



# Standardised Board Agenda

## About SBAI Toolbox

The SBAI Toolbox is an additional aid to complement the SBAI's standard-setting activities. While fund managers sign up to the Alternative investment Standards on a comply-or-explain basis, the SBAI Toolbox materials serve as a guide only and are not formally part of the Standards or a prescriptive template. The SBAI will not hold dedicated consultations in relation to the Toolbox contents; however, it will involve its stakeholders (managers, investors, etc.) in brainstorming and developing the Toolbox contents via its Institutional Investor Roundtables, and it will update the materials from time to time.

Over time, the SBAI will add relevant content to the SBAI Toolbox. Managers, investors, board directors and others are invited to draw upon the SBAI Toolbox materials and to suggest any additions or other areas that it would be helpful to cover.

## Introduction

The governance arrangements of an alternative investment fund seek to address conflicts of interest that can arise between fund managers, the funds that they manage and the investors in those funds. Fund governance has become an area of increased investor scrutiny and regulatory attention in recent years. Concerns that often have been highlighted in the recent public debate include fund boards "rubberstamping" decisions and the number of board mandates held by individual board members.<sup>1</sup>

The Alternative Investment Standards (the Standards) have a dedicated section on fund governance, covering among other things composition of boards and qualification of individual board members, frequency of board meetings and disclosure of the governance structure. In addition, improvements to fund governance were at the heart of consultation CP3 in 2011/12; the proposals in CP3 were developed to enhance the Standards particularly in respect of providing safeguards for situations where there is no independent fund governing body.<sup>2</sup> A key factor determining the robustness of the overall governance mechanism is the collective expertise of the board members and the quality of the actual board meetings.

The purpose of the following standardised board agenda is to provide an overview on the areas and questions that are covered in a fund board meeting in the ordinary course of business.

- The proposed agenda should not be seen as a prescriptive template and needs to be tailored to the specific characteristics of the fund
- Some of the proposed detailed topics might not be dealt with in every meeting, but only on an annual basis (e.g. board effectiveness review) or when changes or new actions are necessary
- Specific items might be delegated to board committees
- Boards might also consider additional agenda items in specific situations (e.g. fund launch, litigation, etc.)

The Standardised Board Agenda also implicitly highlights the possible roles and responsibilities of board members, many of which are also covered in the Standards.<sup>3</sup>

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<sup>1</sup> See list of press articles / academic papers highlighting the concerns in Appendix A

<sup>2</sup> See SBAI consultation section [www.sbai.org](http://www.sbai.org) (Consultations)

<sup>3</sup> See SBAI Standards section [www.sbai.org](http://www.sbai.org) (Standards)

The SBAI would welcome feedback from market participants on the Standardised Board Agenda, so that the materials can be improved over time.

## Standardised Board Agenda – Overview

1. Formalities
2. Investment Manager Report
3. Operations Report
4. Investor Relations Report
5. Administrator Report
6. Third Party Service Provider Report
7. Auditor's Report (annually)
8. Legal Update
9. Regulatory and Compliance Update
10. Industry Developments
11. General Issues
12. AOB
13. Ratification of all documents signed by directors

**NOTE: THE STANDARDISED BOARD AGENDA IS NOT FORMAL PART OF THE STANDARDS.**

## Standardised Board Agenda – Detailed Perspective

### 1. Formalities

- Date, time, location, attendance, apologies received for absences
- Quorum, notice given
- Appointment of Chairperson and Secretary and purpose of meeting
- Minutes of previous meeting
- Matters arising from prior minutes

### 2. Investment Management Report

- Fund Commentary: Overview of investment strategy and key fund objectives (usually annually, quarterly review to make sure in line with disclosures)
- Performance Update: Fund performance for quarter, year to date return against benchmark / peers and performance attribution
- Fund AUM; managers AUM and total strategy AUM (other funds accounts using the same strategy)
- Fund risk review:
  - Portfolio liquidity profile analysed against investor liquidity
  - Fund portfolio composition, leverage and key positions / exposures / strategies (including addition/deletion of markets)
  - Counterparty allocation and monitoring of counterparty risk
- Any changes in cash and collateral management policy or processes
- Verbal report from senior investment team member(s) on performance, strategy, markets, challenges, opportunities, etc.
- Material news on manager: key hires/departures, new products, locations, etc.
- Managed accounts and side-by-side funds (Board needs to understand any adjacency risk)
- Trade allocation procedures across multiple strategies and to accounts within strategies – comparison of the tracking error and explanation of the gap (if any)
- Confirmation that the investments have been made in accordance with the investment objective disclosed in the Offering Document including adherence to any restrictions.
- Proprietary capital management by the firm

### 3. Operations Report

- Overview of risk control and monitoring programme
- Any breaches of investment restriction or valuation policy in period, changes, etc.

- Updates on valuation policy
- Liquidity analysis: fund's liquidity profile
- Operating errors (incl. trade errors): issues identified, how resolved and measures to prevent future occurrence
- Trial balance, including fees and expenses charged to the fund vs. the manager, expense caps, etc.
- Staff: new hires or departures of key positions
- Review of cyber security incidents
- Review of cyber security policy (annually) [see SBAI Toolbox: [Cyber Security](#) for more details]

#### 4. Investor Relations Report

- Breakdown of investors (geographical, type, top 10 by name and %, etc.)
- Review of current and pending subscriptions and redemptions
- ERISA tracking
- FATCA status
- Investor complaints, if any
- Any new side letters (side letter log for review at each meeting)
- New business pipeline
- Marketing update (key meetings, flows, compliance)
- Confirmation of completion of anti-money laundering checks on all investors and any issues to report to the board
- General confirmation that the Administrator has carried out their services in accordance with the Administration Agreement
- Investment manager recommendation on share class status (e.g. closing of share classes, new share classes, etc.). Due diligence visits by investors or prospects (any recommendations received)

#### 5. Administrator Report

- Net asset value (NAV) per share class (incl. details and comments on final NAVs, timeliness of NAVs issued in period, any errors and issues in period, KPIs)
- Anti-money laundering, including KYC update
- Investor activity: Breakdown of subscriptions and redemptions in period (incl. late deals, waivers, etc.)
- Income for the period
- Valuation issues (prices outside of agreed tolerance levels, material positions or % of portfolio not validated to independent sources, any positions or % of portfolio hand priced or subject to manager price overrides, any breaches of fund's valuation policy, etc. )
- % of P&L realized vs unrealized for the current year/quarter
- ASC 820 breakdown (or NAV transparency reports), if available
- Reconciliation, custody or settlement issues to report
- Anything unusual with respect to fees and expenses charged to the fund in the period
- Status of administrator's latest SOC (Service Organisation Controls) report and any items affecting them (litigation, etc.)
- Relationship with manager in period (any issues)
- Investor feedback – details of any issues or complaints raised by investors with the administrator
- Other material or significant issues to report (such as FATCA status)
- Review (approval of) side pockets
- Confirmation as to whether the administrator issues a transparency report to investors and a copy should be required by the directors (see SBAI Toolbox: [Administrator Transparency Reporting \(ATR\)](#) standardised data structure)
- Reporting of cyber security incidents

#### 6. Third Party Service Provider Report

- Anything to report regarding relationship with brokers, custodians, valuation agents, risk providers or legal counsel, etc. (adherence to contracts, operational risk, etc.)
- Annual service provider review

## 7. Auditor's Report (annually)

- Review and approval of the audited financial statements, representation letter and fund annual return filing (probably in a separate meeting ratified at the following board meeting)
- Any new accounting principles or guidelines pending
- Report on how the audit process went and assistance received from the staff at the manager and administrator
- Asset verification and valuation:
  - Has testing been conducted around the existence and valuation of the portfolio and what percentage of the portfolio was tested for both (usually a verbal report)
  - Existence of hard to value investments and pricing sources for those
- Audit findings in management letter or SAS 114 report to management
- Schedule of unadjusted differences
- Audit planning status for the upcoming audit
- Appointment of auditor for the following year

## 8. Legal Update

- New or amendments to existing agreements, offering materials, constituent documents, side letters, etc. in period to report or approve
- Ratification and approval of Boards' prior actions (since last Board meeting)
- Update on any general or regulatory matters concerning the industry overall
- Litigation update and any other legal issues (pending or anticipated)

## 9. Regulatory and Compliance Update

- Regulator visits or communications (especially audits or deficiency notices)
- (Changes to) D&O insurance
- Status of fund or manager regulatory filings (Form PF, ADV, CFTC, CIMA FAR, Rule 506 Bad Actor Questionnaires)
- (Changes to) personal account dealing policy
- Current Regulatory developments and trends
  - US (FATCA, SEC, CFTC, etc.)
  - Europe (AIFMD, etc.)
  - Asia (Emerging fund structures in HK)
  - Cayman (CIMA corporate governance, etc.)
- Conformity with the Standards
- Consideration of conflicts of interest
- Report on annual compliance review
- Review of tax filings schedule (usually annually)

## 10. Industry Developments

- Any industry trends or developments that are relevant or of interest

## 11. General Issues

- Composition of the Board – review of members and the time commitment that board expects from each of the directors; evaluation of performance of each director
- Directors' Remuneration – Approval of fees for forthcoming year
- Succession Planning – at both the manager and board level
- Review of performance of the Fund's service providers – approval for current providers to be renewed / amended
- Directors' D&O Insurance – assess current provider, costs and level of coverage
- Disclosure of Other Directorships Held – By each director
- Dates of next board meeting (two required as minimum where the fund is CIMA registered, the Standards suggest quarterly meetings in normal circumstances)
- Review of terms of reference of board committees (annually)
- Board effectiveness review (annually)

12. AOB

13. Ratification of all documents signed by directors

## Appendix A: Overview regulatory papers, press and academic evidence

<b>Cayman Islands Monetary Authority (CIMA) Statement of Guidance for Regulated Mutual Funds (Corporate Governance)</b>	<p>The purpose of the Statement of Guidance ('Statement of Guidance') is to provide the governing body of a regulated mutual fund and its operators with guidance on the minimum expectations for the sound and prudent governance of the regulated mutual fund.</p> <p><a href="http://www.cimoney.com.ky/WorkArea/DownloadAsset.aspx?id=2147484189">http://www.cimoney.com.ky/WorkArea/DownloadAsset.aspx?id=2147484189</a></p>
<b>Cayman Islands Monetary Authority (CIMA) Hedge Fund Corporate Governance survey:</b>	<p>The Cayman Islands Monetary Authority (CIMA) has published the results of the research it commissioned from <a href="#">Greenwich Associates</a> in 2013 on hedge fund corporate governance, including the proposed introduction of a database of Cayman Islands fund directors. The survey was completed by 57 hedge fund managers, 28 investors, 32 fund directors and 62 service providers.</p> <p><a href="http://www.cimoney.com.ky/WorkArea/DownloadAsset.aspx?id=2147484008">http://www.cimoney.com.ky/WorkArea/DownloadAsset.aspx?id=2147484008</a></p>
<b>Irish Fund Industry Association (IFIA) Corporate Governance Code for Collective Investment Schemes</b>	<p>Whilst the Code is voluntary in nature, its adoption is strongly recommended by the IFIA. This Code became effective from 1st January 2012, with a twelve month transitional period.</p> <p><a href="http://www.irishfunds.ie/publications/">http://www.irishfunds.ie/publications/</a></p>
<b>Harvard Law School</b>	<p>Since the financial crisis, concerns about hedge fund governance have focused on transparency, operational practices, and the growing view that fund directors do not effectively monitor fund managers. Here is a comprehensive scholarly analysis of hedge fund governance published by HLS Forum which makes several contributions:</p> <ul style="list-style-type: none"> <li>- it contributes to the literature on corporate governance by conceptualizing the unique way in which hedge funds are governed and situating their style of governance within established paradigms: hedge fund governance is a type of <i>responsive managerialism</i>.</li> <li>- the second primary contribution is to examine and assess hedge fund agency costs and the governance mechanisms used to reduce them</li> <li>- the third contribution is to provide a normative framework and principles to improve governance. The analysis suggests that the areas in which hedge fund governance needs the most improvement are performance reporting (valuation) and the timing of performance-fee calculations</li> </ul> <p><a href="http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2234482">http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2234482</a></p>
<b>University of Cambridge:</b> The Board of Directors in Hedge Fund Governance (17 Dec 2012)	<p><a href="#">The Board of Directors in Hedge Fund Governance (17 Dec 2012)</a></p> <p>This paper investigates the role and effectiveness of hedge fund boards for the first time, using hand-collected data from hedge fund documentation previously unavailable for academic research. It finds several important results, including evidence that</p> <ul style="list-style-type: none"> <li>(i) board independence leads to improved fund performance,</li> <li>(ii) directors with risk management experience reduce fund risk without affecting returns, and</li> <li>(iii) funds deliver superior returns and lower risk when they give voting rights to investors (including to elect directors).</li> </ul> <p>The paper concludes that the board can be a very useful source of control in hedge funds, whose traditional governance model fundamentally focuses on the realignment of managerial interests.</p>
<b>SEC Action</b>	<p>SEC charges eight mutual fund directors for failure to properly oversee asset valuation:</p>

## Appendix B: What the Standards say:

### Fund governance Standards and Guidance [21]

**21.1 Prior to the establishment of a fund, a fund manager should assess where the fund governance structure should lie on the “spectrum” (see above). In light of that assessment, the manager should be proactive in seeking to ensure that a fund governance structure which is suitable and robust to oversee and handle potential conflicts of interest is put in place at the outset.**

In determining the fund governance structure which is suitable in the case of any particular fund, the SBAI believes that managers will wish to consider:

- the range of relevant skills and experience of the members of the fund governing body and the extent to which the fund governing body is able adequately to supervise, and hold to account, the fund manager; and
- the extent to which the fund governing body is able to operate independently of the fund manager.

**21.2 Where a majority of the individual members of the fund governing body are not independent of the manager or where there is no fund governing body, certain key actions such as (a) material adverse changes to: the fees and expenses payable by the fund to the manager or the redemption rights available to investors, or (b) material changes to the fund’s stated investment strategy or legal structure should (unless required by law or regulation) only be taken with investor consent (obtained in accordance with the provisions relating to investor voting/consent/approval contained in the fund's constitution or offering documents) or if advance notice is provided sufficient for investors to redeem before such actions take effect.**

For the purposes of this Standards, the SBAI would not consider a member of a fund governing body to be independent for the purposes of this Standard if he or she is a director, employee, partner or officer of the fund's manager or of any member of the manager's group with the following exceptions:

The SBAI acknowledges that in certain structures, an entity within a manager’s group may act as the governing body to certain funds managed (e.g. as a general partner to a limited partnership fund). Where an individual acts as a director of such an entity and, but for this, would be considered independent of the manager, then, such an individual may still be viewed as independent for the purposes of this Standard.

**21.3 Members of the fund governing body should have suitable experience and integrity in order to discharge effectively their role with the appropriate level of independence.<sup>4</sup>**

**21.4 The composition of the fund governing body and the governance processes in place should be monitored and, if necessary, adjusted throughout the life of the fund to ensure that they remain effective and appropriate in light of, amongst other things, changes in the nature of the fund and its investors.<sup>5</sup>**

<sup>4</sup> See introduction, chapter 1.3: The fund versus the manager (<http://www.sbai.org> (standards))

<sup>5</sup> See introduction, chapter 1.3: The fund versus the manager (<http://www.sbai.org> (standards))

**21.5 The fund governing body should meet regularly and conduct such meetings in a manner which safeguards the intended legal, regulatory and tax status of the fund. Such meetings should be appropriately documented.<sup>6</sup>**

- In normal circumstances the SBAI would expect fund governing bodies to meet at least quarterly.

**21.6 Careful consideration should be given to the extent to which the adoption by the fund governing body of all or parts of established codes of corporate governance or other director guidance is appropriate.<sup>8</sup> Fund governing bodies should be adequately resourced in order to comply with any such corporate governance code or director guidance.<sup>7</sup> This includes ensuring that the fund governing body has adequate resources to comply with any such corporate governance code or director guidance.**

Whilst the SBAI recognises that managers cannot legally require independent boards to adopt best practice principles for their governance, they should nevertheless use their influence to encourage adoption and compliance. Naturally, the SBAI is also aware that the Standards in no way override legal, technical, contractual and tax realities.

As guidance to managers when considering which corporate governance code or director guidance are appropriate for fund governing bodies to adopt, the SBAI has set out below a selection of those principles contained in the corporate governance codes and director guidance published by AIC and AIMA which it considers to be of greatest importance<sup>8</sup>. The SBAI recognises, however, that not all of these principles will be applicable to all types of fund:

- directors' potential conflicts of interest should be disclosed fully to the fund's investors (through the fund's offering documents) and the board as a whole (at the first available meeting) (AIMA 1.4);
- fund boards should have sufficient collective expertise, availability and be otherwise qualified to understand the investment policy and strategies of the fund and the attendant risks (AIC 6, AIMA 1.4). Expertise should include areas such as investment management, regulatory issues, accounting, administration and technical understanding of the fund's strategies;
- the board should put in place a policy on tenure of directors and disclose it in the fund's offering documents and its annual report (AIC 4);
- directors' remuneration should reflect their duties and responsibilities, and the value of their time spent (AIC 8);
- regular face to face board meetings should be held, preferably quarterly (AIMA 1.6). Typical board agendas may include approval of accounts, investment performance review, review of any relevant regulatory breaches and review of the performance of third party service providers such as the administrator and prime broker(s), review of the manager's risk management procedures;
- there should be regular review of adherence by the manager to investment policy and investment restrictions, review and approval of side letters, compliance and valuation functions and regular review of business continuity. (AIMA 3.5 provides further detail);
- the manager, external valuation agent and administrator should be required to report regularly to the fund directors regarding performance, subscriptions, redemptions and adherence to investment policy and restrictions and applicable anti-money laundering requirements (including direct reporting from the compliance officer and any in-house valuation function) (e.g. AIMA 4.2 and 6.2 and 6.5);
- the fund directors should be made aware of their personal responsibility for the issuance and legality of side letters or discretionary waivers (AIMA 6.9 and 6.11); and

<sup>6</sup> See introduction, chapter 1.3: The fund versus the manager (<http://www.sbai.org> (standards))

<sup>7</sup> See introduction, chapter 1.3: The fund versus the manager (<http://www.sbai.org> (standards))

<sup>8</sup> AIC: Association of Investment Companies: The AIC Code of Corporate Governance, <http://www.theaic.co.uk>; Alternative Investment Management Association: AIMA's Offshore Alternative Fund Director's Guide (2008)

- the directors should consider whether the fund should take out D&O insurance proportional to any liabilities relating to the directors' role with respect to the fund (AIMA 7).

**21.7 Regular reports on compliance with laws and regulations (in particular those relating to anti-money laundering) applicable to activities which are performed by the administrator on behalf of the fund should be obtained by the fund governing body from the fund's administrator.<sup>9</sup>**

## Fund Governance – Disclosure Standards and Guidance [22]

**22.1 Details of the fund governance structure which is put in place should be disclosed in the fund's offering documents.<sup>10</sup>**

This could include elements such as:

- biographies of each director setting out details of his/her experience relevant to performing the role of a member of the fund governing body;
- an indication as to whether each member of the fund governing body is independent of the fund manager; and
- details of any corporate governance code or director guidance with which the fund governing body has agreed to comply.

**22.2 The existence of any class of shares which are held only by the manager (or an entity connected with the manager) and which carry voting rights affecting any aspect of decision-making in respect of the fund should be disclosed in the fund's offering documents.<sup>11</sup>**

*Such classes of shares are often known as "founder" or "management" shares and carry rights to, among other things, vote (to the exclusion of any other shareholders) on the appointment or removal of directors and/or the termination of the investment management agreement between the fund and its manager.*

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<sup>9</sup> See introduction, chapter 1.3: The fund versus the manager (<http://www.sbai.org> (standards))

<sup>10</sup> See introduction, chapter 1.3: The fund versus the manager (<http://www.sbai.org> (standards))

<sup>11</sup> See introduction, chapter 1.3: The fund versus the manager (<http://www.sbai.org> (standards))