



Acting in concert and collaborative shareholder engagement: U.K. guidance

Collaborative engagement and acting in concert

>1 Introduction

Principle 2 of the Principles for Responsible Investment encourages signatories to be active owners and to incorporate environmental, social and governance (“ESG”) issues into their ownership policies and practices. Principle 5 states: “We will work together to enhance our effectiveness in implementing the Principles”.

Active ownership, or stewardship, is generally regarded as one of the most effective mechanisms for responsible investors to have a positive impact on society and the environment, and in turn reduce risks and maximise returns. One of the ways that PRI signatories may wish to do this is through collaborative engagement, which involves groups of investors working together to influence the ESG practices and/or improve ESG disclosure of investee companies. In practice, collaborative engagement can take many forms, from jointly signing and sending letters to companies to co-filing shareholder resolutions. Collaborative engagement can help institutional investors pool their knowledge and resources, reduce engagement costs and maximise their legitimacy when in dialogue with companies. It can also provide a number of benefits to companies, including increased efficiency of engagement with investors, clarifying investors’ expectations on ESG issues and helping to build relationships with long-term investors.

However, in many jurisdictions certain types of collaboration or co-ordination by shareholders in a company may trigger regulatory requirements. It is therefore important for institutional investors who wish to participate in collaborative engagement to have a clear understanding of what behaviour triggers what requirements.

A common trigger for regulatory requirements is where shareholders are deemed to be “acting in concert”. For example, in the EU where acquirers of a bank or investment firm “act in concert” their potential shareholdings will be aggregated for the purposes of determining whether the threshold for needing regulatory approval of the acquisition has been met. What amounts to acting in concert is often unclear and can vary between different jurisdictions and regulations. Nevertheless, there is a clear intent among regulators that these rules should not inhibit shareholder co-operation to support ESG. For example, [the EU Guidelines on the application of the acting in concert requirements in the Acquisitions Directive](#) state “The target supervisor should not apply the regime relating to the notification and prudential assessment of acquisitions of, or increases in, qualifying holdings in such a way as to inhibit cooperation between shareholders aimed at exercising good corporate governance”.¹

Other areas where “acting in concert” or similar behaviour could trigger regulatory requirements include: disclosures required under listing rules; the requirement to make a mandatory offer under takeover rules; regulations against market abuse; and rules aimed at preventing asset stripping. These are described further below. It is worth noting that the way these rules operate varies considerably depending on the type of rule and the jurisdiction.

Often collaborative shareholding does not cause regulatory requirements to be triggered and is supported by regulators. For example, the UK’s Financial Services Authority (FSA), the predecessor to the Financial Conduct Authority, wrote to the Institutional Shareholders’ Committee stating that it did not believe that the FSA’s regulatory requirements prevent collective engagement by institutional shareholders designed to raise legitimate concerns on particular corporate issues where these simply involve ad hoc discussions or understandings.

The following sections cover the key financial regulation regarding collaborative engagement and acting in concert/market abuse. Requirements with more limited application, such as free float listing rules, are not covered. Other areas where acting in concert may be relevant, such as Competition/Antitrust law or the control of certain industries, such as airlines, telecoms or arms manufacture are not considered.

>2 Listing disclosure rules

Disclosure rules that apply to listed companies often require that shareholdings over a certain level are disclosed to the issuer and/or market. Where this is the case, the shareholdings of two or more shareholders may be aggregated where, for example, they agree to co-ordinate the use of their voting power in the listed company. The rationale for this requirement is that a proper functioning market should include transparency about share ownership so that no one can gain an advantage by having selective access to this information. It is also aimed at ensuring that the ownership/control of public companies is not disguised.

>3 Market abuse rules

Trading on the basis of knowledge of others’ voting/trading intentions where this amounts to inside information could amount to market abuse. This is not necessarily however in practice a bar to effective collaborative engagement, but it is important that appropriate safeguards for managing inside information are in place. The rationale for restrictions on trading on inside information is that it is not fair, and does not promote effective markets to allow persons to trade based on information that is not available to the whole market.

>4 Takeover mandatory offer rules

Takeover rules generally stipulate that should a person (or persons acting in concert) acquire a certain percentage of a firm’s shareholdings they are required to make an offer for the purchase of the other shares in the company. The rationale for this requirement is to ensure stability and clear processes for takeovers, and in particular, so that there is not prolonged uncertainty about whether a takeover will take place. It also aims to ensure equal treatment of shareholders and in particular the protection of minority shareholders by requiring that mandatory offers apply to all shareholders.

Similarly to the other rules described above, where persons are acting in concert their shareholding may be aggregated for the purposes of calculating whether a mandatory offer is required. In relation to EU takeover legislation, the European Securities and Markets Authority (“ESMA”) has published a “white list” of activities that shareholders may undertake without being deemed to be acting in concert for the purposes of Directive 2004/25/EC on Takeover Bids² (the “ESMA Takeover Guidance”).

>5 Change in control of regulated financial services firms

Many jurisdictions require owners of regulated financial services firms with a shareholding above a certain percentage to be approved by a regulatory authority. The rationale for this requirement is that the financial services sector is a strategically important sector of the economy where it is important that the controllers of financial services firms are fit and proper, and in particular are prudentially sound.

Where shareholders or potential shareholders are deemed to “act in concert” their shareholdings may be aggregated for the purposes of determining whether regulatory approval is needed. Approval might as a result be required where it would not be needed if the shareholders were not acting in concert.

>6 Disclosure and asset stripping rules

In the EU, the Alternative Investment Fund Managers Directive (AIFMD) imposes restrictions on distributions, capital reductions, share redemptions or purchases of own shares by EU-incorporated portfolio companies during the first two years following acquisition of control by an Alternative Investment Fund (AIF) managed by an EU Alternative Investment Fund Manager (AIFM) or a non-EU AIFM marketing such AIF in the EU. An AIF can acquire control with one more other AIFs, whether managed by the same AIFM or different AIFMs. The rationale for this requirement is to prevent asset stripping by AIFs/AIFMs. AIFMD also imposes certain notification/reporting requirements in relation to the acquisition or holding of control of non-listed companies or issuers.

¹ Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

² ESMA Public Statement on Information on shareholder co-operation and acting in concert under the Takeover Bids Directive (12 November 2013).

UK Acting in Concert Requirements³

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
Disclosure	Chapter 5 of the Financial Conduct Authority (the "FCA") Disclosure Guidance and Transparency Rules sourcebook (DTRs)	<ul style="list-style-type: none"> UK issuers listed on a regulated market (including the LSE Main Market); UK issuers whose shares are traded on a prescribed market (including AIM and ISDX Growth); and non-UK issuers whose shares are traded on a regulated market and for whom the UK is their home member state. 	<p>UK issuer: 3% and each 1% threshold thereafter up to 100%</p> <p>Non-UK issuer: 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.</p>	<p>A person must notify the issuer of the percentage of its voting rights he holds as shareholder or holds or is deemed to hold through his direct or indirect holding of financial instruments falling within DTR 5.3.1R (1) (or a combination of such holdings) if the percentage of those voting rights:</p> <p>(1) reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100% (or in the case of a non-UK issuer on the basis of thresholds at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%) as a result of an acquisition or disposal of shares or financial instruments falling within DTR 5.3.1 R; or</p> <p>(2) reaches, exceeds or falls below an applicable threshold in (1) as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the issuer in accordance with FCA requirements for disclosing such changes; and in the case of an issuer which is not incorporated in an EEA State a notification under (2) must be made on the basis of equivalent events and disclosed information.</p> <p>DTR 5.3.1R (1) Financial instruments held directly or indirectly fall into DTR 5.3.1R (1) where they</p> <p>(a) on maturity give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to the holder's right to acquire, shares to which voting rights are attached, already issued, of an issuer; or</p> <p>(b) are not included in (a) but are referenced to shares referred to in (a) and with economic effect similar to that of the financial instruments referred to in (a), whether or not they confer a right to a physical settlement.</p> <p>A "formal agreement" means an agreement which is binding under applicable law.</p> <p>Indirect holdings of shares A person is an indirect holder of shares to the extent that, amongst other cases, the shares are linked to voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question.</p> <p>The Financial Services Authority ("FSA"), the predecessor to the FCA, stated in a letter dated 19 August 2009 to the Institutional Shareholders' Committee (the "FSA Letter") that indirect shareholdings would be unlikely to be triggered by the "kind of ad hoc discussions and understandings which might be reached between institutional shareholders in relation to particular issues or corporate events". The FSA Letter also said, in relation to the regulatory regime for disclosures of substantial shareholding (as well as market abuse and changes in control) "we do not believe that our regulatory requirements prevent collective engagement by institutional shareholders designed to raise legitimate concerns on particular corporate issues, events or matters of governance with the management of investee companies". Therefore, it seems that, at least from the FSA's perspective at the time of the FSA Letter, that where collective shareholder engagement is limited to a specific issue then it is unlikely that this would trigger the DTR indirect shareholding disclosure requirements.</p>

³ Please note that these requirements are likely to change in the event of Brexit (e.g. definitions such as what qualifies as a regulated market).

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
Market abuse / insider dealing	Market Abuse Regulation (“MAR”) and Criminal Justice Act 1993 (“CJA”)	<p>MAR:</p> <p>The inside information provisions of MAR apply to the following types of financial instrument⁴:</p> <p>(a) financial instruments admitted to trading on a regulated market⁵ or for which a request for admission to trading on a regulated market has been made;</p> <p>(b) financial instruments traded on a multilateral trading facility (“MTF”), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;</p> <p>(c) financial instruments traded on an organised trading facility (“OTF”);</p> <p>(d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.</p> <p>MAR also applies to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Regulation (EU) No 1031/2010.</p> <p>CJA:</p> <p>The inside information provisions of the CJA apply to “price affected” securities, being securities that are both:</p> <ul style="list-style-type: none"> • listed in Schedule 2 to the CJA 1993; and • satisfy conditions specified by HM Treasury (see section 54, CJA). <p>The securities listed in Schedule 2 to the CJA include shares, debt securities, warrants, depositary receipts, security options, futures and contracts for differences. The securities must satisfy certain conditions, specified in secondary legislation⁶. Essentially, the securities must be officially listed on an EEA exchange or be admitted to dealing on, or have their price quoted on or under, the rules of a regulated market.⁷</p> <p>Regulated markets include any market established under the rules of the London Stock Exchange (which includes AIM), the EEA stock exchanges listed, NASDAQ, LIFFE, OMLX PLUS Markets plc (formerly known as OFEX) and CoredealMTS.</p> <ul style="list-style-type: none"> • Although the CJA has a wide scope as a result of the definition of securities, its territorial scope generally means that there must be some connection with the UK in order for a successful prosecution to be brought. 	N/A	<p>MAR - Insider dealing</p> <p>Under MAR, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, is also considered to be insider dealing. MAR prohibits a person from engaging or attempting to engage in insider dealing; or recommending that another person engage in insider dealing or induce another person to engage in insider dealing.</p> <p>MAR – Unlawful disclosure of inside information</p> <p>Under MAR, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties. In <i>Ian Hannam v FCA</i>, the Upper Tribunal, in applying the “improper disclosure” offence under the previous market abuse regime, found that recipients of information should be subject to express confidentiality requirements and understand that the information is or may be inside information.</p> <p>MAR - Inside information</p> <p>MAR stipulates that inside information comprises the following types of information:</p> <p>(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;</p> <p>(a) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;</p> <p>(b) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments; and</p> <p>(c) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client’s pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.</p> <p>MAR - Information which, if it were made public, would be likely to have a significant effect on prices of financial instruments etc.</p> <p>MAR provides that information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.</p> <p>MAR - Information of a precise nature</p> <p>Under MAR information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.</p>

⁴ This is defined in MAR as a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU.

⁵ This is defined in MAR as a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU.

⁶ The Insider Dealing (Securities and Regulated Markets) Order 1994 (SI 1994/187), as amended by the Insider Dealing (Securities and Regulated Markets) (Amendment) Order 1996 (SI 1996/1561).

⁷ As defined in the Insider Dealing (Securities and Regulated Markets) Order 1994 (SI 1994/187) as amended by the Insider Dealing (Securities and Regulated Markets) (Amendment) Order 1996 (SI 1996/1561), the Insider Dealing (Securities and Regulated Markets) (Amendment) Order 2000 (SI 2000/1923) and the Insider Dealing (Securities and Regulated Markets) (Amendment) Order 2002 (SI 2002/1874).

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
				<p>FSA commentary on collective engagement and the market abuse regime</p> <p>The FSA said in its FSA letter (albeit in respect of the predecessor regime to MAR) and in Market Watch 20 that a basic principle was that a firm would not be committing market abuse by carrying out trading on the basis of its own intentions or knowledge of its own strategy. It also pointed out that it might come to a different conclusion if a party dealt on the basis of their knowledge of another party's intentions and strategy, or if several parties acted together with a view to avoiding market disclosures which would otherwise be necessary were the shares to be acquired by a single entity. However, the FSA's survey of market participants suggested that investment managers are able to maintain effective engagement with investees without contravening these restrictions.</p> <p>CJA – Insider dealing</p> <p>Under the CJA, an individual who has information as an insider is guilty of insider dealing if he deals in securities that are price-affected securities in relation to the information where the acquisition or disposal in question occurs on a regulated market, or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary.</p> <p>An individual who has information as an insider is also guilty of insider dealing if he encourages another person to deal in securities that are (whether or not that other knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place where the acquisition or disposal in question occurs on a regulated market, or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary.</p> <p>An individual who has information as an insider is also guilty of insider dealing if he disclosed the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.</p> <p>The offence of insider dealing in the CJA is a criminal offence.</p> <p>CJA – Inside information</p> <p>In the CJA "inside information" means information which:</p> <ol style="list-style-type: none"> relates to particular securities or to a particular issuer of securities or to particular issuers of securities and not to securities generally or to issuers of securities generally; is specific or precise; has not been made public; and <p>if it were made public would be likely to have a significant effect on the price of any securities.</p>
<p>Restrictions on dealing, disclosure of dealings and mandatory offers</p>	<p>"The City Code on Takeovers and Mergers" (the "Takeover Code")</p>	<p>Holdings of, and rights over, securities in any companies (including Societas Europaea) to which the Takeover Code applies, being:</p> <ul style="list-style-type: none"> companies which have their registered office in the UK, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market (e.g. the LSE) or a multilateral trading facility (e.g. AIM) in the UK, the Channel Islands or the Isle of Man; companies which have their registered office in the UK if their securities are admitted to trading on a regulated market in one or more other EEA Member States (note that the EEA does not include the Channel Islands or the Isle of Man) and not in the UK; companies which have their registered office in another EEA Member State and their securities are admitted to trading on a regulated market in the UK and not in the EEA Member State in which it has its registered office; and companies which have their registered office in the UK if their securities are admitted to trading on a regulated market in one or more other EEA Member States (note that the EEA does not include the Channel Islands or the Isle of Man) and not in the UK; companies which have their registered office in another EEA Member State and their securities are admitted to trading on a regulated market in the UK and not in the EEA Member State in which it has its registered office; and 	<p>30% of voting rights of a company</p>	<p>Restrictions on dealings by the offeror and persons acting in concert (Rule 4)</p> <p>Rule 4 restricts dealings by an offeror and persons acting in concert with it in the securities of an offeree company during an offer period. Exceptions apply in certain cases for "exempt principal traders" and "exempt fund managers".</p> <p>Disclosure of dealings and positions (Rule 8)</p> <p>Rule 8 requires various persons to make public, and in certain cases private (i.e. to the Takeover Panel only), disclosures of their positions or dealings in relevant securities during an offer period, including "Opening Position Disclosures" at the start of an offer period and trading disclosures throughout the offer period. Any one person (or any two more persons acting pursuant to an agreement or understanding) who at the relevant time is (or are) interested directly or indirectly in 1% or more of any relevant securities of the offeree company or those of any securities exchange offeror must make a public dealing disclosure if he (or any one of them) deals in such securities. A person acting in concert with any party to an offer must make a public dealing disclosure if he deals in any relevant securities of the offeree company or those of any securities exchange offeror during an offer period for his own account or for the account of discretionary investment clients. The Takeover Panel's website contains a useful disclosure table to assist investors in understanding when they need to make disclosures. Mandatory offer requirements (Rule 9)</p> <p>Except with the consent of the Takeover Panel, when:</p> <ol style="list-style-type: none"> any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company; or any person, together with persons acting in concert with him, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with him, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which he is interested, such person must extend a mandatory cash offer of the highest price paid for the shares in the previous 12 months to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights. If a person (taken together with shares in which persons acting in concert with him are interested) already controls 50% or more of a company's voting rights, he already has control of the company and no offer obligation normally arises from further acquisitions of interests by him or any persons acting in concert with him.

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
		<ul style="list-style-type: none"> in certain circumstances, unlisted public and private companies that are incorporated in and have their place of central management in the UK, the Channel Islands or the Isle of Man (e.g. where any of the securities of the company in question have been admitted to trading on a regulated market (e.g. the LSE) or a multilateral trading facility (e.g. AIM) in the UK, the Channel Islands or the Isle of Man in the 10 years prior to the relevant date). 		<p>The European Securities and Markets Authority (“ESMA”) has published a “white list” of activities that shareholders may undertake without being deemed to be acting in concert for the purposes of Directive 2004/25/EC on Takeover Bids (the “ESMA Takeover Guidance”).</p> <p>Persons acting in concert</p> <p>Under the Takeover Code, persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company. A person and each of its affiliated persons will be deemed to be acting in concert all with each other. Specific advice should be sought on the application of this concept, which will differ according to the relevant facts and circumstances.</p> <p>The following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:</p> <ol style="list-style-type: none"> (1) a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, all with each other (for this purpose ownership or control of 20% or more of the equity share capital of a company is regarded as the test of associated company status); (2) a company with its directors (together with their close relatives and the related trusts of any of them); (3) a company with any of its pension schemes and the pension schemes of any company described in (1); (4) a fund manager (including an exempt fund manager) with any investment company, unit trust or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts; (5) a person, the person’s close relatives, and the related trusts of any of them, all with each other; (6) the close relatives of a founder of a company to which the Code applies, their close relatives, and the related trusts of any of them, all with each other; (7) a connected adviser with its client and, if its client is acting in concert with an offeror or the offeree company, with that offeror or offeree company respectively, in each case in respect of the interests in shares of that adviser and persons controlling, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader); (8) directors of a company which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent; and (9) shareholders in a private company who sell their shares in that company in consideration for the issue of new shares in a company to which the Code applies, or who, following the re-registration of that company as a public company in connection with an initial public offering or otherwise, become shareholders in a company to which the Code applies. <p>For the purposes of the definition of “acting in concert” under the Takeover Code, an “affiliated person” means any undertaking in respect of which any person:</p> <ol style="list-style-type: none"> a) has a majority of the shareholders’ or members’ voting rights; b) is a shareholder or member and at the same time has the right to appoint or remove a majority of the members of its board of directors; c) is a shareholder or member and alone controls a majority of the shareholders’ or members’ voting rights pursuant to an agreement entered into with other shareholders or members; or d) has the power to exercise, or actually exercises, dominant influence or control. <p>For these purposes, a person’s rights as regards voting, appointment or removal shall include the rights of any other affiliated person and those of any person or entity acting in his own name but on behalf of that person or of any other affiliated person.</p> <p>Coming together to act in concert</p> <p>Guidance from the panel explains that when a party has acquired an interest in shares without the knowledge of other persons with whom he subsequently comes together to co-operate as a group to obtain or consolidate control of a company, and the shares in which they are interested at the time of coming together carry 30% or more of the voting rights in that company, the Panel will not normally require a general offer to be made under this Rule.</p>

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
				<p>(a) if the shares in which they are interested together carry less than 30% of the voting rights in that company, an obligation to make an offer will arise if any member of that group acquires an interest in any further shares so that the shares in which they are interested together carry 30% or more of such voting rights; or</p> <p>(b) if the shares in which they are interested together carry 30% or more of the voting rights in that company and they do not hold shares carrying more than 50% of the voting rights in that company, no member of that group may acquire an interest in any other shares carrying voting rights in that company without incurring a similar obligation.</p> <p>Collective shareholder action</p> <p>The Takeover Panel has confirmed its view that the Takeover Code does not have the intention or effect of acting as a barrier to collective shareholder action and does not normally regard the action of shareholders voting together on a particular resolution as action which of itself indicates that such parties are acting in concert. However, the Takeover Panel will normally presume shareholders who requisition or threaten to requisition the consideration of a “board control-seeking” proposal at a general meeting, together with their supporters as at the date of the requisition or threat, to be acting in concert with each other and with the proposed directors. Such parties will be presumed to have come into concert once an agreement or understanding is reached between them in respect of a “board control-seeking” proposal with the result that subsequent acquisitions of interests in shares by any member of the group could give rise to an offer obligation.</p> <p>In determining whether a proposal is board control-seeking, the Takeover Panel will have regard to a number of factors, including the following:</p> <p>(a) the relationship between any of the proposed directors and any of the shareholders proposing them or their supporters. Relevant factors in this regard will include:</p> <ul style="list-style-type: none"> (i) whether there is or has been any prior relationship between any of the activist shareholders, or their supporters, and any of the proposed directors; (ii) whether there are any agreements, arrangements or understandings between any of the activist shareholders, or their supporters, and any of the proposed directors with regard to their proposed appointment; and (iii) whether any of the proposed directors will be remunerated in any way by any of the activist shareholders, or their supporters, as a result of or following their appointment. <p>If, on this analysis, there is no relationship between any of the proposed directors and any of the activist shareholders or their supporters, or if any such relationship is insignificant, the proposal will not be considered to be board control-seeking such that the parties will not be presumed to be acting in concert and it will not be necessary for the factors set out at paragraphs (b) to (f) below to be considered. If, however, such a relationship does exist which is not insignificant, the proposal may be considered to be board control-seeking, depending on the application of the factors set out at paragraph (b) below or, if appropriate, paragraphs (b) to (f) below;</p> <p>(b) the number of directors to be appointed or replaced compared with the total size of the board.</p> <p>If it is proposed to appoint or replace only one director, the proposal will not normally be considered to be board control-seeking. If it is proposed to replace the entire board, or if the implementation of the proposal would result in the proposed directors representing a majority of the directors on the board, the proposal will normally be considered to be board control-seeking.</p> <p>If, however, the implementation of the proposal would not result in the proposed directors representing a majority of the directors on the board, the proposal will not normally be considered to be board control-seeking unless an analysis of the factors set out at paragraphs (c) to (f) below would indicate otherwise;</p> <ul style="list-style-type: none"> (c) the board positions held by the directors being replaced and to be held by the proposed directors; (d) the nature of the mandate, if any, for the proposed directors; (e) whether any of the activist shareholders, or any of their supporters, will benefit, either directly or indirectly, as a result of the implementation of the proposal other than through its interest in shares in the company; and (f) the relationship between the proposed directors and the existing directors and/or the relationship between the existing directors and the activist shareholders or their supporters. <p>In respect of a proposal to replace some or all of the directors and the investment manager of an investment trust company, the relationship between the proposed new investment manager and any of the activist shareholders, or their supporters, will also be relevant to the analysis of the factors set out at paragraph (a) above and, if appropriate, paragraphs (c) to (f) above.</p> <p>In determining whether it is appropriate for such parties to be held no longer to be acting in concert, the Panel will take account of a number of factors, including the following:</p> <ul style="list-style-type: none"> (a) whether the parties have been successful in achieving their stated objective; (b) whether there is any evidence to indicate that the parties should continue to be held to be acting in concert; (c) whether there is any evidence of an ongoing struggle between the activist shareholders, or their supporters, and the board of the company; (d) the types of activist shareholder involved and the relationship between them; and (e) the relationship between the activist shareholders, or their supporters, and the proposed/new directors.

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
				<p>Consortium offers</p> <p>Investors in a consortium (e.g. through a vehicle company formed for the purpose of making an offer) will normally be treated as acting in concert with the offeror. Where an investor is part of a larger organisation, the Takeover Panel should be consulted to establish which other parts of the organisation will also be regarded as acting in concert.</p> <p>Where the investment in the consortium is, or is likely to be, 10% or less of the equity share capital (or other similar securities) of the offeror, the Takeover Panel will normally be prepared to waive the acting in concert presumption in relation to other parts of the organisation, including any connected fund manager or principal trader, provided it is satisfied as to the independence of those other parts from the investor. Where the investment is, or is likely to be, more than 10% but less than 50%, the Takeover Panel may be prepared to waive the acting in concert presumption in relation to other parts of the organisation depending on the circumstances of the case.</p> <p>ESMA “white list”</p> <p>The ESMA Takeover Guidance provides that when shareholders co-operate to engage in any of the activities listed below, that co-operation will not, in and of itself, lead to a conclusion that the shareholders are acting in concert:</p> <ul style="list-style-type: none"> (a) entering into discussions with each other about possible matters to be raised with the company’s board; (b) making representations to the company’s board about company policies, practices or particular actions that the company might consider taking; (c) other than in relation to the appointment of board members, exercising shareholders’ statutory rights to: <ul style="list-style-type: none"> (i) add items to the agenda of a general meeting; (ii) table draft resolutions for items included or to be included on the agenda of a general meeting; or (iii) call a general meeting other than the annual general meeting; (d) other than in relation to a resolution for the appointment of board members and insofar as such a resolution is provided for under national company law, agreeing to vote the same way on a particular resolution put to a general meeting, in order, for example: <ul style="list-style-type: none"> A. to approve or reject: <ul style="list-style-type: none"> (i) a proposal relating to directors’ remuneration; (ii) an acquisition or disposal of assets; (iii) a reduction of capital and/or share buy-back; (iv) a capital increase; (v) a dividend distribution; (vi) the appointment, removal or remuneration of auditors; (vii) the appointment of a special investigator; (viii) the company’s accounts; or (ix) the company’s policy in relation to the environment or any other matter relating to social responsibility or compliance with recognised standards or codes of conduct; or B. to reject a related party transaction. <p>If shareholders co-operate to engage in an activity which is not included on the White List, that fact will not, in and of itself, mean that those shareholders will be regarded as persons acting in concert. Each case will be determined on its own particular facts.</p> <p>The ESMA Takeover Guidance relates to the requirements in the Takeover Bids Directive on acting in concert. These requirements have been implemented in the UK through the Takeover Code.</p>

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
Change in control	Financial Services and Markets Act 2000 (“FSMA”)	Financial services firms authorised by the Prudential Regulation Authority (the “PRA”) or authorised/registered by the FCA (a “UK Authorised Person”)	10% / 20% / 30% / 33% / 40% / 50%	<p>Change in control requirement</p> <p>A person (“A”) who decides to acquire or increase control over a UK Authorised Person must give the PRA or FCA (depending on which regulator the firm is authorised by) notice in writing before making the acquisition.</p> <p>Thresholds</p> <p>The thresholds that apply to determine when control is acquired or increased vary depending on the type of firm being acquired. The default (which applies for banks, insurers, reinsurers, MiFID investment firms, payment institutions authorised or registered under the Payment Services Directive 2 (“PSD2”) and electronic money institutions), is:</p> <ul style="list-style-type: none"> • 10% or more of the shares in the UK Authorised Person or in a parent undertaking of the UK Authorised Person (“P”); • 10% or more of the voting power in the UK Authorised Person or P; or • shares or voting power in the UK Authorised Person or P as a result of which A is able to exercise significant influence over the management of the UK Authorised Person. <p>The default for increasing control is that this take place whenever:</p> <ul style="list-style-type: none"> • the percentage of shares which A holds in B or in a parent undertaking of B (“P”) increases by any of the steps mentioned below; • the percentage of voting power A holds in B or P increases by any of the steps mentioned below; or • A becomes a parent undertaking of B. <p>The steps are:</p> <ul style="list-style-type: none"> • from less than 20% to 20% or more; • from less than 30% to 30% or more; and • from less than 50% to 50% or more. <p>For regulated payment institutions (“PIs”) which have not been re-authorised or re-registered under PSD2 a single 10% band applies.</p> <p>For “non-directive” firms (e.g. non-MiFID investment firms, general insurance intermediaries, full permission consumer credit firms and mortgage lenders/home finance firms), there is a single threshold of 20%.</p> <p>For limited permission consumer credit firms, which do very restricted activities such as credit broking in relation to store cards or items being sold on credit by a retailer, there is a single threshold of 33%.</p> <p>Criminal offence</p> <p>A person who fails to comply with an obligation to notify the PRA/FCA of a decision to acquire or increase control before making the acquisition is guilty of a criminal offence and liable for a fine. It is also an offence to give notice but make the acquisition without the FCA’s approval.</p> <p>Acting in concert requirement</p> <p>For the purposes of calculations relating to whether control is held, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert. The requirement to aggregate the holdings of shares and/or voting power under section 178(2) of FSMA applies to existing holdings, as well as to new purchases, of shares and/or voting power.</p> <p>Deemed voting power requirement</p> <p>In addition to where acting in concert, a person (“H”) may be attributed with voting power in a UK Authorised Person through the application of any of the circumstances described in section 422(5)(a) of FSMA (in addition to any other voting power that he holds (or is deemed to hold) in the UK Authorised Person. This includes, amongst other circumstances, voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the undertaking in question.</p> <p>The FSA letter stated that deemed voting power would be unlikely to be triggered by the kind of ad hoc discussions and understandings which might be reached between institutional shareholders in relation to particular issues or corporate events.</p> <p>Meaning of acting in concert</p> <p>There is no definition of acting in concert in FSMA. The PRA and the FCA refer to the guidelines published jointly by CEBS, CEIOPS and CESR (the “Level 3 Guidelines”), which state that ‘persons are “acting in concert” when each of them decides to exercise his rights linked to the shares he acquires in accordance with an explicit or implicit agreement made between them.’ The relevant persons must therefore (1) hold shares and/or voting power in the firm or its parent undertaking, and (2) reach a decision to exercise the rights linked to those shares in accordance with an agreement (in writing or otherwise) between them.</p>

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
				<p>The PRA and FCA expect that while the rights ‘linked to’ for these purposes are most likely going to be voting rights, persons may be acting in concert where they decide to exercise other share-related rights, either in addition to, or instead of, voting rights, in accordance with an agreement made between them. The PRA and FCA do not specify what other share-related rights could trigger acting in concert requirements, but this could conceivably, include, for example, board appointment rights or rights over decision-making.</p> <p>The PRA and FCA consider that this decision may be taken before or after the time the relevant persons decide to purchase shares in the UK Authorised Person. Further, the agreement need not require them always to exercise the rights attached to their respective shares in the same way.</p> <p>The PRA and FCA state in guidance that although the term “acting in concert” has a potentially wide meaning, not all common actions taken by shareholders, in relation to shares or voting power, will require the aggregation of holdings of shares or voting power. The PRA and FCA consider that there may be circumstances in which persons (who between them hold the percentage level or more of the shares or voting power in a firm or its parent undertaking prompting notification) may engage in a concerted exercise of voting power, without this amounting to acting in concert in a manner requiring aggregation of their holdings.</p> <p>The PRA/FCA state that acting in concert covers all agreements as to how to exercise voting power on future issues generally. Such agreements would, therefore, require the aggregation of holdings by the parties to the agreement, for the purposes of section 178 of FSMA. It may also fall within the ambit of section 422(5)(a)(i) of FSMA, but this will depend on whether the parties to the agreement have adopted a lasting common policy that relates to the management of the relevant undertaking.</p> <p>The FSA said in the FSA Letter that “...it is not intended that the phrase ‘acting in concert’ – either in the Directive, FSMA or the Level 3 guidance - should capture ad hoc discussions and understandings in good faith solely aimed at exerting influence intended to promote generally accepted principles of good corporate governance. The FSA will apply this approach to changes in control.”</p> <p>Voting on specific issues</p> <p>The PRA and FCA say that they would not regard shareholders as acting in concert for the purposes of section 178(2) of the Act or as having deemed voting power requiring aggregation pursuant to section 422(5)(a)(i) of the Act simply because they have agreed to vote together on a particular issue, for example:</p> <ul style="list-style-type: none"> • rejection of a proposal for the remuneration of directors; • appointment/removal of a particular director; or • approval/rejection of an acquisition or disposal proposed by the firm’s board of directors <p>However, there may be circumstances in which voting together on a specific issue would amount to acting in concert for these purposes. Where, for example, shareholders who have no previous agreement in relation to the exercise of their voting rights agree to act together for the purpose of voting to enable them to obtain control of the board of a firm. This may not fall within section 422(5)(a)(i) of FSMA, if those shareholders have no lasting common policy towards the firm’s management. However, the PRA and FCA consider that these circumstances are likely to be exceptional. The FCA also states that while it is not possible to give a definitive list of how they might arise in its published guidance, the FCA remains willing to provide firms with individual guidance on the point in cases of uncertainty.</p> <p>The FSA Letter also said, in relation to the regulatory regime for change in controls (as well as market abuse and disclosures of substantial shareholding), “we do not believe that our regulatory requirements prevent collective engagement by institutional shareholders designed to raise legitimate concerns on particular corporate issues, events or matters of governance with the management of investee companies”. Therefore, it seems that, at least from the FSA’s perspective at the time, that where collective shareholder engagement is limited to a specific issue then it is unlikely that this would trigger the change in control regime.</p> <p>Agreement to put management actions to a vote of shareholders</p> <p>The PRA and FCA also say that an agreement that does no more than require particular management actions to be put to a vote of shareholders, such as major acquisitions, disposals or new issues of shares, would not of itself trigger the requirement to notify. This is because there is no agreement as to how the shareholders will exercise their rights on, or whether the shareholders will adopt a common policy towards, those proposals.</p> <p>Passive shareholder agreements</p> <p>The PRA considers that acting in concert may also arise as a result of passive shareholder agreements. In these, a shareholder (the passive shareholder) agrees explicitly or implicitly with another shareholder or group of shareholders (the ‘active shareholder’) that it will not exercise its voting power. However, persons that acquire shares as part of an investment or hedging programme, and adhere consistently to a stated policy of not voting those shares, would not be regarded by the PRA as having entered into an agreement with other shareholders, and would not be regarded as acting in concert with them.</p>

Type of requirement	Legislation/regulation	Holdings affected	Threshold(s)	Requirements
Disclosure and asset stripping rules	Alternative Investment Fund Managers Directive (“AIFMD”) and the Alternative Investment Fund Managers Regulations 2013 (the “AIFM Regulations”)	Non-listed companies ¹⁰ and issuers ¹¹ .	<p>Non-listed company: 50% of the voting rights</p> <p>Issuer: holding the percentage of voting rights which confers control in the EEA State in which the issuer has its registered office.¹²</p>	<p>AIFMD imposes restrictions on distributions, capital reductions, share redemptions or purchases of own shares by EU-incorporated portfolio companies during the first two years following acquisition of control by an Alternative Investment Fund (an “AIF”) managed by an Alternative Investment Fund Manager (an “AIFM”) that is either an EU AIFM or a non-EU AIFM marketing such AIF in the EU. AIFMD also imposes certain notification/reporting requirements in relation to the acquisition or holding of control of non-listed companies or issuers.</p> <p>Under the AIFM Regulations “control” means:</p> <p>(a) for a non-listed company, holding more than 50% of the voting rights of the company; and</p> <p>(a) for an issuer, holding the percentage of voting rights which confers control in the EEA State in which the issuer has its registered office¹³.</p> <p>Control can be acquired in one of the following ways:</p> <p>(a) one AIF acquires control individually;</p> <p>(b) two or more AIFs, managed by the same AIFM, acquire control jointly on the basis of an agreement aimed at acquiring such control; or</p> <p>(c) two or more AIFs, managed by two or more AIFMs, acquire control jointly on the basis of an agreement aimed at acquiring such control.</p>

¹⁰ This is defined as a company which has its registered office in the EU and the shares of which are not admitted to trading on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC.

¹¹ This is defined as an issuer within the meaning of point (d) of Article 2(1) of Directive 2004/109/EC where that issuer has its registered office in the EU, and where its shares are admitted to trading on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC.

¹² This is determined by and calculated in accordance with rules or other provisions adopted in that EEA State implementing Article 5.1 and 5.3 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

¹³ Ibid.

Acting in Concert Scenarios

This table considers a number of scenarios and considers whether they would amount to acting in concert, adopting a common policy towards the management of an undertaking or insider dealing for the purposes of the Financial Services and Markets Act 2000 change in control regime (the “**FSMA CiC Regime**”), Chapter 5 of the FCA Disclosure Guidance and Transparency Rules sourcebook (the “**DTRs**”), the Takeover Code, Market Abuse Regulation (“**MAR**”)/Criminal Justice Act 1993 (“**CJA**”), the Alternative Investment Fund Managers Directive (“**AIFMD**”) and the Alternative Investment Fund Managers Regulations 2013 (the “**AIFM Regulations**”). Please note that these requirements are likely to change in the event of Brexit (e.g. definitions such as what qualifies as a regulated market).

The analysis of the scenarios is based on the description provided but the actual application of the relevant law/regulation will depend on the specific facts that apply. It is therefore possible that changes or nuances in the fact pattern could change the analysis in relation to a scenario.

Whether acting in concert or adopting a common policy towards the management of an undertaking triggers a requirement under the FSMA CiC Regime, DTRs, Takeover Code or AIFMD will depend on whether the company subject to the shareholder engagement is in scope of the requirements and whether a relevant threshold is triggered by the amalgamation of shares/voting power. These apply as follows:

- **FSMA CiC Regime:** UK Authorised Persons;
- **DTRs:** UK issuers listed on a regulated market (including the LSE Main Market) and UK issuers whose shares are traded on a prescribed market (including AIM and ISDX Growth);
- **Takeover Code:** any of the following:
 - companies which have their registered office in the UK, the Channel Islands or the Isle of Man if any of their securities are admitted

to trading on a regulated market (e.g. the LSE) or a multilateral trading facility (e.g. AIM) in the UK, the Channel Islands or the Isle of Man;

- companies which have their registered office in the UK if their securities are admitted to trading on a regulated market in one or more other EEA Member States (note that the EEA does not include the Channel Islands or the Isle of Man) and not in the UK;
- companies which have their registered office in another EEA Member State and their securities are admitted to trading on a regulated market in the UK and not in the EEA Member State in which it has its registered office; and
- in certain circumstances, unlisted public and private companies that are incorporated in and have their place of central management in the UK, the Channel Islands or the Isle of Man (e.g. where any of the securities of the company in question have been admitted to trading on a regulated market (e.g. the LSE) or a multilateral trading facility (e.g. AIM) in the UK, the Channel Islands or the Isle of Man in the 10 years prior to the relevant date).

- **AIFMD:** non-listed companies and issuers.

The inside information provisions of MAR apply to the following types of financial instrument:

- (a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
- (b) financial instruments traded on a multilateral trading facility (“**MTF**”), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;

- (c) financial instruments traded on an organised trading facility (OTF);
- (d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

MAR also applies to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Regulation (EU) No 1031/2010.

The inside information provisions of the CJA apply to “price affected” securities, being securities that are both:

- listed in Schedule 2 to the CJA 1993; and
- satisfy conditions specified by HM Treasury (see section 54, CJA).

The securities listed in Schedule 2 to the CJA include shares, debt securities, warrants, depositary receipts, security options, futures and contracts for differences. The securities must satisfy certain conditions, specified in secondary legislation. Essentially, the securities must be officially listed on an EEA exchange or be admitted to dealing on, or have their price quoted on or under, the rules of a regulated market. Regulated markets include any market established under the rules of the London Stock Exchange (which includes AIM), the EEA stock exchanges listed, NASDAQ, LIFFE, OMLX PLUS Markets plc (formerly known as OFEX) and CoredealMTS. Although the CJA has a wide scope as a result of the definition of securities, its territorial scope generally means that there must be some connection with the UK in order for a successful prosecution to be brought.

No.	Description of scenario	DTRs	MAR and CJA	Takeover Code	FSMA CiC Regime	AIFMD/AIFM Regulations
1	<p>A number of investors agree to join a working group to engage with a number of companies that they are shareholders in on specific issues (e.g. the environmental impact of plastics on oceans) and agree in writing to terms of reference for the group.</p> <p>The terms of reference include the objective of engaging with the companies to promote more sustainable approaches to plastics so as to reduce their environmental impact on oceans.</p> <p>Potential activities for the group described in the terms of reference include dialogue with companies (including meetings/calls with the company and signing joint letters) but not activities such as filing resolutions with companies on the issue or voting against/for directors depending on their approach to the company's approach to its environmental impact on plastics in the oceans.</p>	<p>This is unlikely to trigger the indirect shareholding provisions because this does not involve the exercise of voting power.</p>	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors' agreement amounts to inside information.</p> <p>For example, if the making public of the collaboration between the investors would have a significant effect on the price of the company's shares or a related derivative financial instrument then it would amount to inside information assuming it would also be precise (e.g. if the agreement was expected to change the operations of the company to make it more or less profitable/valuable such that this would be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>There is a good argument that in this scenario the information would not be precise, as it does not indicate a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the relevant financial instruments etc..</p> <p>However, clarification from the PRA/FCA would be helpful in this area, especially as the FSA Letter contains limited guidance.</p> <p>In the event that the information about the agreement was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	<p>Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert as it did not involve an agreement or understanding in respect of a "board-control seeking" proposal.</p>	<p>This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve the exercise of voting power.</p>	<p>Not applicable as there is no agreement between the investors to acquire control.</p>
2	<p>Same as scenario 1 but the formation and objectives/planned activities of the group are agreed orally only.</p>	<p>Same as scenario 1.</p>	<p>Same as scenario 1.</p>	<p>Same as scenario 1.</p>	<p>Same as scenario 1.</p>	<p>Same as scenario 1.</p>

No.	Description of scenario	DTRs	MAR and CJA	Takeover Code	FSMA CiC Regime	AIFMD/AIFM Regulations
3	<p>A number of investors agree to join a working group to engage with a number of companies that they are shareholders in on specific issues (e.g. the environmental impact of plastics on oceans) and agree in writing to terms of reference for the group.</p> <p>The terms of reference include the objective of engaging with the companies to promote more sustainable approaches to plastics so as to reduce their environmental impact on oceans.</p> <p>Potential activities for the group described in the terms of reference include dialogue with companies (including meetings/calls with the company and signing joint letters), filing resolutions with companies on the issue and voting against/for directors depending on their approach to the company's approach to its environmental impact on plastics in the oceans.</p>	<p>There is a good argument that this should not amount to adopting a common policy towards the management of an undertaking because the agreement is limited to a specific issue (e.g. the environmental impact of plastics on oceans) rather than broader control of the company.</p> <p>However, clarification from the FCA would be helpful in this area, especially as the FSA Letter contains limited guidance on what they consider to be ad hoc discussions or understandings that do not amount to acting in concert or the adoption of a common policy towards the management of an undertaking.</p>	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors' agreement amounts to inside information.</p> <p>For example, if the making public of the collaboration between the investors would have a significant effect on the price of the company's shares or a related derivative financial instrument then it would amount to inside information assuming it would also be precise (e.g. if the agreement was expected to change the operations of the company to make it more or less profitable/valuable such that this would be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>There is a good argument that in this scenario the information would not be precise, as it does not indicate a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the relevant financial instruments etc..</p> <p>However, clarification from the PRA/FCA would be helpful in this area, especially as the FSA Letter contains limited guidance.</p> <p>In the event that the information about the agreement was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	<p>Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert as it does not involve an agreement or understanding in respect of a "board-control seeking" proposal.</p>	<p>There is a good argument that this should not amount to acting in concert or adopting a common policy towards the management of an undertaking because the agreement is limited to a specific issue (e.g. the environmental impact of plastics on oceans) rather than broader control of the company.</p> <p>This scenario also seems to fall short of the example provided by the PRA/FCA where voting together in relation to a specific issue would amount to acting in concert or adopting a common policy towards the management of an undertaking (i.e. agreeing to vote together to obtain control of the board of a firm).</p> <p>Nevertheless, the activities in this scenario are wider than those referred to in PRA/FCA guidance (e.g. agreeing to vote together on the appointment/removal of a particular director).</p> <p>As such, clarification from the PRA/FCA would be helpful in this area, especially as the FSA Letter contains limited guidance on what they consider to be ad hoc discussions or understandings that do not amount to acting in concert or the adoption of a common policy towards the management of an undertaking.</p>	<p>Although there is no guidance on this point, there is a good argument that this should not amount to acquiring control on the basis of an agreement to acquire control because the agreement is limited to a specific issue (e.g. the environmental impact of plastics on oceans) rather than broader control of the company. However, this could benefit from clarification by ESMA.</p>
4	<p>Same as scenario 3 but the formation and objectives/planned activities of the group are agreed orally only.</p>	<p>Same as scenario 3.</p>	<p>Same as scenario 3.</p>	<p>Same as scenario 3.</p>	<p>Same as scenario 3.</p>	<p>Same as scenario 3.</p>

No.	Description of scenario	DTRs	MAR and CJA	Takeover Code	FSMA CiC Regime	AIFMD/AIFM Regulations
5	A number of investors sign a letter to a company they are shareholders in asking the company to set a target for greenhouse gas emissions reductions.	This is unlikely to trigger the indirect shareholding provisions because this does not involve the exercise of voting power.	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the plans to sign the letter or the signing of the letter amount to inside information.</p> <p>For example, if the making public of the plans to sign the letter or the sending of the letter would have a significant effect on the price of the company's shares or a related derivative financial instrument then it would amount to inside information assuming it would also be precise (i.e. if the letter amounted to information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>In the event that the information about the letter was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert so long as it does not involve an agreement or understanding in respect of a "board-control seeking" proposal.	This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve the exercise of voting power.	Not applicable as there is no agreement between the investors to acquire control.
6	A number of investors have a meeting/call with each other to discuss labour rights issues at a company they are shareholders in.	This is unlikely to trigger the indirect shareholding provisions because this does not involve the exercise of voting power.	Not applicable on the assumption that none of the parties hold/will disclose inside information in relation to the company.	Based on the guidance in the Takeover Code regarding collective shareholder action it is unlikely that this scenario would amount to acting in concert so long as it did not involve an agreement or understanding in respect of a "board-control seeking" proposal.	This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve the exercise of voting power.	Not applicable as there is no agreement between the investors to acquire control.
7	Three investors meet with a company they are shareholders in and encourage it to improve labour rights within their operations and to disclose information related to labour rights issues on an annual basis.	This is unlikely to trigger the indirect shareholding provisions because this does not involve the exercise of voting power.	Not applicable on the assumption that none of the parties hold/will disclose inside information in relation to the company.	Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert so long as it did not involve an agreement or understanding in respect of a "board-control seeking" proposal.	This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve the exercise of voting power.	Not applicable as there is no agreement between the investors to acquire control.
8	An investor met with a company to discuss water use in its supply chain. This investor then shares their notes on the call with a group of other investors.	This is unlikely to trigger the indirect shareholding provisions because this does not involve the exercise of voting power.	Not applicable so long as the information shared does not include inside information.	Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert as it does not involve an agreement or understanding in respect of a "board-control seeking" proposal.	This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve the exercise of voting power.	Not applicable as there is no agreement between the investors to acquire control.

No.	Description of scenario	DTRs	MAR and CJA	Takeover Code	FSMA CiC Regime	AIFMD/AIFM Regulations
9	A number of investors in a company meet to discuss the impact of deforestation on the company and discuss how their organisations intend to vote at the company's AGM (without making any agreement as to how to vote).	This is unlikely to trigger the indirect shareholding provisions because this does not involve the concerted exercise of voting power or an agreement between the investors.	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors' discussions amounts to inside information.</p> <p>For example, if the making public of the discussions between the investors would have a significant effect on the price of the company's shares or a related derivative financial instrument then it would amount to inside information assuming it would also be precise (e.g. if the agreement was expected to change the operations of the company such that this would be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>There is a good argument that in this scenario the information would not be precise, as it does not indicate a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the relevant financial instruments etc. However, clarification from the PRA/FCA would be helpful in this area, especially as the FSA Letter contains limited guidance.</p> <p>In the event that the information about the discussions was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert so long as it did not involve an agreement or understanding in respect of a "board-control seeking" proposal.	This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve the concerted exercise of voting power or an agreement between the investors (and in any event relates to a particular issue rather than general control of the company).	Not applicable as there is no agreement between the investors to acquire control.
10	An investor makes public before a company's AGM that they will vote for a resolution for the company to adopt a responsible sourcing policy.	This is unlikely to trigger the indirect shareholding provisions because this does not involve an agreement.	Not inside information as this information is made public.	This should not involve acting in concert as there is no agreement or other concert relationship between the parties.	This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve an agreement.	Not applicable as there is no agreement between the investors to acquire control.

No.	Description of scenario	DTRs	MAR and CJA	Takeover Code	FSMA CiC Regime	AIFMD/AIFM Regulations
11	An investor tells a limited number of other investors before a company's AGM that they will vote for a resolution for the company to adopt a responsible sourcing policy.	This does not trigger the indirect shareholding provisions because this does not involve the exercise of voting power.	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether an investor's voting intentions amount to inside information.</p> <p>For example, if the making public of the investor's intended voting would have a significant effect on the price of the company's shares or a related derivative financial instrument then the information would amount to inside information assuming it would also be precise (e.g. if the position of the investor made the resolution more likely to pass and that is expected to be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>In the event that the information about the collaboration was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	This should not involve acting in concert as there is no agreement or other concert relationship between the parties.	This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve an agreement.	Not applicable as there is no agreement between the investors to acquire control.
12	A number of investors agree to vote in favour of a shareholder resolution requiring a company they are shareholders in to be more energy efficient.	<p>There is a good argument that this should not amount to adopting a common policy towards the management of an undertaking because the agreement is limited to a specific resolution rather than broader control of the company.</p> <p>This scenario appears to fall into what the FSA Letter would consider to be ad hoc discussions or understandings that do not amount to the adoption of a common policy towards the management of an undertaking.</p>	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors' agreement amounts to inside information.</p> <p>For example, if the making public of the agreement between the investors would have a significant effect on the price of the company's shares or a related derivative financial instrument then the information would amount to inside information assuming it would also be precise (e.g. if the agreement of the investors made the resolution more likely to pass and would be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>In the event that the information about the agreement was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert as it does not involve an agreement or understanding in respect of a "board-control seeking" proposal.	<p>There is a good argument that this scenario in isolation should not amount to acting in concert or adopting a common policy towards the management of an undertaking because the agreement is limited to a specific issue (e.g. the company becoming more energy efficient) rather than broader control of the company.</p> <p>This scenario also seems to be analogous with those referred to in PRA/FCA guidance, and in particular the example of shareholders agreeing to vote together in relation to approval/rejection of an acquisition or disposal proposed by the firm's board of directors.</p> <p>This scenario appears to fall into what the FSA Letter would consider to be ad hoc discussions or understandings that do not amount to acting in concert or the adoption of a common policy towards the management of an undertaking.</p>	Not applicable as there is no agreement between the investors to acquire control.

No.	Description of scenario	DTRs	MAR and CJA	Takeover Code	FSMA CiC Regime	AIFMD/AIFM Regulations
13	A number of investors agree to vote against the reappointment of a director or for the appointment of a new director of a company they are shareholders in at its AGM.	<p>This is unlikely to amount to adopting a common policy towards the management of an undertaking because the agreement is limited to a specific resolution rather than broader control of the company.</p> <p>This scenario is also referred to in PRA/FCA guidance, as not amounting to acting in concert or the adoption of a common policy towards the management of an undertaking.</p>	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors' agreement amounts to inside information.</p> <p>For example, if the making public of the agreement between the investors would have a significant effect on the price of the company's shares or a related derivative financial instrument then the information would amount to inside information assuming it would also be precise (e.g. if the agreement of the investors made the reappointment/appointment more/less likely and that is expected to make the company more or less profitable/valuable such that this would be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>In the event that the information about the agreement was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	Based on the guidance in the Takeover Code regarding collective shareholder action it is unlikely that this scenario would amount to acting in concert so long as it did not involve an agreement or understanding in respect of a "board-control seeking" proposal.	<p>This is unlikely to amount to acting in concert or adopting a common policy towards the management of an undertaking because the agreement is limited to a specific issue rather than broader control of the company.</p> <p>This scenario is also referred to in PRA/FCA guidance as not amounting to acting in concert or the adoption of a common policy towards the management of an undertaking.</p>	Not applicable as there is no agreement between the investors to acquire control.
14	A number of investors agree to vote the same way on all votes at a company's AGM.	<p>This is likely to amount to adopting a common policy towards the management of an undertaking (assuming that the issues dealt with at the AGM cover a fairly broad range) because the agreement may amount to seeking to exercise broad control of the company.</p>	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors' agreement amounts to inside information.</p> <p>For example, if the making public of the agreement between the investors would have a significant effect on the price of the company's shares or a related derivative financial instrument then the information would amount to inside information assuming it would also be precise (e.g. if the agreement of the investors mean that the decisions that are expected to make the company more/less profitable/valuable were more likely to pass such that this would be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>In the event that the information about the agreement was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	Based on the guidance in the Takeover Code regarding collective shareholder action it is unlikely that this scenario would amount to acting in concert so long as it did not involve an agreement or understanding in respect of a "board-control seeking" proposal, which depending on the nature of the votes at the AGM, this scenario may do.	This may amount to acting in concert and/or adopting a common policy towards the management of an undertaking (assuming that the issues dealt with at the AGM cover a fairly broad range) because the agreement may amount to seeking to exercise broad control of the company.	Not applicable as there is no agreement between the investors to acquire control but simply to vote the same way at the AGM.

No.	Description of scenario	DTRs	MAR and CJA	Takeover Code	FSMA CiC Regime	AIFMD/AIFM Regulations
15	A number of investors discuss co-filing a shareholder resolution for a company they are shareholders in to tie executive compensation to sustainability metrics.	This is unlikely to alone result in the adoption of a common policy towards the management of an undertaking so long as there is no agreement between the investors on co-filing the resolution or agreeing to vote for it. However, if there is such an agreement the same considerations as in scenario 12 would apply.	Not applicable so long as the information shared does not include inside information. It is unlikely that this will be the case as the information would not be precise, as it does not indicate a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the relevant financial instruments etc.	Based on the guidance in the Takeover Code regarding collective shareholder action it is unlikely that this scenario would amount to acting in concert as it does not involve an agreement or understanding in respect of a “board-control” seeking proposal.	This is unlikely to alone result in acting in concert or the adoption of a common policy towards the management of an undertaking so long as there is no agreement between the investors on co-filing the resolution or agreeing to vote for it. However, if there is such an agreement the same considerations as in scenario 12 would apply.	Not applicable as there is no agreement between the investors to acquire control.
16	A number of investors with shares in a company state that they intend to divest from the company if it does not publish a sustainability report.	This is unlikely to trigger the indirect shareholding provisions because this does not involve the exercise of voting power.	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors’ statement amounts to inside information.</p> <p>For example, if the making public of the statements between the investors would have a significant effect on the price of the company’s shares or a related derivative financial instrument then the information would amount to inside information assuming it would also be precise (taking into account whether the information is information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>In the event that the information about the statement was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	This should not amount to acting in concert under the as Takeover Code as the investors are not co-operating to obtain or consolidate control of the company or to frustrate the successful outcome of an offer for a company.	This is unlikely to amount to acting in concert or trigger the deemed voting power provisions because this does not involve the exercise of voting power.	Not applicable as there is no agreement between the investors to acquire control.

No.	Description of scenario	DTRs	MAR and CJA	Takeover Code	FSMA CiC Regime	AIFMD/AIFM Regulations
17	Investors agree to vote against the directors' remuneration report and remuneration policy at the AGM of a company they are shareholders in.	<p>There is a good argument that this should not amount to adopting a common policy towards the management of an undertaking because the agreement is limited to a specific resolution rather than broader control of the company.</p> <p>This scenario appears to fall into what the FSA Letter would consider to be ad hoc discussions or understandings that do not amount to the adoption of a common policy towards the management of an undertaking.</p>	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors' agreement amounts to inside information.</p> <p>For example, if the making public of the agreement between the investors would have a significant effect on the price of the company's shares or a related derivative financial instrument then the information would amount to inside information assuming it would also be precise (e.g. if the agreement of the investors made the approval of the remuneration report/policy less likely and that would be expected to make the company more or less profitable/valuable such that this would be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>In the event that the information about the agreement was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert as it does not involve an agreement or understanding in respect of a "board-control" seeking proposal.	<p>There is a good argument that this scenario in isolation should not amount to acting in concert or adopting a common policy towards the management of an undertaking because the agreement is limited to a specific issue rather than broader control of the company.</p> <p>This scenario also seems to be analogous with those referred to in PRA/FCA guidance, and in particular the example of shareholders agreeing to vote together in relation to approval/rejection of an acquisition or disposal proposed by the firm's board of directors.</p> <p>This scenario appears to fall into what the FSA Letter would consider to be ad hoc discussions or understandings that do not amount to acting in concert or the adoption of a common policy towards the management of an undertaking.</p>	Not applicable as there is no agreement between the investors to acquire control.
18	Investors agree to vote against reappointing the auditors at the AGM of a company they are shareholders in.	<p>There is a good argument that this should not amount to adopting a common policy towards the management of an undertaking because the agreement is limited to a specific resolution rather than broader control of the company.</p> <p>This scenario appears to fall into what the FSA Letter would consider to be ad hoc discussions or understandings that do not amount to the adoption of a common policy towards the management of an undertaking.</p>	<p>Not applicable so long as the information shared does not include inside information. Case-by-case analysis would be required to assess whether the investors' agreement amounts to inside information.</p> <p>For example, if the making public of the agreement between the investors would have a significant effect on the price of the company's shares or a related derivative financial instrument then the information would amount to inside information assuming it would also be precise (e.g. if the agreement of the investors made the approval of the auditors less likely and that is expected to make the company more or less profitable/valuable such that this would be information a reasonable investor would be likely to use as part of the basis of his or her investment decisions). If the information is inside information, this would mean that persons dealing on such information could be guilty of insider dealing.</p> <p>In the event that the information about the agreement was inside information, it would cease to be inside information if it was made public. It is likely that any disclosure by the investors to the public or each other for the purposes of the collaborative engagement would be in the normal exercise of an employment, a profession or duties and so would not amount to unlawful disclosure of inside information.</p>	Based on the guidance in the Takeover Code regarding collective shareholder action, it is unlikely that this scenario would amount to acting in concert as it does not involve an agreement or understanding in respect of a "board-control seeking" proposal.	<p>There is a good argument that this scenario in isolation should not amount to acting in concert or adopting a common policy towards the management of an undertaking because the agreement is limited to a specific issue rather than broader control of the company.</p> <p>This scenario also seems to be analogous with those referred to in PRA/FCA guidance, and in particular the example of shareholder agreeing to vote together in relation to approval/rejection of an acquisition or disposal proposed by the firm's board of directors.</p> <p>This scenario appears to fall into what the FSA Letter would consider to be ad hoc discussions or understandings that do not amount to acting in concert or the adoption of a common policy towards the management of an undertaking.</p>	Not applicable as there is no agreement between the investors to acquire control.

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The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a menu of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

More information: www.unpri.org

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