

## Consultation on ESAM Feedback Report –Code of Conduct of Proxy Advisors

### **Feedback Provided by: Emiliano Torracca (Corporate Governance Analyst)**

Emiliano Torracca has an experience of over five years in the governance services industry, firstly working four years as a governance researcher at P.I.R.C. Ltd. and subsequently collaborating as governance analyst with ECGS. Emiliano has an undergraduate degree in Economics and Finance (University of Siena, Italy) and an MSc in Corporate Governance and Business Ethics (Birkbeck College, UK).

In February 2012, upon conclusion of the European Securities and Markets Authority (“ESMA”) consultation regarding the proxy advisory industry in Europe, an industry group formed to develop a set of Best Practice Principles for Governance Research Providers (“Principles”).

The Principles (which, in draft form, are the subject of this consultation) are designed to govern, on a comply-or-explain basis:

- The nature and character of governance research services;
- The standards of conduct that underpin those services; and
- How signatories to the Principles interact with other market participants.

They are intended to complement applicable legislation, regulation and other soft-law instruments.

The Drafting Committee of the Principles (“Committee”) invites comments on all matters contained in this Consultation Document and, in particular, on the questions raised

The Committee is seeking feedback from potential signatories, institutional investors, issuers and other stakeholders on a variety of topics, including:

- Views on the way the Principles aim to improve communication with stakeholders and the public, and means to foster understanding about the way signatories operate and the services they provide;
- Views on the proposed key Principles and related Guidance; and
- Views on the governance of the Principles, the transparency of the process and possible further development of the initiative.

Please find the answers provided by Emiliano Torracca in *italic*, below.

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

*The development of best practice principles is a positive step for the governance research and proxy industry. The participation of all major players, asset owners, asset managers and issuers ensures that the Principles are balanced and have a holistic approach to the industry*

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 a representative feedback mechanism can be implemented.

*There should be a regular and ongoing feedback process with the players in this markets and other stakeholders to ensure that the principles are up to date and in line with current trends and specific matters.*

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

*Comply-or-explain is the most common approach used for other Codes regulating the Governance Industry. The majority of the Governance Codes use this approach. Given the range of different national regulations under which the different stakeholder operate, the comply-or-explain approach seems to be the most appropriate approach, providing guidance without forcing proxy advisors to follow regulations that may be unsuitable given the particular market where they operate.*

*Participants to the ESMA Consultation did not support the introduction of any binding measures, while there was some form of support for the implementation and the introduction of a code (either self-developed by the industry or developed at EU-level by ESMA/European Commission) based on a comply or explain approach.*

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

*N/a*

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.

*N/a*

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.

*N/a*

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?

*Stating out with global principles could represent a rather ambitious task. Given that in markets outside the EU similar Principles are being developed, it might be more reasonable to wait that non-EU principles are firstly developed and then in a second period, a process of reciprocal engagement and feedback might be put in place to seek harmonization between EU and non-EU principles.*

8 For additional potential signatories only: Are there factors that generally would keep you from becoming a signatory to the Principles? If yes, please elaborate and provide specific examples and/or suggestions.

9 For additional potential signatories only: What are your views on the Guidance for subscription, adoption and ongoing compliance from an organisational point of view? Do you think the ongoing management of the Principles could be improved? If yes, please elaborate and provide specific examples and/or suggestions.

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.

*The definition included in the Principles seems to provide an accurate description of the services provided by the industry. I would consider including “engagement and governance overlay services” as it seems to be a key part of governance services provided rather than an additional service.*

- 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.

*The definitions of “vote agency services” and “engagement and governance overlay services” appear to be accurate.*

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

*I agree with the BPP’s conclusion that these requirements concern the investor’s duty of care or conduct of business as established by legislation governing institutional investors and as such are beyond the scope of these Principles. The inclusion of such requirements might also create an unnecessary overlay with principles included in the Stewardship Code in the UK or other similar codes in the EU. As a matter of keeping things simple and clear, I believe that these principles should only be aimed at the governance services industry.*

- 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

- 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.

*No, the issue of service quality is well assessed through this Principle.*

- 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.

*I believe they will.*

- 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

*Adequate.*

b. voting guidelines

*I would add ‘engagement with issuers and/or other relevant stakeholders’ to the list of approaches to house voting guideline development and review.*

c. research methodologies

*Adequate*

- 17 For additional potential signatories only: Does the Guidance provide you with the information necessary to properly apply Principle One? If not, would you prefer further Guidance? Please explain.

- 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.

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

*I agree.*

20	<p>Do you agree with the proposed approach on disclosure of material conflicts? If not, please explain.</p> <p><i>I agree.</i></p>
21	<p>For potential additional signatories only: Does the Guidance provide you the information necessary to properly apply Principle Two? If not, what additional Guidance do you need?</p>
22	<p>Please express your views on the scope and content of the proposed policy disclosure under this principle with respect to:</p> <ul style="list-style-type: none"> <li>a. Issuers <i>Adequate</i></li> <li>b. Media and the public <i>Adequate</i></li> </ul>
23	<p>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.</p> <p><i>None identified.</i></p>
24	<p>Are there any other aspects of media and the public dialogue that should take into account? If yes, please elaborate and provide specific examples and/or suggestions.</p> <p><i>None identified.</i></p>
25	<p>For additional potential signatories only: Does the Guidance provide you with the information you need to properly apply Principle Three? If not, where would you prefer further Guidance?</p>
<b>Consultation Questions - General Features of The Principles</b>	
26	<p>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.</p> <p><i>I support the Committee's approach. The development of the Principles through a regular stream of consultations and feedbacks ensures that these Principles remain up to date and coherent with the governance service industry's needs and demands. Currently, the Principles provide an adequate coverage of matters concerning quality, transparency and conflict of interest.</i></p>
27	<p>Do you feel that the Principles meet the policy principles set forth in ESMA's Final Report? If not please explain.</p> <p><i>I believe the BPP Principles meet the Principled included in the ESMA' Final Report on disclosure, transparency, quality and conflict of interest.</i></p>
28	<p>Do you have any other comments that the Committee should take into account when finalising the Principles?</p> <p><i>None</i></p>

## Summary of Consultation Questions

--

1 What are your views about the principles development process?

*The development of best practice principles is a positive step for the governance research and proxy industry. The participation of all major players, asset owners, asset managers and issuers ensures that the Principles are balanced and have a holistic approach to the industry*

2 Respondents are welcome to express their expectations regarding the review and monitoring of the principles. As the on-going 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.

*A regular stream of consultations and feedbacks would ensure that the Principles remain up to date and coherent with the governance service industry's needs and demands. Currently, the Principles provide an adequate coverage of matters concerning quality, transparency and conflict of interest.*

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

*Comply-or-explain is the most common approach used for other Codes regulating the Governance Industry. The majority of the Governance Codes use this approach. Given the range of different national regulations under which the different stakeholder operate, the comply-or-explain approach seems to be the most appropriate approach, providing guidance without forcing proxy advisors to follow regulations that may be unsuitable given the particular market where they operate.*

*Participants to the ESMA Consultation did not support the introduction of any binding measures, while there was some form of support for the implementation and the introduction of a code (either self-developed by the industry or developed at EU-level by ESMA/European Commission) based on a comply or explain approach.*

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

*N/a*

5 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*

6 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.

*No, the issue of service quality is well assessed through this Principle.*

7 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.

*I believe they will*

8 Please express your views on the scope and content of the proposed research-related disclosure under this principle with respect, to:

<p>d. research policy <i>Adequate.</i></p> <p>e. voting guidelines <i>I would add 'engagement with issuers and/or other relevant stakeholders' to the list of approaches to house voting guideline development and review.</i></p> <p>f. research methodologies <i>Adequate</i></p>
<p>9 For additional potential signatories only: Does the Guidance provide you with the information necessary to properly apply Principle One? If not, would you prefer further Guidance? Please explain. 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.</p>
<p>10 Do you agree with the proposed conflict management and mitigation procedures? If not, please explain why and what additional measures you would propose.</p> <p><i>Agree.</i></p>
<p>11 Do you agree with the proposed approach on disclosure of material conflicts? If not, please explain.</p> <p><i>Agree.</i></p>
<p>12 For potential additional signatories only: Does the Guidance provide you the information necessary to properly apply Principle Two? If not, what additional Guidance do you need?</p>
<p>Please express your views on the scope and content of the proposed policy disclosure under this principle with respect to:</p> <p>a. Issuers; <i>Adequate</i></p> <p>b. Media and the public <i>Adequate</i></p>
<p>13 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.</p> <p><i>None identified.</i></p>
<p>14 Are there any other aspects of media and the public dialogue that should take into account? If yes, please elaborate and provide specific examples and/or suggestions.</p> <p><i>None identified.</i></p>
<p>15. For additional potential signatories only: Does the Guidance provide you with the information you need to properly apply Principle Three? If not, where would you prefer further Guidance?</p>
<p>16. 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.</p>

*I support the Committee's approach. The development of the Principles through a regular stream of consultations and feedbacks ensures that these Principles remain up to date and coherent with the governance service industry's needs and demands. Currently, the Principles provide an adequate coverage of matters concerning quality, transparency and conflict of interest.*

17. Do you feel that the Principles meet the policy principles set forth in ESMA's Final Report? If not please explain.

*I believe the BPP Principles meet the Principles included in the ESMA's Final Report on disclosure, transparency, quality and conflict of interest.*

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

*None*