

## Shareholder Rights Directive II Position Paper

Prepared by:

Best Practice Principles Group for Shareholder Voting Research (“BPP Group”)

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- The BPP Group, the industry group that developed the Best Practice Principles for Shareholder Voting Research & Analysis, warmly welcomes and supports the objective of the updated Shareholder Rights Directive to encourage long-term stewardship and good governance. The BPP Group believes that shareholders should be able to better exercise their ownership rights on a cross-border basis and is supportive of proposals in the draft update to the Directive that would strengthen those rights.
- Shareholder voting research plays an important role in supporting the efficient exercise of ownership rights by shareholders through the provision of high quality data, information and analysis of corporate governance, ESG and voting issues.
- Following a detailed consultation on the Role of the Proxy Advisor Industry<sup>1</sup>, the European Securities & Markets Authority (“ESMA”) [announced in February 2013](#)<sup>2</sup> that:
  - It had not found any evidence of market failure that would require regulatory intervention;
  - Furthermore, it said that a comply-or-explain code of conduct would help foster a better understanding and assurance of the way the shareholder voting research industry operates.
- Respondents to the ESMA consultation overwhelmingly expressed their preference for either no action at the EU level or encouraging a policy-based approach, as opposed to endorsing hard regulation<sup>3</sup>.
- The shareholder voting research industry responded to ESMA’s suggestions and, after a detailed public consultation, released its [Best Practice Principles](#) for Shareholder Voting Research & Analysis (“Principles”) in March 2014.
- Investors and stakeholders [overwhelmingly supported](#) the three main Principles of the BPP Group, which, together with their detailed supporting guidance, comprise all of the expectations outlined in the draft Directive update namely:
  - Service Quality
  - Conflicts of Interest Management
  - Communications Policy
- All signatories to the Principles have committed to publishing their Statement of Compliance with the Principles by June 2014 with a further review by ESMA. The BPP Group believes that, through its policy-based Principles initiative, it is already positively responding to the concerns the draft Directive update is seeking to address.

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<sup>1</sup> Consultation: “An Overview of the Proxy Advisory Industry. Considerations on Possible Policy Options”, ref. ESMA/2012/212, <http://www.esma.europa.eu/system/files/2012-212.pdf>

<sup>2</sup> Final Report: “Feedback statement on the consultation regarding the role of the proxy advisory industry” ref. ESMA/2013/84, <http://www.esma.europa.eu/system/files/2013-84.pdf>

<sup>3</sup> 47 of the 67 preferences expressed by 57 respondents were for no action or policy-based approach. Some respondents expressed more than one preference

- The proposed Directive update appears to reflect concerns raised by certain members of the corporate community or their representative bodies. These constituents have consistently overstated the influence of shareholder voting research providers and misrepresented how shareholders make use of their services. Indeed, the majority of consultation respondents do not agree with this minority perspective (see [here](#)) nor was it substantiated during ESMA's final review process.
- The BPP Group raises a number of concerns regarding the hard regulatory approach suggested by the Directive proposals that should be resolved, namely:
  - **Disproportionate & Unworkable Standards:** The proposed Directive calls for shareholder voting research to be 'guaranteed'<sup>4</sup>. Research, analysis or recommendations are points of view based on investors' policy preferences. Investors are responsible for making their own final voting decisions and these are based on a variety of in-house and third-party information sources. As written, the proposed Directive risks not only compromising free speech rights, but also the provision of independent and objective research to investors by censoring analysis commissioned by and for investors. The BPP group is not aware that any other financial services market constituents acting in a research or advisory capacity are subject to this proposed level of requirement.
  - **Anti-competitive & Burdensome Compliance Costs:** The proposed Directive will only apply to shareholder voting research providers in the EU. Moreover, it is likely to be transposed differently in each EU jurisdiction. Hence, it risks creating an unfair operating landscape, particularly for industry participants that are active across multiple national jurisdictions, and risks favouring those who are located entirely outside of the EU. In the BPP Group's professional opinion, the Impact Assessment significantly understates the compliance costs that would be imposed on the industry. The Directive would impose disproportionate burdens that would create additional barriers to entry to an industry that the Commission and ESMA have both noted has only a small number of participants.
- The BPP Group considers there is a significant risk of over-regulation in the provision of shareholder voting research. The Group believes that a comply-or-explain framework of best practice principles will be both effective and proportional in ensuring:
  - Transparency and quality of service to investors;
  - Accountability to investor clients;
  - Responsible dealing with issuers; and,
  - Proper accountability to the public market.
- Regulations are easy to propose but difficult to unwind. Therefore, in conclusion, the BPP Group calls upon the European Commission, Parliament and national governments to support the proportionate, principles-based approach to service supplier oversight overwhelmingly supported by shareholders that is embodied in the Best Practice Principles for Shareholder Voting Research & Analysis. Unwarranted or disproportionate legislation may inhibit the provision of independent information and services that assist investors in the exercise of the very rights and responsibilities that the Directive aims to foster and support.

For more information please email: [committee@bppgrp.info](mailto:committee@bppgrp.info)

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<sup>4</sup> [http://ec.europa.eu/internal\\_market/company/docs/modern/cgp/shrd/140409-shrd\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/cgp/shrd/140409-shrd_en.pdf) Article 3i (p22).