

The Investment Association – Special Committees Frequently Asked Questions

What is a Special Committee?

A special committee is an ad hoc group of investors formed to consider issues in respect of one or more specific securities. The majority of special committees deal with issues arising in the fixed interest arena.

When are Special Committees created?

Special committees are instigated either at the request of securities' issuers and their advisers, or by The Investment Association's members and other similar long-term investors.

Notwithstanding the expansion of financial markets and the increasing diversity of participants, Investment Association members continue to view special committees as the best, sometimes the only, forum for discussion with issuers of matters of mutual interest.

What are the Outcomes of Special Committees?

A key driver is that, in many cases, a stockholder vote is anticipated. The special committee process, by providing a peer group opinion, facilitates a process whereby proposals ultimately put to a stockholders' vote are more likely to be found acceptable. Reducing the potential for failed meetings improves the efficiency of the markets and at the same time reduces costs for corporates.

The efficiency of the special committee process is partly dependent on issuers presenting properly-worked, firm proposals for review. Special committees are not intended for the purposes of market testing or kiteflying and committees reserve the right to reject proposals that provide insufficient basis for a commercial judgement to be made.

Whilst opinions are issued by a special committee on the basis of unanimity, there is no obligation on any individual committee to reach a consensus on the proposal placed before them. Where a special committee reaches a consensus, there is no obligation on any individual Investment Association member to act in accordance with the special committee opinion.

What is the Scope of Special Committee Activities?

Special committee activities include technical changes to documentation, early redemption of individual financial instruments and complex financial restructurings.

The Investment Association's Investment Committee has decided, as a matter of policy, that special committees will not offer an opinion on the pricing level for partial redemptions. Given the differing investment objectives of various types of funds, the terms of tenders or partial redemption are considered a matter of commercial judgement for individual investors.

How is a Special Committee constituted?

Each special committee reflects the complexity of the proposals it is asked to review but with the proviso that committees are only formed in cases where The Investment Association's members are a significant, if not dominant part, of the investor base or there are significant market precedent-setting issues for stockholders. This is designed to ensure that the special committees' opinions carry real weight.

Special committees considering relatively simple proposals are usually composed of 3 or 4 investors. Special committees considering proposals covering several financial instruments or special purpose financial structures may be larger in order to provide appropriate cover of the investor base.

Whilst special committees are generally composed of The Investment Association's members, invitations to other long-term institutional investors to participate are common.

How are Special Committee Members selected?

Investors are not obliged to serve on special committees and may, from time to time, decline to participate.

Invitations to participate in a special committee are based on an assessment of investors' holdings of the relevant securities.

In the case of registered securities, the issuer and/or its advisers will normally provide a copy of the register of holders to The Investment Association. This will provide the basis on which the Executive will approach certain Investment Association members (or others) to seek their participation in the special committee in question. The difficulty of identifying holdings through nominees means that this is not always a simple process.

Bearer securities can be more complex. The issuer and its advisers will have a view on the holdings' pattern from their knowledge of the initial offering and subsequent trading. However, this may be far from complete. In such cases, The Investment Association's Executive can issue a "holdings' enquiry" to establish the level of holdings in the membership. Response to such an enquiry is voluntary but the process generally identifies major holdings. Only aggregate holdings data is provided to external parties, unless Investment Association members give specific approval to disclosure of their individual holdings.

The Timeframe of the Special Committee Process

This will depend on the complexity of the proposals to be reviewed. Normally, a special committee can be constituted in a matter of days, although more time should be allowed during holiday periods.

Once a special committee has been formed it is supplied with a brief provided by the issuer and/or its advisers. Except in the simplest of cases, customary practice is at least one face-to-face meeting between the issuer and the special committee.

The Investment Association's members place a premium on completing the review process as efficiently as possible; most are completed in a matter of weeks. However, whilst taking account of an issuer's projected timetable, a special committee, having agreed to consider a proposal, will require the time necessary for its proper evaluation.

It should be borne in mind that participation in a special committee is generally an addition to the normal workload of individuals composing the special committee.

The Issue of Price-Sensitive Information

Many, but not all, of the proposals placed before special committees are of a price-sensitive nature. This requires that special committee members place themselves off market. This has important implications.

First, it puts a premium on reducing the length of the special committee process to the minimum necessary for its effective operation. Secondly, each investor serving on a special committee will have its own procedures for deciding whether it can ring fence, appropriately, the securities subject to the proposals or needs to apply off market status to all the securities, both equity and debt, of the issuer in question. In connection with the latter, a number of investment houses have integrated research functions which serve both equity and fixed income. Clearly, ring-fencing can be problematic within such a structure.

Investors are keen to avoid, where possible, off market status for all securities and particularly equities. To assist them in assessing their position, such houses are increasingly seeking, where the circumstances are appropriate, a letter from the issuers' advisers stating that, to the best of their judgement, proposals covering fixed-interest instruments are not expected to have a material impact on equity valuation. Such a letter will assist investors, but not substitute their own decision making process, in assessing this matter.

Investors will regard themselves as "clean" and free to return to on market status when either the company publishes its proposals or it is agreed that discussions between the issuer and the special committee have come to a close.

Confidentiality

The special committee process is tried, tested and evolved market practice. The integrity of the process is well-established and it is not the custom of special committee members to sign confidentiality letters.