

To: the Best Practice Principles Group for Shareholder Voting Research

Submitted by e-mail

Ref: B17.34

Subject: Eumedion's response to the 2017 BPP consultation: Questionnaire Best Practice Principles for Shareholder Voting Research

The Hague, 15 December 2017

Dear Mr. Hodge,

Eumedion welcomes the opportunity to respond to your questionnaire on the Best Practice Principles for Shareholder Voting Research (hereinafter: BPP).

By way of background, Eumedion is the Dutch based corporate governance and sustainability forum for institutional investors. Our 65 Dutch and non-Dutch participants represent more than € 5 trillion assets under management. Participants include a wide range of institutional investors; pension funds, mutual funds, asset managers and insurance companies. It is the objective of Eumedion to maintain and further develop good corporate governance and sustainability performance of Dutch listed companies.

Below, you will find the answers to the questions raised in the questionnaire.

Information on Respondent

1. Name of Organisation

Answer: Eumedion.

2. Type of organisation [select one]:

- Investor
- Company
- Governance advisory / voting research service (investor advisors)
- Company advisor
- Representative body
- Other (please specify)

Answer: Representative body.

3. Main country / region of operation

Answer: The Netherlands.

4. Are you currently a client of a voting research provider? [Yes/ No]

Answer: No.

5. All responses will be posted on the Review website unless requested otherwise.

Please indicate below if you wish your comments to be treated as confidential.

Answer: Not applicable.

6. If you would like to be informed of the outcome of this consultation please provide a contact email.

Answer: diana.vankleef@eumedion.nl.

General questions on the Principles

7. Were you previously aware of the Best Practice Principles? [Yes/No]

Answer: Yes.

8. If yes, how would you rate the positive impact of the Principles since they were introduced in 2014? [Scale of 0-5 where 0 is no impact, 5 is very positive]

Answer: 3.

Please give a reason for your rating

Answer: In our perception the BPP has improved the standards within the proxy advisory industry. However, we believe that the effectiveness of and the confidence in the BPP could further benefit from establishing an independent body that monitors the application of the BPP on a regular basis and publicly reports on the monitoring outcomes. We also refer to our answer to question 36.

9. If you are a user of voting research services, do you, or will you in future check whether a service provider had signed up to the Principles before appointing them? [Yes/No]

Answer: Not applicable.

10. Would it be beneficial to have a set of principles that are capable of being applied in all markets? [Yes/No]

Answer: Yes.

Scope and Structure of the Principles

11. At present the Principles address three areas: service quality (which includes duties to clients, research methodology and voting policy); managing conflicts of interest; and communications with issuers, the media and other stakeholders (see the BPPG website here). Are there other issues or activities that should also be covered by the Principles [tick each that applies]

- Intermediary vote processing and confirmation
- ESG advisory services and indices
- Governance engagement services
- Other (please specify)

Answer: Eumedion would not be against the broadening of the scope of the BPP to intermediary vote processing and confirmation, ESG advisory services and indices and governance engagement services as the scope of the largest proxy advisors has already been broadened to these issues in the last number of years. The above-mentioned ESG advisory services and indices and governance engagement services may threaten independent voting advices by proxy advisors. In case it is decided to broaden the scope of the BPP to ESG advisory services and indices and governance engagement services we believe that safeguards should be included in the BPP to preserve independent voting advices by proxy advisors who offer those services (e.g. with respect to the prevention and management of potential conflicts of interest). We also refer to our answer to question 22.

12. Each Principle is accompanied by guidance which sets out practices to be followed and information to be disclosed, on a "comply and explain" basis. Is this structure clear and appropriate? [Yes/No]

Answer: No.

13. If no, how might it be improved?

Answer: Whilst we generally support the use of the 'comply or explain' framework, we believe that the current structure of the BPP is not robust enough. The revised shareholder rights directive (art. 3j) obliges proxy advisors to publicly disclose reference to the code of conduct which they apply and to report on the application of that code. Where a proxy advisor departs from any recommendation of the code of conduct it applies, it shall declare from which parts it departs, provide an explanation for doing so and indicate, where appropriate, any alternative measures adopted. The BPP consists of just three high level "principles" and some "guidance" on each of them. The BPP are silent on specific "recommendations". In order to be more in line with the revised shareholder rights directive and to increase understandability and transparency, we suggest to transform parts of the current guidance into "recommendations" which the proxy advisors have to apply, or explain if and why they do not.

The Content of the Principles (1: Service quality)

14. If you are a client of one or more signatories, do you consider that this Principle deals adequately with the various service commitments that you expect? [Yes/No]

Answer: Not applicable.

15. If no, how might it be improved?

Answer: Not applicable.

16. Depending on the wishes of their individual clients, those signatories that make voting recommendations will follow either bespoke or house voting policies. How satisfied are you with the process used by signatories to develop their house voting policies? [Scale 0 to 5, where 0 is dissatisfied and 5 is very satisfied]

Answer: Not applicable.

17. How might the process be improved?

Answer: Not applicable.

18. In addition to national law and listing rules, which, if any of these considerations should signatories take into account when deciding whether to adjust their house policies for different markets? [Tick all that apply]

- Standards in national corporate governance codes and equivalent
- Views and practices of local companies
- Views of local and international investors

Answer: We are of the opinion that signatories when deciding whether to adjust their house policies for different markets should take into account both standards in national corporate governance codes and equivalent, views and practices of local companies and views of local and international investors. This is also in line with the revised shareholder rights directive (art. 3j). According to this directive proxy advisors should among other things publicly disclose whether and, if so, how they take national market, legal, regulatory and company-specific conditions into account.

Other (please specify)

Answer: Not applicable.

19. How informative are signatories' descriptions of their research methodologies (see BPPG website here), including how they ensure that the research is reliable? [Scale 0 to 5, where 0 is uninformative and 5 is very informative]

Answer: 4.

20. While recognising the need for signatories to protect their intellectual property, how might the statements be made more informative?

Answer: We did not perform an in-depth investigation of the public statements of the signatories, but in general they give – especially those of the proxy advisors with the highest market shares – a good picture of:

- the methodology that the different proxy advisors use;
- the main information sources they use;
- the procedures put in place to ensure quality of research;
- whether and, if so, how they take national market conditions into account; and
- the extent to which custom or house voting policies or guidelines may be applied.

We are of the opinion that the statements could elaborate more on the staff that performed the research, including reliance on junior support staff. This will enable clients of proxy advisors to assess the adequacy of the resources used. According to the revised shareholder rights directive (art. 3j) proxy advisors should among other things publicly disclose: a) the essential features of the methodologies and models they apply, b) the main information sources they use, c) the procedures put in place to ensure quality of the research, advice and voting recommendations and qualifications of the staff involved and d) whether and, if so, how they take national market, legal, regulatory and company-specific conditions into account. This gives rise to the question how coherent the BPP and article 3j of the revised shareholder rights directive are. We believe that the BPP should be coherent with the minimum requirements stemming from the revised shareholder rights directive.

The Content of the Principles (2: Conflicts)

21. The Principle does not attempt to eliminate potential conflicts, but to ensure that the signatories disclose the procedures by which they are managed. Is this an adequate approach? [Yes/No]

Answer: No.

22. If no, how might it be strengthened?

Answer: It is fundamental that clients of proxy advisors can trust that the proxy advisors have adequate systems and controls in place to ensure that the analyses and recommendations are free from conflicts of interest. Against this background we believe that the wording of principle 2 of the BPP (Conflicts-of-Interest Management) should be broadened. Signatories should not only be

obliged to have procedures for addressing potential or actual conflicts of interest (like currently stated in principle 2) but they should also have and publish their procedures with respect to the prevention of those conflicts. This is also in line with the revised shareholder rights directive (art. 3j) which obliges proxy advisors among other things to annually publicly disclose their policy regarding the prevention and management of potential conflicts of interests. According to the guidance to principle two signatories should consider how issuer-client influence, such as when signatories provide consulting services to companies under coverage for research, may materially impact their operations and how these potential conflicts of interest may be addressed. We doubt whether those potential conflicts of interest are properly addressed in practice. We believe that signatories who provide ESG advisory services to companies and/or issue ESG ratings on companies should create separate subsidiaries to provide the consultancy services to companies and should install 'Chinese walls' between the ESG advice and ESG ratings businesses. Furthermore we strongly advocate an evaluation of the effectiveness of the procedures and policies for addressing potential or actual conflicts of interest to be carried out on a regular basis by the signatories. Any issues arising from these evaluations should be immediately addressed by the signatories.

23. The Principles include the following non-exhaustive list of potential sources of conflict:

- A signatory's ownership or shareholder base/structure, such as when a signatory is owned by an investor that owns shares in companies under coverage or when the investor is owned by an issuer under coverage;
- A signatory's employee activities, such as board memberships, stock ownership, etc;
- Investor-client influence on the signatories, such as when an investor who is a client of the service provider is a shareholder proponent or is a dissident shareholder in a proxy contest;
- Issuer-client influence on the signatories, such as when signatories provide consulting services to companies under coverage for research; and
- Influence of other investor clients.

Are there any others that should be included in this list?

Answer: No.

24. If yes, please identify them.

Answer: Not applicable.

25. If you are a client of a signatory, how satisfied are you with the information you receive on how potential conflicts are being managed? [Scale 0 to 5, where 0 is dissatisfied and 5 is very satisfied]

Answer: Not applicable.

26. How might procedures be improved?

Answer: Not applicable.

The Content of the Principles (3: Communications policy)

27. How satisfied are companies with their communication with signatories? [Scale 0 to 5, where 0 is completely dissatisfied, 5 is very satisfied]

Answer: Not applicable.

28. How might communication be improved?

Answer: Not applicable.

29. If you are a company, have you used the procedures set up by one or more signatories to make a complaint or provide feedback on their research on, or engagement with, your company?

Answer: Not applicable.

30. If yes, how satisfied were you with how your complaint was handled? [Scale 0-5 where 0 is not at all satisfied, 5 is very satisfied]

Answer: Not applicable.

Please give a reason for your rating

Answer: Not applicable.

31. Many companies consider they should have the opportunity to comment on the analysis and recommendations in research reports before they are finalised. If you are an investor, which of these statements most closely reflects your view? [Tick one only]

- I find it helpful to know the company's views on the research report before deciding how to vote, ahead of the custodian cut-off
- I have no objection in principle to this practice, as long as it does not reduce the amount of time I have to make voting decisions or impact on costs
- Companies already have opportunities to explain their case in their annual reports, the papers for the general meeting and direct engagement with their shareholders; they do not need another one
- It is not appropriate for companies to have a right to review or comment on draft research reports of which they are the subject
- Other (please specify)

Answer: Other. We believe it is good practice to send the draft research report and the draft proxy voting recommendations to the company in question. This good practice should also apply to

proponents of shareholder proposals and to dissidents in a proxy fight in order to create a level playing field between management and those shareholders. However, we believe that the possibility for companies to comment on the analysis and recommendations in research reports before they are finalized should be confined to the prevention of material misstatements and should not lead to a shortening of the period for institutional investors to analyse the proxy advisor's reports and voting recommendations. Furthermore, we believe that the wording of the guidance according to which signatories may inform clients of the outcome of a dialogue is too weak. In our view the BPP should be enhanced by a provision which requires proxy advisors to inform their clients about any changes in their initial research document and voting recommendations as a result of the dialogue with the company in question. A result of the dialogue with the company in question could be that a proxy advisor gets familiar with new, relevant and material information that is not part of the public proxy materials. In that case a proxy advisor should request the company in question to make that information publicly available. If the company refuses to do that, the proxy advisor should not take the information into account when finalizing the research report and voting recommendations. We advise to reflect this position in the BPP.

Reporting on the Principles

32. At present, signatories are required to produce a public statement on how they have applied the Principles, which they update as necessary; some have chosen to update the statement every year. Signatories also produce a summary in a standard format for purposes of comparison (see BPPG website here). Do the statements adequately cover all the matters that signatories are supposed to report on under the Principles? [Yes/No]

Answer: Yes. We did not perform an in-depth investigation of the public statements of the signatories, but in general – especially those of the proxy advisors with the highest market shares – we are under the impression that the statements cover all the matters that signatories are supposed to report on under the BPP.

33. If no, please identify which matters are not adequately reported on

Answer: Not applicable.

34. How informative and useful are the statements? [Scale 0-5 where 0 is uninformative, 5 is very informative]

Answer: 4.

35. How might the statements be made more useful?

Answer: As already mentioned in our answer to question 20 we are of the opinion that the statements could elaborate more on the staff that performed the research, including reliance on junior support staff.

Monitoring the Application of the Principles

36. As part of this review, the BPP Group intends to introduce an independent element into the monitoring arrangements. Which of the following features should be part of the arrangements for monitoring the implementation and impact of the Principles? [tick all that apply]

- Oversight body including members independent of the sector
- Surveys of market participants
- Third party certification of how the Principles have been implemented by signatories

Other (please specify)

Answer: We believe that an independent body should be established that monitors the application of BPP on a regular basis and publicly reports on the monitoring outcomes. This is similar to the UK Financial Reporting Council and the Dutch Corporate Governance Code Monitoring Committee.

37. If you have specific suggestions for how the Principles should be monitored, please provide details

Answer: We refer to our answer to question 36.

38. Have you ever used the complaints procedure to complain about a breach of the Principles (see BPPG website here) [Yes/No]

Answer: No.

39. If yes, how satisfied were you with how your complaint was handled? [Scale 0-5 where 0 is not at all satisfied, 5 is very satisfied]

Answer: Not applicable.

Please give a reason for your rating

Answer: Not applicable.

Signing-Up Process

40. The process of signing up to the Principles is being looked at as part of this review. Other than a commitment to apply and report on the Principles and to be subject to the monitoring arrangements, are there other criteria that service providers should have to meet in order to be accepted as signatories? [Yes/No]

Answer: No.

41. If yes, please specify

Answer: Not applicable.

Other comments

42. If there are any additional comments you would like to make as part of this consultation, please do so here:

Answer: Due to the current broad scope of the BPP it also applies to non profit investor fora which carry out activities that are totally different from those of proxy advisory firms (e.g non profit investor fora which only issue alerts, bulletins and newsletters). We believe that the current scope of the BPP is too broad and should be narrowed down to proxy vote advisory services only. This could be achieved by aligning the current definition of Shareholder Voting Research and Analysis with the definition of proxy advisor from the revised shareholder rights directive. That directive (art. 2 (g)) defines proxy advisor as follows: *“a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors’ voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights”*. More generally we believe that the BPP should be coherent with the minimum requirements stemming from the revised shareholder rights directive.