



BEAMA response to the Public Consultation on Best Practice Principles for Governance Research Providers (28/10/2013)

The Belgian Asset Managers Association (BEAMA¹) wishes to thank the Committee for submitting their work to consultation and seizes the offered opportunity to provide comment on the proposal for Best Practices Principles for Governance Research Providers.

I. General Comment

BEAMA is pleased to provide an answer to the Committee's proposal on Best Practices Principles for Governance Research Provider. As the representative of the Belgian Asset Manager Industry, our association attaches great importance to corporate governance matters. Being held to a fiduciary duty to their clients, our members all agree that exerting voting rights bound to shares held in managed portfolios is of crucial importance to enhance issuer-shareholder dialogue and engagement in order to create long term value for the asset managers' clients.

In order to fulfil this mission, BEAMA considers the services of Governance Research Providers to be crucial and welcomes this initiative that will enhance transparency and define the expectations our members can rightfully have toward those actors.

BEAMA broadly agrees with the drafted principles but still expresses a few punctual reservations. In addition, the association regrets various stakeholders were not associated to the earlier stages of the drafting of the Principles.

II. Response to specific questions in the consultation

1. *What are your views about the Principles development process?*

Although BEAMA welcomes the initiative of the members of the Committee to lean towards greater disclosure and transparency in Governance Research service, we venture to

¹ BEAMA, www.beama.be, the Belgian Asset Managers Association, is the professional association of Belgian fund and asset managers. BEAMA has 114 members (64 effective members – 50 associated members), representing €225bn in assets under management as of the end of 2012. BEAMA is a founding member of Febelfin, the Belgian Federation of the Financial Sector.

question to some extent the representativeness of the Committee. Indeed, the Committee is constituted of six Governance Research Industry Members, the origin of two being non-European. This indicates that the Committee is probably representative of the players in the supply-side governance research providers but we regret there is no further transparency as to how the Committee was formed and according to which criteria its members were accepted / selected.

We also wonder why there was no inclusion of representatives of clients and target companies in the Committee. As such, there is no proof that the views expressed by the Committee fully reflect the opinion of all the practitioners (such as asset managers, target companies, advisory companies ...), and in particular the demand-side of the considered market.

2. Respondents are welcome to express their expectations 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 representative feedback mechanism can be implemented.

BEAMA would suggest organizing regular meetings with main stakeholders. As a representative of the asset management sector, we would definitely suggest including EFAMA² in those meetings. In addition, we think that representatives of wealth managers and target companies (such as the FBE³ in Belgium or the MEDEF⁴ in France) should also attend to these feedback meetings.

3. Please share your views on the practicality of a comply-or-explain approach to the Principles.

BEAMA is of the view that there is no need to set up compulsory and/or legally binding rules in relation to Governance Research Services. In consequence, we fully agree with a classical comply-or-explain approach as there is no other practicable approach.

4. Could the effectiveness of the Principles be further enhanced? Please elaborate and provide specific examples and/or suggestions.

² EFAMA is the representative association for the European investment management industry. EFAMA represents through its 27 member associations and 60 corporate members approximately EUR 15 trillion in assets under management of which EUR 9.2 trillion was managed by approximately 55,000 funds at end June 2013.

³ Federation of Belgian Enterprises

⁴ Mouvement des Entreprises de France (Movement of the Enterprises in France)

In our opinion, the effectiveness and application of the Principles should remain at the level of the signatory and the relations between the different signatories and their clients. Indeed, the variety of hypotheses, constraints and situations is so broad that it is not possible to regulate and foresee each case. Therefore, BEAMA is in favour on remaining at the level of broad principles which provide the practitioners with the possibility to take on and give substance to those principles on a comply-or-explain basis as explained under question 3.

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.

No conflict to our knowledge.

6. Please share your views on the procedures for registering as a signatory, describing and disclosing how Principles and related Guidance are being applied, and for disclosing the Statement of Compliance.

We agree with the idea of publishing the Statement of Compliance on the independent Committee's website and on the ESMA website. However, we think publication of the conflict of interest management policy is also of the utmost importance and should be equally published.

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 are of the opinion that the Principles should first be developed and tested at European level and then extended at global level, in close dialogue with local players. Should principles only exist in Europe, this situation would then result in an uneven playing field between actors from different regions of the world. This would definitely not lead to an open and fair competition and equivalent protection of clients. As the most important players in this market are global players, we think it is important to adopt a global view as soon as possible.

8. Not relevant for BEAMA.

9. Not relevant for BEAMA.

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

We agree with the proposed definition but we would like to remind the committee of the potential problems linked to the use of ratings.

The definition of ratings should be clear as well as how they are built up. In addition, we remind the Committee of the dangers arising when one is relying on sole rating, especially in a field such as governance: think of recent experience of investors with credit rating agencies.

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.

We think the definitions are indeed clearly distinct and we also agree with the definition of “Vote agency”.

However, we express more reserve concerning the definition of “Engagement and governance overlay services”. This service is defined as undertaking contact and engagement with issuers on behalf of investors with a view to asking the company to amend aspects of its governance. We wonder what the scope of those matters to be amended is. As the advisor is a fiduciary of its client (asset manager), we do not think the advisor should engage into such activities without explicit assent from its client. Any action in this sense should be aligned with client(s) demands. In addition, it seems very difficult to perform such activities when the advisor has several clients whose views might be totally diverging. Such engagement and contacts should then only occur when there is global endorsement of the philosophy of those actions by all clients of the advisor.

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

We do agree that no standard of conduct should be imposed on investors. Situations are too heterogeneous to permit such an approach. Should investors agree on such standards, those should restrain to common high-level principles.

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

Yes, we agree that the existence and disclosure of a research policy and “house” voting guidelines will help understand the services provided. At any time those policies should be governed by the conflict of interest policy: research policy and “house” voting guidelines are part of the business and services offered by the governance research providers. The conflict of interest policy of the providers is at a higher level as it governs research and advice services as well as the voting policy and instructions.

14. Do you see any issues 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 disclosures.

We think of principles relating to resolution of disagreements between advisor and client. In addition, the liability of the advisor should be addressed in greater detail. Is there a professional liability insurance covering the adviser’s liability?

Should an advisor provide erroneous information, their responsibility might be then engaged. As many advisors have no insurance at all, this can lead to major problems.

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

Yes, the disclosure of research policy, voting guidelines and research policies will enable stakeholders to determine how advisors consider local market conditions; however local peculiarities have to be disclosed for each market if the stakeholders want to be properly informed and understand the direction of the voting recommendations. Most advisory firms work with local subsidiaries providing them with the necessary information (legal and regulatory plus corporate).

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**

BEAMA has no specific comment on the scope and content.

17. Not relevant for BEAMA.

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

Yes, we agree that Principle Two address the relevant issues and considerations relating to potential conflicts of interest.

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

BEAMA agrees with the proposed conflict management and mitigation procedures.

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

We agree on the fact material conflicts have to be disclosed but we are not very happy with the fact the Principles allow disclosure only at the time the service is delivered. We think material conflicts have to be disclosed as soon as possible and in any case before any service is provided.

21. Not relevant for BEAMA.

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

We have no reserve concerning the engagement into dialogue with issuers. However, we think contacts with media and the public are a very delicate topic because this raises the advisor's liability. Indeed, disclosure of information can be dangerous should the information be confidential, wrong, inaccurate, prejudicial to the target company or out of timing. In any case, we think the advisor should not engage in such contacts without the client's prior agreement. The client should at least agree on a methodology concerning this type of dialogue.

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.

The advisor should always ensure that the information and the contact person of the target company is duly authorised, that the information received is adequate and correct and that it can be disclosed. The timing and use of information have to be adequate and not prejudicial to the target company's interest. Class actions for misrepresentation are becoming a trendy juridical activity these days so we are of the view that those aspects should be a central point in this dialogue.

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.

No further aspects but please refer to our answers to questions 22 and 23.

25. Not relevant for BEAMA.

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.

No additional comments except for the fact we regret that no more stakeholders were included during the drafting process 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.

Yes we agree that the Principles are in line with the principles ESMA set in its Final Report dated 19 February 2013. All the 3 principles proposed by ESMA and their sub-principles seem well encompassed by the proposal of the Committee.

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

We think more efforts should be done in the reporting area. More transparency should be provided regarding compliance with instructions from clients and BEAMA is clearly in favour of exhaustive reporting automatically provided to clients. Some of our members see potential problems when several clients make use of the proxy voting service of an advisor: was the vote correctly casted and in proportion to the different voting instructions coming from different clients?

BEAMA - 18/12/2013