

Guide to shareholder dialogue

Foreword

Paris Europlace is convinced that the quality of the dialogue between listed companies and their shareholders is key to the appeal and smooth operation of the Paris financial centre. As such, it has produced this guide to promote the best practices that can help ensure that this dialogue runs smoothly.

The benefits of shareholder dialogue are well known. For shareholders, this means gaining a better understanding of the information provided by the company and its governance, as well as being able to comment on relevant issues (including strategy, governance, financial performance and sustainability). It also enables shareholders to monitor the implementation of the strategy as decided by the Board of Directors. For issuers, shareholder dialogue enables them to gain a better understanding of their shareholders' concerns and expectations, so that they can take them into account more effectively if necessary, and thus prevent disagreements. Generally speaking, shareholder dialogue strengthens shareholder confidence in the company and its governance bodies.

Encouraged by the European legislator in Directive (EU) 2017/828 of 17 May 2017 amending Directive 2007/36/EC with a view to promoting long-term shareholder engagement, shareholder dialogue has been detailed in the recommendations formulated by the AMF (French Financial Markets Authority)¹ as well as in the corporate governance codes published by AFEP-MEDEF and Middenext, and the High Committee for Corporate Governance. It has also been the focus of parliamentary work², as well as work and recommendations from the industry, in particular from the IFA (French Institute of Directors), the AFG (French Asset Management Association), Cliff (French association of financial communication professionals) and the Club des Juristes.

Following on from these recommendations and the work carried out by the industry and following a hearing and consultation with the parties concerned, this guide has been produced to bring together a set of best practices. It aims to present them in their entirety and to encourage their implementation in companies wishing to develop constructive shareholder dialogue.

With this in mind, this guide sets out the principles for constructive shareholder dialogue and then presents examples of good practice for implementing such dialogue.

This guide deals solely with “private” dialogue, and therefore excludes “public” dialogue that may take place at general meetings, which is governed by the law and raises specific issues. However, the fact that this important moment in shareholder dialogue is not dealt with does not mean that the dialogue is segmented: the general meeting is fully part of the dynamic of ongoing dialogue and the spirit of the good practice highlighted in this guide could be transposed to the holding of the general meeting. Furthermore, this guide does not deal with communications that may occur during public campaigns, which go beyond the scope of the dialogue and may result in its failure. Nor does it deal with the dialogue with voting advisory agencies, which is not intended to replace the direct dialogue with shareholders.

This guide has been written with reference to public limited companies with a Board of Directors. However, it is intended to apply *mutatis mutandis* to public limited companies with a Management Board and a Supervisory Board, as well as to partnerships limited by shares (*sociétés en commandite par actions*) and European companies.

It also looks at best practice, which could of course be adapted to the capacities and specific features of the parties involved in the dialogue.

It is a guide to good practices and it is not legally binding. Its purpose is to explain and encourage. It does not therefore create any obligation enforceable against the parties to which it refers.

¹ Autorité des Marchés Financiers, Position-Recommendation no. 2016-08 – Guide to ongoing disclosure and management of inside information

² Information report no. 2287 tabled by the committee on finance, the general economy and budgetary control, concluding the work of a fact-finding mission on shareholder activism (Mr Éric Woerth and Mr Benjamin Dirx), 2 October 2019.

Principles for constructive shareholder dialogue

A. Engage in ongoing dialogue

Shareholder dialogue should not take place exclusively at the annual general meeting. It should be regular and part of an ongoing process, such that the issuer and shareholders can engage in dialogue throughout the year.

B. Engage in a broad and open dialogue, while respecting its limitations

Shareholder dialogue should remain broad and open. It should neither be confined to a few issues defined by the issuers beforehand, nor be limited to formal exchanges paraphrasing information already communicated. However, there are limitations to shareholder dialogue, which are due in particular to the prohibitions on revealing certain data (illicit disclosure of insider information, confidentiality obligations and business secrecy, for example).

C. Engage in constructive dialogue

Constructive shareholder dialogue presupposes mutual respect between those involved. While ensuring the consistency of their communication, issuers should take into account the diversity of the shareholders with whom they are in dialogue and their legitimate expectations, by adapting the methods of dialogue to their specific characteristics. Conversely, shareholders should take into account the resources required by the issuer to engage in this dialogue, as well as the constraints that issuers may face in fostering the dialogue, in terms of resources, timing and feasibility.

D. Promote dialogue to ensure fair and equitable discussions

Discussions between the issuer and its shareholders are a factor of good governance. In order to preserve the fair and equitable nature of discussions, the issuer and its shareholders should, as far as possible, endeavour to favour dialogue in all circumstances and make every effort to resolve any disagreements reasonably.

Implement constructive shareholder dialogue

1. Examples of best practice for issuers:

1.1. Earmark the necessary resources for shareholder dialogue

Shareholder dialogue requires the issuer to put in place an appropriate organisational structure and allocate the necessary resources, which should be proportionate to the issues at stake and to the company's capabilities.

1.2. Implement a shareholder dialogue policy

In order to encourage constructive shareholder dialogue, it is advisable for the issuer to put in place, under the supervision of the board of directors, a shareholder dialogue policy, enabling it to optimise the benefits of dialogue. This policy could focus, in particular, on identifying, from among the members of the Board of Directors and senior management, the parties involved in the dialogue and their respective roles, and on defining the practical procedures for conducting the dialogue.

This dialogue policy could, where appropriate, be formalised and periodically approved by the Board of Directors, and possibly made public. The monitoring of this policy could be the focus of periodic information from the Board of Directors, which could also be made public.

Some issuers present a summary of the composition of the shareholder base to the Board of Directors on a regular basis. This summary could provide an opportunity to inform the Board of the main issues of concern to shareholders.

1.3. Create the conditions for dialogue with shareholders on the Board of Directors

The Board of Directors should ensure appropriate conditions for dialogue between shareholders and itself. To this end, it may identify a person on the Board responsible for shareholder dialogue, who would be entrusted with the task of ensuring shareholder relations with the Board of Directors, particularly on corporate governance issues.

When the functions of Chairman and Chief Executive Officer are separated, this task would naturally be entrusted to the Chairman of the Board of Directors, who could possibly appoint an independent director if they are not independent. On the other hand, if the roles of Chairman and Chief Executive Officer are combined, it would be desirable for this task – particularly with regard to governance – to be entrusted to an independent director (the lead director where one exists), as it would be difficult for the Chairman and Chief Executive Officer to disregard their executive role during the shareholder dialogue.

It is advisable for the person chosen to be assisted in their duties by one or more representatives of the company (the secretary of the Board, for example), and, generally, for close coordination to be organised with operational managers, such as the individuals responsible for "investor relations", the relevant directors or the managing director, who are in more direct contact with shareholders. In this context, the person in charge of dialogue should be able to ask them to be informed of the progress of the various meetings held with shareholders, particularly during roadshows.

It might also be desirable for the person chosen to be able to report to the Board of Directors on the performance of their duties.

1.4. Put in place tools to facilitate shareholder dialogue

It would be helpful if the issuers could:

- specify the conditions under which shareholders can initiate dialogue, for example by indicating a dedicated e-mail address for shareholder dialogue, in order to facilitate the procedures for shareholders and the centralisation by issuers of requests for dialogue;
- provide for internal procedures in order to
 1. direct requests so that they are sent to the right person to deal with them and enter into dialogue with the shareholder (investor relations, relevant management, senior management, lead director/Chairman of the Board of Directors, etc.),
 2. monitor shareholder requests to ensure that, where the shareholder's request is appropriate, a response is provided within a reasonable timeframe or that the absence of a substantive response is explained,
 3. report to the board of directors;
- organise shareholder meetings on key issues (finance, governance, sustainability, etc.) for different shareholder profiles (institutional, individual shareholders, etc.);
- draw up and circulate a calendar of shareholder meetings, specifying the topics to be discussed;
- post on their website the presentation materials used during roadshows;
- send shareholders a letter signed by the Chairman at least once a year.

These various tools could be presented in the shareholder dialogue policy.

Other good practices have been observed among certain issuers that are very attentive to the issue of shareholder dialogue, have a large number of individual shareholders and are highly capitalised:

- creation of an Individual Shareholders' Club;
- conducting of a survey of a significant number of individual shareholders prior to the annual general meeting to better identify their concerns.

1.5. Make the annual general meeting a dynamic forum for dialogue

As the annual general meeting is an important moment in the shareholder dialogue, it should be part of the dialogue dynamic. To this end, issuers should conduct shareholder dialogue as far as possible:

- before the meeting of the Board of Directors which will approve the draft resolutions to be put to the annual general meeting;
- in the weeks or months following the general meeting when certain issues have been raised during the general meeting.

1.6. Engage in dialogue when there are disagreements

In the event of disagreements between the issuer and some of its shareholders, it is desirable – where a change in the respective positions is conceivable – that dialogue should continue in an attempt to reach an agreement. Generally speaking, it is good practice for the issuer to inform the shareholder(s) concerned of the action it intends to take in the event of a dialogue revealing disagreements (continuation or termination of the dialogue, change of contact, internal discussion, etc.).

2. Examples of good practices for shareholders:

2.1. Respect the framework for dialogue proposed by the issuer

When the issuer provides shareholders with tools to facilitate shareholder dialogue (particularly an e-mail address), shareholders wishing to dialogue with the issuer should make use of them and raise all their concerns. Shareholders will thus be able to adhere to the internal organisational structure set up by the issuer and take account of all the information already made available by the issuer. While they may ask to be able to talk to a particular person, they cannot demand it.

2.2. Respond to the issuer's request for information

When a shareholder wishes to enter into a dialogue with the issuer, it is advisable for the shareholder to inform the issuer, if the latter so requests, of their level of shareholding, the type of securities held and any hedging arrangements.

2.3. Be open to the dialogue initiated by the issuer

As part of an active shareholder dialogue policy, an issuer may wish to talk to some of its shareholders, particularly those considered to be significant shareholders or representative of a certain type of shareholder. Shareholders approached in this context should be open to such requests for dialogue and endeavour to respond, provided that they are reasonably able to respond to the issuer's requests.

Dialogue should also take place prior to the general meeting when draft resolutions seem incompatible with an investor's published voting policy. A dialogue could enable shareholders to better appreciate the specific circumstances put forward by the issuer.

In addition, sound preparation by the party representing the shareholder will make the dialogue more effective.

2.4. Engage in dialogue when there are disagreements

In the event of disagreements between the issuer and some of its shareholders, it is desirable – where a change in the respective positions is conceivable – that dialogue should continue in an attempt to reach an agreement. Shareholders could therefore endeavour to continue to communicate with the issuer, even when they wish to make their disagreements public. Generally speaking, it is good practice for shareholders to inform the issuer of the steps they intend to take when disagreements arise during a dialogue (support, escalation, withdrawal, etc.).

This good practice is particularly welcome in the case of initiatives commonly referred to as shareholder activism, which should be preceded by appropriate contact with issuers, allowing reasonable lead times and encouraging as constructive a dialogue as possible.

Before any public campaign, shareholders could therefore send the issuer a white paper describing their plans and proposals and their arguments and then allow the issuer a reasonable period of time to correct any material errors and make any comments.



Paris Europlace

28 Place de la Bourse 75002 Paris

Tel: +33 (0)1 70 98 06 30

www.paris-europlace.com

contact@paris-europlace.com