REVIEW OF THE ICGN ‘MODEL MANDATE’ GUIDANCE

CONSULTATION ON THE USE AND CONTENT OF THE GUIDANCE

Introduction

1. The International Corporate Governance Network (ICGN) first published the ‘Guidance on Model Contract Terms between Asset Owners and Managers’ (better known as the ‘Model Mandate’) in 2012. The primary aim of the guidance was to help asset owners to express what they expected of the asset managers that they engaged, and to reflect those expectations in contracts and mandates. The guidance can be found on the ICGN website here.

2. A lot has happened in the world of stewardship and investment in the intervening eight years. While the contents of the Guidance are at least as relevant now as when it was first published, it may not fully reflect all the issues that matter to asset owners and their beneficiaries in 2020 or the nature of their relationship with asset managers. Nor does it take account of changes to regulation and standards in many markets since 2012 - for example, the 2017 EU Shareholder Rights Directive and the many national stewardship codes.

3. The ICGN is reviewing the Guidance to ensure that it addresses these developments to the extent that is necessary, and that it remains aligned with the ICGN’s own Global Stewardship Principles, an updated edition of which will be published later in 2020.

4. We are keen to hear the views of ICGN members and other current and potential users of the Guidance. This paper asks a series of questions about the purpose, use, structure and content of the Guidance. Once your responses have been analysed, we will consult on draft updated Guidance. We currently expect to start the second consultation in October 2020.

5. Please send your comments on the issues covered in this paper by 26 June 2020 to Garvin Payne (email: Garvin.Payne@icgn.org).
The purpose and use of the Guidance

6. The primary audience for the Model Mandate is asset owners and their advisors, such as investment consultants. The main purpose of the Guidance is to assist them in aligning the interests of their fund managers with asset owners’ obligations to beneficiaries and participants. It identifies the different factors that impact on that alignment, explains their relevance, and provides model contract terms that they may wish to use or adapt in their own contracts and mandates. The Guidance is intended to be applicable to all asset classes and in all markets.

7. Anecdotally, we are told that asset owners use the Guidance in a number of different ways: as a template for their contracts, as a reminder or checklist of the different issues that they need to discuss with asset managers when selecting managers and negotiating contracts, and/or as a source of guidance on one or more specific issues. As part of this review, ICGN would find it helpful to have a clearer understanding of how asset owners wish to be able to use the Guidance, to ensure that the updated guidance is written in a way that meets their needs.

8. Asset owners are not the only potential audience for the Guidance. Asset managers and other service providers may find it helpful in understanding the expectations of current and potential clients and their beneficiaries, and perhaps for informing their own standard terms. In addition, regulators, representative bodies and others responsible for promoting stewardship at national and regional levels may find the Model Mandate a useful source if developing guidance for their own markets.

Questions:

- Is the Guidance a useful resource for asset owners? How do they use the Guidance at present? If the Guidance has not proved useful, what are the reasons?
- Are asset managers familiar with the Guidance and how do they use it, if at all? Could it be helpful for managers aiming to meet the expectations of multiple clients?
- Is the Guidance a useful resource for organisations aiming to promote stewardship at national and regional level? How could it be made more useful?

The structure of the Guidance

9. The Guidance has three sections. Part 1 describes a number of issues that asset owners ought to consider when entering into contracts with asset managers, explains their relevance and identifies specific matters that should be covered in the contract. Part 2 addresses reporting and accountability, specifically the reporting from the asset manager to the client on performance and on how the mandate has been implemented, including stewardship activities.
10. Draft contract clauses that owners and managers might wish to consider including in contracts in relation to the matters covered in Parts 1 and 2 are contained in the final part of the Guidance. For some topics, two or more alternative clauses are provided with an indication of the circumstances in which one is likely to be more appropriate than the others. However, the Guidance does not cover all possible circumstances or alternative forms of wording, as attempting to do so would increase its complexity considerably.

11. To date, efforts to encourage good stewardship have been primarily focused on equities but there is an increasing belief that it is relevant to all asset classes. This is reflected, for example, in the UK Stewardship Code and the ICGN Global Stewardship Principles. The 2012 Guidance was written to be capable of being applied to all assets, and the aim is to ensure that the revised Guidance is as well.

Questions:

- Is the current structure of the Guidance clear and easy to use? How could it be improved?
- Is the level of detail in each section of the Guidance sufficient? If not, which parts of the Guidance could usefully be expanded and how?
- Is the Guidance capable of being applied to all asset classes not just equities? If not, how can it be made more applicable to other asset classes?

Topics to be covered by the Guidance

12. The Guidance addresses a range of topics that impact on the ability of asset owners to align the interests of their beneficiaries and the activities of the managers that act on their behalf. These include:

- An agreed, long-term investment approach;
- Adherence to relevant professional standards;
- Integration of ESG factors into the investment process;
- Risk management;
- Investment horizon, portfolio composition and turnover;
- Stock lending;
- Stewardship activities, including voting; and
- Fees, remuneration and commission.

13. These issues all remain relevant today, and some may be more important considerations for many asset owners now than they were in 2012. For example, in the last eight years there has been a significant increase in responsible and ethical investment and active stewardship, in part as a result of greater expectations on the part of beneficiaries as well as regulatory and market pressure; while Covid-19 and climate change reinforce the necessity of considering systemic risks when making investment decisions.
14. There may also be topics of importance to asset owners that are not currently addressed in the Guidance at all. One example that has been raised with ICGN is the provision of portfolio level data, in particular about matters on which more transparency is being expected of owners themselves (for example, greenhouse gas emissions); and there may be other omissions.

Questions:

- Should the Guidance give more weight to any of the factors that it covers? If so, which factors and what needs to be changed?
- Is there anything in the current Guidance that is impractical or inappropriate?
- Are there any topics or factors not currently covered by the Guidance which should be addressed?

Reflecting regulation and standards

15. Since 2012, a number of jurisdictions have enacted legislation that either affects the fiduciary duties of asset owners or requires them to disclose details of their approach to investment. The same period has seen a proliferation of national stewardship codes which set out good practice principles and standards for both asset owners and their managers. There are now over twenty such codes, compared to only two in 2012.

16. Many regulations and codes emphasise that it is the asset owner’s responsibility to specify the approach to be followed by its managers. One example is the European Union’s Shareholder Rights Directive, which requires owners to report on how their contracts with asset managers for equities incentivise the asset manager to align its investment strategy and decisions with the profile and duration of the owner’s liabilities and the long-term performance of investee companies. Another example is the recently revised Japanese Stewardship Code, which states that “when selecting or issuing mandates to asset managers, asset owners, in line with their size and capabilities, should clearly specify issues and principles to be required in conducting stewardship activities… instead of mechanically accepting asset managers’ policies”.

17. In addition, there are a significant number of existing standards, some of them intended to apply across all investments (such as the Principles for Responsible Investment) and others specific to particular asset classes (for example, the Institutional Limited Partners Association Principles).

18. As ICGN has a global membership, the Model Mandate ideally should be capable of being applied in all markets, to the extent that this is possible, as well as being a useful resource for asset owners with a wide range of investment strategies. The Guidance cannot realistically incorporate every aspect of these different regulations and standards. However, it should, as a minimum, aim to ensure that it is not incompatible with them.
19. The working group that produced the Model Mandate in 2012 suggested that the ICGN may in due course wish to develop a standard set of metrics, KPIs and client disclosure standards in relation to the subject areas covered in the Guidance. We would welcome views on whether this would be helpful, or whether it would be better simply to cross-refer to existing standards.

Questions:

- What regulatory requirements, codes, standards and sources of guidance in the markets in which you operate should be taken into account when revising the Model Mandate? Please provide details.
- Would it be helpful to list relevant regulations, codes and standards either in an appendix to the Guidance or on the ICGN website?
- Should the Guidance recommend specific metrics, KPIs or client disclosure standards?

Advisors to asset owners

20. In some markets, investment consultants play an important role in supporting asset owners. Depending on the contract, this can include helping to design their investment strategy and determine their asset allocation as well as helping to select and monitor the performance of their asset managers. Some investment consultants also now offer what they call a fiduciary management service, which can involve the asset owner giving the consultant responsibility for the day to day management of some or all parts of their investment portfolio.

21. It has been suggested that ICGN might usefully develop a second ‘Model Mandate’ for asset owners specifically covering their contractual relationship with the investment consultant and that, as with the current Guidance, this might include draft contract terms. We are aware of existing sources of guidance in some markets (for example, the 2018 guidance from the Association of Member Nominated Trustees and UKSIF in the UK), and have no wish to replicate work that has already been done; but we would welcome views on whether there is a gap that could usefully be filled.

Questions:

- Would it be helpful for ICGN to publish guidance on contracts between asset managers and investment consultants? What existing guidance is available?

International Corporate Governance Network
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