

The Best Practice Principles  
for Governance Research Providers Group  
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## **Re: Public Consultation on Best Practice Principles for Governance Research Providers**

We welcome the work of the Drafting Committee and the opportunity to comment on the draft best practice principles, which are intended to operate as a voluntary industry code of conduct. We particularly appreciate the quality of the document and of the solutions proposed, which address the main concerns of issuers towards the proxy advisory activity.

Before addressing the specific questions raised by the Paper, we would like to formulate a few general comments.

### **General comments**

Proxy advisors have an important influence on institutional investors voting and this influence is likely to grow. As to proxy advisory activity and its influence on the results of voting, issuers are generally concerned about the following issues: lack of accuracy in drafting policy guidelines if differences among corporate laws and regulations in the different States are not taken into appropriate consideration; lack of transparency on conflict of interest, for example when the advisor has an interest towards the company whose draft resolutions is analyzing; lack of dialogue with issuers, which could instead improve the knowledge by proxy advisors of the specificity of the national legal system and corporate governance practices.

We fully support the position taken in the Consultation Document, according to which “the ultimate responsibility to monitor investments and make voting decisions lies with institutional investors. The use of third-party services (such as those provided by signatories to the Principles) does not shift this responsibility, unless the third party assumes additional authorities from the client. Stakeholders wishing to understand how an institutional investor discharges its stewardship or ownership responsibilities should consult relevant disclosures of the organisation to understand”. We thus believe that, at EU level, the promotion of stewardship codes for institutional investors and their asset managers should be encouraged, and that a disclosure rule requiring asset managers and institutional investors to disclose whether or not they comply with a code should be provided for. As for companies, investors should disclose with which code they comply. We also support disclosure of voting policies by institutional investors, in order to assist companies to understand their shareholders’ approach and to ensure greater understanding. This would facilitate better dialogue between companies and their investors.

We also believe that full transparency of voting results of AGM might help. Currently, Article 14 of the SHRD provides that the company shall establish for each resolution at least the

number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution and, where applicable, the number of abstentions. Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.

Enhanced transparency of voting results could be useful at European level, by providing for disclosure of (i) the list of the names of those participating on their own behalf or by proxy, specifying the number of shares for which certification has been issued; (ii) the names of the parties that have cast opposing votes, abstained, or left prior to a vote, and the number of shares held by them; (iii) the summary of the interventions stating the name of the intervening parties, the responses provided and any remarks made.

### Background to the Principles

- 1. What are your views about the Principles development process?*
- 2. Respondents are welcome to express their expectation regarding the review and monitoring of the Principles. As the ongoing governance of the Principles has yet to be determined, the Committee particularly welcomes suggestions by stakeholders as to how a representative feedback mechanism can be implemented.*

We appreciate the work done by the Drafting Committee which was a timely response to the requests coming from ESMA Report of February 2013. In particular, we welcome the consultation process and the opportunity to comment on the draft best practice principles. We expect that the same approach will be followed in the future for the review of the Principles. A possible involvement of representatives of issuers and institutional investors either as direct member of the Committee or in an advisory function could give more credibility to the whole process.

According to the Consultation Document, the Committee will monitor the impact of Principles and will review them periodically in order to respond to ongoing feedback from stakeholders and developments that are relevant to the industry. The Committee will finalize the specifics of the monitoring and review process as part of the launch of the Principles.

We appreciate the line suggested in the Consultation Document as we believe that the provision of a monitoring activity on the application of the Principles is essential to improve the effectiveness of the comply or explain approach. Beside, the provision for an activity of monitoring is consistent with the most recent experience in the application of other best practice codes and it was strongly encouraged by the EU Commission in the Green Paper on the corporate governance of listed companies.

We suggest that the monitoring should be carried out by an independent committee or by a body where different market participants are represented; in this case, participation of representatives from issuers and corporate governance committees as well as from institutional investors should be ensured. A balanced composition of the monitoring body is

fundamental to ensure its independence and to guarantee the quality and effectiveness of the monitoring process itself.

### Comply or explain

- 3. Please share your views on the practicality of a comply-or explain approach to the Principles.*
- 4. Could the effectiveness of the Principles be further enhanced? Please elaborate and provide specific examples and/or suggestions.*

We fully support the comply or explain approach followed by the Drafting Committee. In our response to the ESMA consultation on proxy advisors in 2012, we supported the adoption of codes of conduct from the industry recommending adequate standards of accuracy and transparency as the best and most flexible way to take into consideration the differences in the industry and practices followed proxy advisors and their application on a comply or explain basis.

An appropriate monitoring process carried out by an independent body on an annual basis and full disclosure of the outcome of the monitoring will contribute to the effectiveness of the Principles (see our answer to questions 1 and 2).

### Application of the Principles

- 5. Do you believe the Principles and/or supporting Guidance conflict with obligations under legislation or other best practice principles? If yes, please elaborate and provide specific examples and/or suggestions.*
- 6. Please share your views on the procedure for registering as a signatory, describing and disclosing how Principles and related Guidance are being applied, and for disclosing the Statement of Compliance.*
- 7. What should the regional scope of the Principles be, in terms of signatories and services provided? For example, do you think that the Principles should be global?*

We agree on the suggested content of the Statement of Compliance, which, according to the draft, should: i) describe in a meaningful way how signatories apply both the Principles and related Guidance; ii) disclose any specific information suggested in the supporting Guidance; iii) provide a reasoned explanation why where any of the Principle (and we suggest to add also “of the Guidance”) have not been applied or relevant information has not been disclosed.

We also agree that an annual review of the statement of compliance would be useful.

A special consideration should be given to the quality of the explanation from deviation, considering that information on the compliance to principles of best practice and on deviations from its recommendations is the core of the comply or explain approach. We believe that meaningful and specific disclosures, together with reasoned explanations of the non-application of the Principles, will be important in order to promote a better understanding among companies of how the signatories operate, and thus to promote a better understanding

among companies of when and how to engage with proxy advisers and when and how to engage with their clients.

As to the disclosure of the proxy advisor Statement of Compliance, we agree that signatories to the Principles should publish a link to the Committee independent website but also publish it on the proxy advisor's website as well.

As for the disclosure of the proxy advisor policies on service quality, conflict of interest management and communication (p. 13), they should be always (and not on request) available on the proxy advisor website and also on the Committee independent website

### Scope and definitions

***10. Do you agree with the definition of “governance research services”? Is the scope of the definition adequate? If not, please elaborate and provide for specific suggestions.***

***11. Are the definitions of “vote agency services” and “engagement and governance overlay services” and their distinction from “governance research services” sufficiently clear and accurate. If not, please elaborate.***

***12. Do you agree that the Principles should not impose standards of conduct on investors. If not, please explain why.***

The industry of proxy advisers is diverse and their influence on the voting process may depend on the kind of services rendered to their clients.

The Drafting Committee distinguishes between “governance research services” and “additional services” in order to define the scope of application of the Principles. We agree with this approach which reflects the distinction adopted by the ESMA Securities and Markets Stakeholder Group (“SMSG”) in its Opinion of April 2012, distinguishing the advisory activity from the agency activity.

The definition of governance research services is broader and more generic than the definition of the advisory activity adopted in the SMSG opinion, which made reference only to the “advice on how to exercise the voting rights”. Governance research services should be within the scope of the code only if performed by proxy advisers.

Furthermore, we believe that some of the terminology used could be more clearly defined. For example, it is not clear whether “policy guidance” refer to both country-specific guidance and to guidance tailored for individual clients. It could be helpful to provide some more concrete definitions and examples of the governance research services, especially to clearly distinguish some of them from the additional services that are excluded from the scope of the Principles: i.e. “corporate governance rating” is classified as a governance research service in the consultation document, but it seems to be very close to the service of “engagement and governance”, which is instead classified as an additional service.

As to the scope of application, we agree that the Principles should not impose standards of conduct on investors; we believe that investors should be subject to their own, separate stewardship codes.

### **Principle 1 – Service Quality**

***13. Do you think that Principle 1 will help the market to better understand the different kinds of services and approaches that participants operate? If not, please explain.***

***14. Do you see any issue of service quality that are not addressed in this section? If so, please provide examples and specific information on the purpose and merits of any additional disclosure.***

***15. Do you think the disclosure of research policy, voting guidelines and research methodologies will enable stakeholders to determine how signatories consider local market conditions? If not, please provide reasons.***

***16. Please express your views on the scope and content of the proposed research-related disclosure under this principle with respect to: a. research policy; b. voting guidelines; c. research methodologies.***

Principle 1 aims at explaining the quality of services provided by signatories. It underlines the primary importance of loyalty and transparency towards clients and calls for the disclosure of research policies, voting guidelines and research methodologies.

Principle 1 addresses one of the main concern of issuers regarding proxy advisor activity, that is the accuracy in drafting policy guidelines and the transparency of methodology. In particular, we believe that appropriate consideration should be given to the differences among corporate laws and regulations in the different States. As a matter of fact, we experienced in the past how the lack of specific knowledge of the national systems risked to cause inaccuracy in the report of proxy advisors or even ill-placed negative voting recommendation.

Therefore, we believe that in Principle 1 it should be recalled that proxies must dispose of the appropriate skills and resources to provide the relevant services and to analyse draft resolutions. The persons in charge of examining draft resolutions must have a solid knowledge of the market practice and legislative framework of the relevant market to conduct this type of analysis. In addition, i) voting policies developed by proxy advisors should be formulated in a clear and concise manner and be tailored for each market, making reference to local market conditions and applicable law, as well as to local governance practices; ii) proxies should not only make their voting policy transparent to the public and to issuers but also any update thereof; iii) proxies should be required to make their policy available in due time.

Guidance to Principle 1 covers the need to explain how research is developed, responsibilities to clients, the need for a written research policy including any systems and controls,

explanation of voting guidelines including development via public consultation and discussions, research methodologies to be available to clients, quality of research including data and personnel, timeliness, complaints, and any other operational aspects. By so doing, Principle 1 when taken together with the Guidance in the consultation document will help to promote better understanding of the services provided. Increased disclosure of information about how proxy advisors arrived at their recommendations will help issuers and investors assess the quality and the credibility of the analysis that forms the recommendation. However, it should be made clear that disclosure of research policy, in house voting guidelines and research methodologies is to the public in general, via website of the proxy advisor.

### **Principle 2 – Conflict of Interest Management**

***18. Does Principle 2 address the relevant issues or considerations relating to potential conflict of interest in the provision of governance research? If not, please explain.***

***19. Do you agree with the proposed conflict management and mitigation procedures? If not, please explain why and what additional measures you would propose.***

***20. Do you agree with the proposed approach on disclosure of material conflicts? If not, please explain.***

According to Principle 2, signatories should have and publicly disclose a conflicts-of-interest policy that details their procedures for addressing potential or actual conflicts of interest that may arise in connection with the provision of services. The Guidance provides a non-exhaustive list of potential conflicts. The list of examples provided includes the most relevant types of conflicts, e.g. conflicts between consulting services and proxy advisory services provided by the same firm, conflicts in ownership structures, etc. Nevertheless, we believe that it would be helpful to include a definition of conflict of interest here.

The Drafting Committee considers that a written, publicly available conflicts-of-interest policy is the right instrument to ensure the independence and integrity of the service. However, we believe that conflicts of interest should not only be addressed by way of disclosure requirements but also through adoption of policies and organisational structures that mitigate the conflicts, such as: (i) Chinese walls to separate their proxy voting services from advisory or consulting services; (ii) policies and procedures designed to identify and manage any conflicts of interest that arise in connection with a vote recommendation; (iii) public disclosure of potential conflicts of interest; (iv) review of the effectiveness of these policies and procedures on a regular basis.

### **Principle 3 – Communication policy**

***22. Please express your views on the scope and content of the proposed policy disclosure under this principle with respect to:***

***a. issuers***

***b. media and the public***

***23. Are there any other aspects of issuer-related dialogue that should be taken into account? If yes, please elaborate and provide specific examples and/or suggestions.***

***24. Are there any other aspects of media and the public dialogue that should be taken into account? If yes, please elaborate and provide specific examples and/or suggestions.***

Issuers are concerned with inaccuracies in proxy advisors reports, which may lead to misinformed decision-making, especially in the context of complex or sensitive matters. Another concern is that proxies have often adopted a “one-size-fits-all” approach and do not always take into account the company’s specific, local circumstances.

In order to address issuers concerns, a on-going dialogue of proxy advisors with issuers, issuers’ representative and corporate governance committee might be useful to enhance proxy advisors knowledge of the specificity of the national legal system and corporate governance practices. In Italy, Assonime initiated a constructive dialogue with proxy advisors on the revision of their policies well before the AGM season, with good results in terms of debate and common understanding.

As to direct engagement of proxy advisors with issuers, we fully support the approach followed by Principle 3, which does not dictate signatories to engage in dialogue with issuers but provides that they should disclose and explain their approach in a communication policy publicly accessible, including how they address issuers’ comments on voting recommendation.

While the primary relationship is the one between institutional investors and issuers, we believe that a direct dialogue between issuers and proxy advisors may prove useful in drafting voting recommendation and could be recommended. In this case, adequate transparency should be ensured, in the relationship between proxy advisors and their clients, as the engagement with issuers, the policy for comments, if any, and the decision making process and the methodology followed.

In order to address issuers’ concerns for potential inaccuracies and factual errors, proxy advisors could inform issuers during working hours before publication of the voting recommendation in order to give them an opportunity to draw attention on any material errors.

**General features of the Principles**

***26. In addition to comments on the specific questions addressed in the remainder of this Consultation Document, views are invited on the general approach taken by the Committee and the general features of the Principles.***

***27. Do you feel that the Principles meet the policy Principles set forth in ESMA’s Final Report? If not, please explain.***

***28. Do you have any other comments that the Committee should take into account when finalizing the Principles?***

See our general comments before.

Rome, 19 December 2013