

FIX Protocol Ltd. - Corporate Structure FAQ

Q: What is the current legal structure of FIX Protocol Ltd. (FPL)?

In 2005, FPL (branded as FIX Trading Community) made changes to its legal structure and established a special 'Purpose Trust' owning the assets and enabling FPL to concentrate on the activity of promoting the adoption of the protocol and its development, without undue risk or exposure. The trust deed defines the 'purpose' of FPL:

- to promote cooperation between bodies and corporations engaged in the conduct of global securities trading and transaction settlement processing
- to seek to enhance and promote the adoption of the FIX Protocol within the financial services community worldwide
- to ensure that the FIX Protocol remains available without charge to any person and that it is managed via an open vendor-neutral process
- to promote and ensure the adoption and maintenance of common industry standards of the FIX Protocol throughout the securities industry and financial services community worldwide including consistency in its application to new markets and asset classes

The trust states that the protocol will remain 'open' and available royalty free. It also seeks to establish the neutrality of the protocol and effectively formalizes the principles on which FIX Protocol has been based. It does all this, and at the same time gives powers to the subscribers ("FPL members") to set the direction that FPL and its officers shall follow.

FIX Protocol Ltd. (FPL) is organized under English Law and is resident in the UK. It is registered with various regulatory bodies and also with the Inland Revenue for tax purposes, and HM Customs and Excise for VAT purposes. Under the trust, FPL will remain a not-for-profit enterprise.

The trust is located offshore of the UK, in the tax friendly jurisdiction of the States of Jersey which is one of the Channel Islands. The legal activities of the trust are administered by a professional corporate trustee who is paid to undertake these duties. The trustee acts in pursuance of a detailed trust deed and under the laws of Jersey and any breach of these duties can be remedied by an application to the court by the 'Enforcer' (further detail on this role below). This person is appointed by the Global Steering Committee.

Q: What was the original legal structure of FIX Protocol Ltd.?

The FIX Protocol specification was developed in 1993 and subsequently enhanced by several firms within the investment community. These firms organized collaborative groups such as a Technical Committee, a Steering Committee, Regional Committees, etc. to improve and encourage adoption of the protocol. At the time, individual firms funded various operating requirements such as hosting the website.

As both the use of the protocol and the organization grew, it became clear that a legal entity was needed as this would provide a way to operate a bank account, receive subscriptions from members and enter into simple contracts with suppliers. The company was not promoted to be a source of profit but rather as a mutual concern, in effect seeking to implement the goals set down in the mission statement.

As a result, in 1999, it was determined by the promoters that the most appropriate and cheapest way of giving effect to these ambitions was to establish FIX Protocol Limited as a not-for-profit UK company "Limited by Guarantee." The original Global Steering Committee firms (American Century, Citigroup, Foreign & Colonial, Goldman Sachs and UBS) became 'guarantors' (shareholders with 1 GBP liability and directors) and agreed to own the enterprise on a mutual basis for the benefit of the financial services industry.

FPL served as a vehicle for the collection of subscriptions from organizations that, in addition to providing funding on an annual basis, also contributed to the specification, development and promotion of the protocol. FPL's income was small and the claims on its income were equally modest. As time went on a reasonable surplus was accumulated and the Global Steering Committee, in pursuit of openness and broad participation decided that it would be appropriate to engage the services of Jordan & Jordan to act as a Program Office.

As a result of work undertaken at the behest of the Global Steering Committee by Program Office it was decided to widen the membership beyond just firms from the asset management industry and brokerage & investment banking industry and allow additional types of contributors to join (vendors, exchanges, etc.) and this exercise rapidly expanded the membership. This expansion in the membership began to stretch the resources of FPL which had no dedicated support available for it to draw on. This lack of support and the increasing complexity of the issues that the company faced like registration for VAT, dealings with the tax authorities and in particular being named as a beneficiary under the terms of the liquidation of GSTPA resulted in the appointment of an Executive Director whose task it was to give effect to the changes that were needed at FPL and to sort out aspects of its management.

During this time, the legal and compliance culture in which FPL and its members operated was subject to a major change. As a result of some very high-profile failures the compliance environment in both the United States and the United Kingdom has changed significantly. Corporate Governance, accountability and disclosure are now considerably more central to the duties, roles and responsibilities of all participants in the Financial Services industry. FPL has not been immune to these pressures.

As part of the exercise undertaken to secure funds from GSTPA, it was necessary to investigate whether the current ownership structure and governance structure of FPL was appropriate in the new environment in which it operated. In particular was the ownership structure exposing the company or its property to unnecessary risks? On the other hand, was the existence of FPL exposing the guarantors to excessive reputational risk for no reward. Firms were not eager to become shareholders of the company, albeit with limited liability, as reputational risk became a significant concern. The handful of firms who were the company's guarantors began to voice similar concerns and were uncomfortable with the fact that other firms were benefitting from the protocol, yet not participating in an equivalent manner. It is important to note that the company has never declared a dividend and has made no other distribution to any of its guarantors.

In 2003/4 the company appointed new auditors and decided to switch its year end from March 31st to December 31st. Together with the implementation of appropriate controls over spending and procedures designed to manage risk, FPL has significantly improved its services to members and continues to expand its membership. It has embarked on innovative programs designed to encourage smaller members to 'donate' time as well as cash and through its website has dramatically strengthened the 'value proposition' for both its members and the broader FIX community.

Awareness and concerns over intellectual property had also increased significantly throughout the industry. So, at the time in 2005, there were five firms who ultimately 'owned' the FIX organization with the IPR of the protocol itself not established in a single ownership structure. The existing owners, who were also Directors, the Global Steering Committee, and others all agreed that we needed to change the legal structure (which was already domiciled in the UK) and ensure the free and open nature of the protocol.

Q: What was the reasoning behind establishing the TRUST structure?

After extensive consultation with counsel, and mindful of the need both to protect the protocol from ever being exploited commercially, and to meet the best practices of 'good corporate governance' it was determined by the guarantors, Directors and the Global Steering Committee, as representatives of all the membership, that it was desirable to establish a 'trust'.

This trust owns the assets in perpetuity and has enabled FPL to concentrate on the business of promoting the adoption of the protocol and its development, without undue risk or exposure. The Trust is located offshore of the UK, in the tax friendly jurisdiction of the States of Jersey which is one of the Channel Islands. The legal activities of the trust are administered by a professional corporate trustee who are paid to undertake these duties. The trustee acts in pursuance of a detailed trust deed and any breach of these duties can be remedied by an application to the court by the 'Enforcer'. This person is appointed by the Global Steering Committee.

The principal features of the trust are found in the trust deed, which states that the protocol will remain 'open' and available royalty free in perpetuity. It also seeks to establish the neutrality of the protocol and effectively formalizes the principles on which FIX Protocol has been based. It does all this, and at the same time gives new powers to the subscribers to set the direction that the company and its officers shall follow. This is achieved by the fact that the trustee will look to the Global Steering Committee to recommend 'persons' to occupy the position of directors. In turn the Global Steering Committee will look to a vote from all subscribers to assist them in their deliberations. In order to define the duties and responsibilities of the various interests in this exercise, it has been necessary to define the powers of both the Trustee, the Enforcer, the Directors of FPL and the Global Steering Committee. This review has been undertaken and copies of the constitutions of all these bodies are available for review.

Q: What are the overall benefits of the TRUST?

The structure allows FPL considerable freedom to protect its intellectual property, to incorporate commercial subsidiaries to offer more services to the community and to continue to operate in accordance with the wishes of the broader financial services industry. Although, under the trust, FPL will remain a not-for profit enterprise, it is hoped over time, that revenues from commercial subsidiaries will help to reduce the current reliance on subscription income and assist in diversifying the income sources available to the trust. It is hoped that as revenues from 'other sources' grow that annual subscription dues can be progressively reduced.

Additionally, the major FPL members did not themselves want to "own" the protocol, and therefore the purpose trust was set up for the very reason that there should be no accusation that the specific firms or institutions could control and manipulate the protocol to their own ends. Finally, the purpose trust would also prevent any person from being able to control the protocol to its own end in the future.

The structure is, in large part, a measured response to the success of the protocol and its adoption. It offers the prospect of a stronger structure which complies with the principles of good corporate governance and allows the work of the FIX community to continue whilst protecting the interests of our members and the staying true to the original goals of the founders of the protocol.

Q: Who are the members of the Global Steering Committee (GSC)?

The GSC consists of the elected leaders from all of FPL's top-level (product, region, and service) committees and the current members can be found here: <https://www.fixtrading.org/groups/gsc/>. The GSCCo-Chairs are elected by the GSC members.

Q: Who are the current Directors of FPL?

The current Directors of the company are as follows: <https://www.fixtrading.org/corporate-governance/fix-directors/>. The Directors of FPL are chosen from experienced financial professionals who have participated in the development and promotion of FIX in the past. Their duties and responsibilities are governed by English law. Many of the Directors have served on the Global Steering Committee at some stage, although this is not a requirement. The day-to-day operation of FPL is delegated to the Global Steering Committee and Program Office but in addition there are up to seven FIX Directors (2 of whom are the GSC Co-chairs) who:

- oversee the running of the FIX Protocol and look after the interests of the wider membership
- have the ability to 'step in' if there are concerns over the running of the Protocol and to call a meeting of the Directors
- attend 3 or 4 formal Directors' meetings each year, including the AGM and signing off on the year end accounts (which are independently audited by a firm of accountants)
- potentially acting as a signatory on the bank mandates - as part of the financial control processes to ensure oversight of the financial stability of FPL.
- ensure the adherence of the UK laws regarding company filings and other compliance (in practice this is done by the Program office, accountants and auditors)

Q: Does the Trustee have the power to end the trust?

By its nature the trust is relatively passive (owning the assets), unless a radical change of direction was to be proposed for FPL (which is unlikely). The trust is administered in accordance with the provisions of the trust deed and further protection is achieved by including a protector ('Enforcer') in the structure and reserving certain decisions to the additional approval of the GSC.

It is not the case that the Trustee can at its instigation end the trust or distribute the shares in FPL. Any such action would have to be made with consent of the Enforcer and on application to the Court in Jersey and can only be made if it furthers the purposes of the Trust set out in clause 1.1(v) of the Trust Deed: <https://www.fixtrading.org/packages/trust-deed-completed-deed/>

Q: What is the role of the enforcer?

The role of the enforcer (Chris Morstatt) is to enforce the terms and purposes of the trust. The enforcer is answerable to the Royal Court in Jersey and can enforce the purposes of the trust if they are not

followed. The role of the enforcer is akin to a “protector” and his duties under Jersey trust law are fiduciary and owed to the Court, and therefore not to members of FPL or the wider FIX community. As such the enforcer cannot simply be encouraged to follow the will of the larger institutions that use the protocol. The function of the enforcer is essentially defensive; to defend the purposes of the trust from abuse, and his fiduciary duties require him to intervene to protect the purposes of the purpose trust from unauthorized change. The enforcer therefore has the power to oversee and prevent any radical change of direction of the protocol, if necessary.

Q: How long does the trust last?

The trust is not perpetual. It lasts for 100 years, which is the maximum life permitted for a Jersey purpose trust. FPL believes this gives sufficient protection to the protocol in the foreseeable future. If towards the end of the period of the trust there is a need to continue to protect the protocol in a trust structure, this can be done at that time with the involvement of the enforcer.

Q: Will I ever be charged for the use of FIX?

No. The “open” nature of the protocol is enshrined within the Trust Deed - i.e., “to ensure that the FIX Protocol remains available without charge to any person (whether involved in the provision of financial services or members of the general public) and that it is managed via an open vendor-neutral process.”

Q: Where can I go for additional information on this?

In order to define the duties and responsibilities of the various interests in this exercise, it has been necessary to define the powers of the Trustee, the Enforcer, the Directors of FPL and the Global Steering Committee. This review has been undertaken and copies of the constitutions of all these bodies as well as an overview of the corporate structure are available for review on the following page: <http://www.fixtradingcommunity.org/pg/about/corporate-governance>. Please feel free to follow-up with the Program Office directly if you have any specific questions – fix@fixtrading.org or + 1 212 652 4469.