engagement and on how they will discharge the responsibilities they assume. This policy statement will be a public document. The responsibilities addressed will include each of the matters set out below.

- How investee companies will be monitored. In order for monitoring to be effective, where necessary, an active dialogue may need to be entered into with the investee company's board and senior management.
- The policy for meeting with an investee company's board and senior management.
- How situations where institutional shareholders and/or agents have a conflict of interest will be minimised or dealt with.
- The strategy on intervention.
- An indication of the type of circumstances when further action will be taken and details of the types of action that may be taken.
- The policy on voting.

Agents and their institutional shareholder clients should agree by whom these responsibilities are to be discharged and the arrangements for agents reporting back.

3. Monitoring performance

Institutional shareholders and/or agents, either directly or through contracted research providers, will review Annual Reports and Accounts, other circulars, and general meeting resolutions. They may attend company meetings where they may raise questions about investee companies' affairs. Also investee companies will be monitored to determine when it is necessary to enter into an active dialogue with the investee company's board and senior management. This monitoring needs to be regular, and the process needs to be clearly communicable and checked periodically for its effectiveness. Monitoring may require sharing information with other shareholders or agents and agreeing a common course of action.

As part of this monitoring, institutional shareholders and/or agents will:

- seek to satisfy themselves, to the extent possible, that the investee company's board and sub-committee structures are effective, and that independent directors provide adequate oversight; and
- maintain a clear audit trail, for example, records of private meetings held with companies, of votes cast, and of reasons for voting against the investee company's management, for abstaining, or for voting with management in a contentious situation.

In summary, institutional shareholders and/or agents will endeavour to identify problems at an early stage to minimise any loss of shareholder value. If they have concerns and do not propose to sell their holdings, they will seek to ensure that the appropriate members of the investee company's board are made aware of them. It may not be sufficient just to inform the Chairman and/or Chief Executive. However, institutional shareholders and/or agents may not wish to be made insiders. Institutional shareholders and/or agents will expect investee companies and their advisers to ensure that information that could affect their ability to deal in the shares of the company concerned is not conveyed to them without their agreement.

4. Intervening when necessary

Institutional shareholders' primary duty is to those on whose behalf they invest, for example, the beneficiaries of a pension scheme or the policyholders in an insurance company, and they must act in their best financial interests. Similarly, agents must act in the best interests of their clients. Effective monitoring will enable institutional shareholders and/or agents to exercise their votes and, where necessary, intervene objectively and in an informed way. Where it would make intervention more effective, they should seek to engage with other shareholders.

Many issues could give rise to concerns about shareholder value. Institutional shareholders and/or agents should set out the circumstances when they will actively intervene and how they propose to measure the effectiveness of doing so. Intervention should be considered by institutional shareholders and/or agents regardless of whether an active or passive investment policy is followed. In addition, being underweight is not, of itself, a reason for not intervening. Instances when institutional shareholders and/or agents may want to intervene include when they have concerns about:

- the company's strategy;
- the company's operational performance;
- the company's acquisition/disposal strategy;
- independent directors failing to hold executive management properly to account;
- internal controls failing;
- inadequate succession planning;
- an unjustifiable failure to comply with the Combined Code;
- inappropriate remuneration levels/incentive packages/severance packages; and

- the company's approach to corporate social responsibility.

If boards do not respond constructively when institutional shareholders and/or agents intervene, then institutional shareholders and/or agents will consider on a case-by-case basis whether to escalate their action, for example, by:

- holding additional meetings with management specifically to discuss concerns;
- expressing concern through the company's advisers;
- meeting with the Chairman, senior independent director, or with all independent directors;
- intervening jointly with other institutions on particular issues;
- making a public statement in advance of the AGM or an EGM;
- submitting resolutions at shareholders' meetings; and
- requisitioning an EGM, possibly to change the board.

Institutional shareholders and/or agents should vote all shares held directly or on behalf of clients wherever practicable to do so. They will not automatically support the board; if they have been unable to reach a satisfactory outcome through active dialogue then they will register an abstention or vote against the resolution. In both instances it is good practice to inform the company in advance of their intention and the reasons why.

5. Evaluating and reporting

Institutional shareholders and agents have a responsibility for monitoring and assessing the effectiveness of their engagement. Those that act as agents will regularly report to their clients details on how they have discharged their responsibilities. This should include a judgement on the impact and effectiveness of their engagement. Such reports will be likely to comprise both qualitative as well as quantitative information. The particular information reported, including the format in which details of how votes have been cast will be presented, will be a matter for agreement between agents and their principals as clients.

Transparency is an important feature of effective shareholder activism. Institutional shareholders and agents should not however be expected to make disclosures that might be counterproductive. Confidentiality in specific situations may well be crucial to achieving a positive outcome.

6. Conclusion

The Institutional Shareholders' Committee believes that adoption of these principles will significantly enhance how effectively institutional shareholders and/or agents discharge their responsibilities in relation to the companies in which they invest. To ensure that this is the case, the Institutional Shareholders' Committee will monitor the impact of this statement with a view to further reviewing and refreshing it, if needs be, in 2007 in the light of experience and market developments.