

Public Consultation  
on  
Best Practice Principles  
for  
Governance Research Providers

Developed By:

The Best Practice Principles for  
Governance Research Providers Group

Under the Chairmanship of Dr. Zetsche

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## Part One: Executive Summary

### 1.1 Introduction

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 (a full list of questions can be found on page 25.)

### 1.2 Background to the Principles

In March 2012, ESMA launched a consultation on the proxy advisory industry in Europe and the role of the industry in the shareholder voting process. In the *ESMA Final Report and Feedback Statement on the Consultation Regarding the Role of the Proxy Advisory Industry* (“ESMA Final Report”), published 19 February 2013, ESMA concluded that:

“(I)t has not been provided with clear evidence of market failure in relation to how proxy advisors interact with investors and issuers. On this basis, ESMA currently considers that the introduction of binding measures would not be justified. However, based on its analysis and the inputs from market participants, ESMA considers that there are several areas, in particular relating to transparency and disclosure, where a coordinated effort of the proxy advisory industry would foster greater understanding and assurance among other stakeholders in terms of what these can rightfully expect from proxy advisors. Such understanding and assurance will help to keep attention focused where it belongs, namely on how investors and issuers can, from their respective roles foster effective stewardship and robust corporate governance, and ensure efficient markets. Consequently, ESMA considers that the appropriate approach to be taken at this point in time is to encourage the proxy advisory industry to develop its own Code of Conduct.<sup>1</sup>”

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<sup>1</sup> ESMA recommends EU Code of Conduct for proxy advisor industry: <http://www.esma.europa.eu/content/ESMA-recommends-EU-Code-Conduct-proxy-advisor-industry> (page 3).

In February 2013, the Committee, made up of the following governance research industry members, was formed:

- [Glass, Lewis & Co.](#)
- [Institutional Shareholder Services Inc.](#)
- [IVOX GmbH](#)
- [Manifest Information Services Ltd](#)
- [PIRC Ltd](#)
- [Proxinvest](#)

The Committee is led by an independent chairman, Prof. Dr. Dirk Andreas Zetsche, LL.M. (Toronto), who is a professor of law and holds the Propter Homines Chair for Banking and Securities Law at the University of Liechtenstein. He is also one of the directors of the Center for Business and Corporate Law at Heinrich Heine University in Düsseldorf.

Prof. Zetsche was selected by the Committee after a public call for interest and is independent from both the Committee and ESMA. Prof. Zetsche has no industry affiliations but extensive practical and academic experience with both shareholder voting and institutional investments.

ESMA provides Prof. Zetsche with logistical support, including granting him a daily allowance of 150 EUR for meetings attended and reimbursing his travel and accommodation costs in connection with meetings. Prof. Zetsche undertook the role of Committee Chair because of his interest in shareholder stewardship and fostering transparency of the voting process. While the Chair fulfilled an advisory and coordinating function, he did not interfere with the fundamental decisions with regard to the Principles; these decisions were made exclusively by the industry members of the Committee.

Once finalised, the Committee will monitor the impact of the Principles and will review them periodically in order to respond to ongoing feedback from stakeholders and developments that are relevant to the industry. While the Committee has yet to finalise the specifics of the monitoring and review process, the first review will take place in autumn 2014, after which a statement regarding any further developments to the Principles will be issued. The Committee expects to publish the details of the monitoring and review process as part of the launch of the Principles, taking into account feedback by all relevant stakeholders in the course of this consultation.

A Committee member has volunteered to organise the creation and continued administration of an independent website that will serve as a central location for signatories to the Principles. (A copy of this consultation can be found at <http://bppgrp.info>.)

### **1.3 Aim & Scope of the Public Consultation**

In drawing up the Principles, the Committee took into account market feedback to the 2012 ESMA consultation regarding the role of the proxy advisory industry, as well as the analysis and views of ESMA and the ESMA Securities and Markets Stakeholder Group (“SMSG”) that were expressed in the ESMA Final Report.

To refine the Principles and finalise the process, 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.

#### **1.4 How to Respond to the Consultation**

The following document features the Principles and related Guidance that were approved on a preliminary basis by Committee members on 18 October 2013.

The Consultation questions to which respondents are invited to answer are presented after each section.

Whenever possible, responses to this consultation should contain specific examples and/or describe possible alternatives the Committee should consider.

Responses should be sent via e-mail to [consultation@bppgrp.info](mailto:consultation@bppgrp.info) by noon (CET) 20 December 2013. It would greatly help the analysis of responses if you could send both PDF and word processor versions of your responses to the consultation.

When providing feedback, please also describe your organisation (e.g. issuer, asset owner, asset manager, etc.) and background.

If you do not wish your response to be made public, please let us know. All other responses will be made available at the Committee's independent website: <http://bppgrp.info>.

The Committee intends to issue the final Principles in March 2014. Please see Appendix II: Consultation Timetable on page 28 for details.

## Part Two: The Best Practice Principles

### 1 Background

The charter signatories (see Appendix 1) of the Best Practice Principles for Governance Research Providers (“Principles”) have prepared and adopted the following Principles in relation to activities associated with the provision of shareholder voting and analytical services.

In addition to promoting the integrity and efficiency of processes and controls related to the provision of such services, the Principles are intended to foster greater understanding of the role of governance research providers in the voting decisions made by institutional investors (i.e., asset owners and fund managers).

The Principles were developed by the Drafting Committee (“Committee”), which participated in a series of meetings under the guidance and independent chairmanship of Prof. Dr. Dirk Andreas Zetsche, LL.M. (Toronto), Propter Homines Chair for Banking and Securities Law, University of Liechtenstein (Principality of Liechtenstein), and Director of the Center for Business & Corporate Law, Faculty of Law, University of Duesseldorf (Germany).

New signatories beyond the Committee are encouraged to adopt the Principles.

In developing the Principles, signatories have drawn on a number of publicly available sources, including but not limited to:

- **ESMA Final Report** and Feedback Statement on the Consultation Regarding the Role of the Proxy Advisory Industry (19 February 2013)
- **Investor Codes**
  - AFG: Recommendations de l’Association Française de Gestion (FR)
  - BVI: Bundesverband Investment and Asset Management Rules of Good Conduct (DE)
  - Code for Responsible Investing in South Africa (“CRISA”) (ZA)
  - EFAMA: European Fund and Asset Management Association Code for External Governance (EU)
  - Eumedion: Eumedion Best Practices for Engaged Ownership (NL)
  - FRC: The UK Stewardship Code (September 2012), published by the Financial Reporting Council (UK)
  - ICGN: International Corporate Governance Network Statement of Principles on Institutional Shareholder Responsibilities (Global)
  - Lignes Directrices pour les Investisseurs Institutionnels (Economiesuisse and other Swiss organizations) (CH)
  - OECD: Organisation for Economic and Co-operation and Development Principles of Corporate Governance (Global)
  - PRI: Principles for Responsible Investment (Global)

- **Financial Markets Participants**

- AMF : Recommendation No 2011-06 of 18 March 2011 in respect of proxy voting agencies issued by the Autorités des Marchés Financiers (FR)
- CFA: Code of Ethics and Standards of Professional Conduct and Research Objectivity Standards (Global)
- IIA: Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing (Standards) 1300 Series Regarding Quality Assurance and Improvement Programs (Global)

### **1.1 Comply or Explain**

Not all governance research providers offer the same services in the same way. For this reason, the Principles are constructed on a “comply-or-explain” framework. This will enable each signatory to explain how the Principles relate to their specific circumstances and business model.

Regardless of a signatory’s business model, it is expected that explanations for deviation from the Principles and the related Guidance should be comprehensible, relevant and detailed. They should be substantiated and adapted to the signatory’s particular situation and should convincingly indicate why a specific aspect justifies an exemption. The explanations provided should state alternative measures that have been taken, if applicable. If a signatory intends to comply at a later stage with a measure from which it has provisionally deviated, it should state when this temporary situation will come to an end.

### **1.2 Application of the Principles**

In the first instance, signatories to the Principles should publish a link to their Statement of Compliance with the Governance Research Principles (“Statement of Compliance”), via the Committee’s independent website <http://bppgrp.info>.

If they so choose, signatories may wish to issue their statements via other publicly accessible sources. For example, ESMA has agreed to maintain a voluntary list of signatories to the Principles on its website together with a link to the independent Best Practice Principles Group website.

The Statement of Compliance should:

- Describe in a meaningful way how signatories apply the Principles and related Guidance;
- Disclose any specific information suggested in the supporting Guidance; and
- Where any of the Principles have not been applied or relevant information has not been disclosed, provide a reasoned explanation as to why.

Signatories are encouraged to review their Statement of Compliance from time to time (at least annually) and update it as appropriate to reflect current practice or material changes.

## Consultation Questions - Background to The Principles

In February 2013, the members of the Committee announced their support of ESMA's recommendation to develop a set of best practice principles for the industry and launched a process for collaborating on the development of the Principles, with the administrative support of ESMA.

Since announcing the initiative, the Committee met in March (Milan), April (Paris), July (Frankfurt), August (London), September (via conference calls and in person in Paris) and in October (via conference calls and in person in London) and has scheduled a February session in Frankfurt to finalise the Principles in advance of the official launch scheduled for March in Brussels.

In drafting the Principles, the Committee considered each of ESMA's and the SMSG's conclusions and suggestions in terms of content and practicability. Where conclusions and suggestions were inconsistent with actual industry practice, the Committee carefully reviewed alternatives in light of the two key rationales of the ESMA Final Report: enhance transparency and reduce the impact of conflicts of interest on stakeholders.

In October, the Committee invited a number of additional potential signatories to a meeting in London for a discussion of a draft version of the Principles. The Consultation Document reflects feedback and suggestions made at the October meeting, if they were widely supported by the expanded group. (Feedback from the October meeting is not reflected in this version of the Principles and will be considered as part of the wider Consultation review.) The Committee acknowledges that certain provisions of the Principles were hotly debated among the Committee members and/or potential signatories.

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

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.

## Consultation Questions - Comply or Explain

The Principles are intended to operate on a "comply-or-explain" basis. This approach is inspired by other successful best practice codes and is considered to be the best option to ensure the effectiveness of the Principles.

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.

## Consultation Questions - Application of the Principles

The Committee recognises that potential signatories have different business models and approaches to service provision, i.e. they are not “One Size Fits All”. The comply-or-explain approach is therefore viewed as the most appropriate tool to enable the industry to enhance transparency and understanding of their individual approaches without imposing standards that may not be relevant to their given model.

The form and substance of disclosures are fundamental to the effectiveness of the comply-or-explain model and will enhance the visibility of the initiative. To that end, signatories should publish their Statement of Compliance on the Committee’s independent website.

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 procedures 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?
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.

## 2 Introduction to the Principles

Investors have a number of important ownership rights, one of which is the right to vote at shareholder meetings. Voting is a key right of asset owners, whose effective discharge is a fiduciary responsibility.

As with many other parts of the investment process, investors need access to information and administration tools that support them in the discharge of their responsibilities.

Signatories provide a range of professional services designed to assist institutional investors in the discharge of their rights and responsibilities. The Principles set forth here govern signatories' conduct in discharging their responsibilities toward clients.

These Principles have been developed with the following considerations in mind:

- The services are an efficient way of managing the logistical complexities associated with analysing and interpreting corporate disclosures, as well as ensuring and managing the operational aspects of shareholder voting;
- Clients may use one or more services that support and complement their own in-house research activities;
- Clients may, themselves, be subject to a variety of rules and regulations in relation to asset ownership and oversight;
- Signatories' underlying clients are responsible for their own compliance procedures;
- Signatories operate within the framework provided by applicable law, including those governing company law, contract law and client confidentiality, as well as securities laws associated with market abuse and insider trading; and,
- Nothing in these Principles is a substitute for adherence to relevant laws and market regulations.

Irrespective of the type of services used to support ownership and voting activities, the ultimate responsibility to monitor investments and make voting decisions lies with institutional investors; use of third-party services (such as those provided by signatories) 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 its approach.

### 2.1 Scope & Definitions

To better understand the relevance and application of the Principles, it is important to understand the different types of services the signatories provide.

The key objective of the signatories is to support institutional investors in the exercise of their ownership rights and responsibilities through the provision of value-added services. These services may include one or more of the following, which may or may not be provided on a commercial basis:

### 2.1.1 Governance Research Services

Governance research services comprise services provided on a regular basis as an intellectual contribution to the company-specific, proxy vote-decision and engagement activities of institutional investors.

Governance research services can be varied and may exhibit one or more of the following characteristics:

- Alerts, bulletins and newsletters
- Company-specific advice/opinions
- Data and analysis
- Policy guidance
- Ratings
- Voting recommendations

Depending on the services subscribed to, the services may yield different results for different clients. This is because governance and ownership policies and preferences will vary from organisation to organisation.

Unless otherwise stated or disclosed, in developing governance research services, signatories are not acting on behalf of a particular shareholder or group of shareholders that is trying to influence how other shareholders vote, nor are they acting on behalf of an issuer that is trying to secure votes from its shareholders.

### 2.1.2 Additional Services

In addition to governance research services, signatories may provide additional services, such as vote agency and/or engagement and governance overlay services.

“Vote agency” is defined as the provision of proxy vote execution services, whereby the voting agent is responsible for some or all of the logistical and operational activities associated with transmitting instructions from the institutional investor to the company meeting, as well as record-keeping and reporting activities. Votes may be transmitted to the meeting directly (including personal attendance) or through a chain of operational intermediaries, depending on regulatory or market specificities in each relevant jurisdiction.

“Engagement and governance overlay services” are defined as undertaking contact and engagement with issuers on behalf of investors with a view to asking the company in question to amend aspects of its governance.

Vote agency, engagement and governance overlay services providers often provide governance research services. Where this is the case, the provision of these Principles apply to the governance research services they offer, either on a standalone basis or in conjunction with other services.

The particularities of vote agency and engagement services are not addressed by these Principles.

## Consultation Questions – Scope & Definitions

The scope of the governance research industry, and hence the list of potential signatories, can only be determined by a clear definition of the services provided to investors. In its feedback statement, ESMA does not provide such a definition. According to the SMSG, the Principles should apply to “all parties that engage on a professional basis in proxy advice”<sup>2</sup>

A review of the services provided by different members of the industry revealed a wide variety of types of services. In fact, some industry members do not provide “advice”<sup>3</sup> on how to exercise voting rights but rather provide governance research and guidance to help investors form their own voting decisions.

The Committee believes the distinction between the defining activities of “governance research” and other related governance services best reflects what (potential) signatories offer on a regular basis. This approach was taken in light of the SMSG’s clear distinction between agency services and “proxy advice”<sup>4</sup>.

The Principles relate only to the development and provision of “governance research services,” as defined in 2.1 on page 10. It is up to the individual service provider to determine if what it does qualifies as governance research and, as such, should be subject to the Principles.

In addition to governance research services, signatories may provide additional services, such as vote agency services and/or engagement and governance overlay services. Those services are likely to be governed by additional legal requirements imposed by the company and securities laws of relevant markets, most of which are not fully harmonised. Since the Principles do not seek to override existing legislation, neither at the EU Member States’ or global markets’ level, the Principles are silent on these matters. The Committee and the Principles may evolve over time to encompass other such activities related to governance research.

Given that the responsibility for the vote decision lies with the shareholder or its investment manager, the Committee has not included any Principles or Guidance that would impose standards of conduct on investors, for example any obligation on the part of investors to review governance research before voting. 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.

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.

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.

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<sup>2</sup> See [ESMA Final Report](#), p. 34.

<sup>3</sup> The legal definition of “Advice” varies from market to market. Advice may be regarded by some as “telling” or directing clients what to do, others consider advice as “informing”. A Tilba and T McNulty, “Engaged versus disengaged ownership: the case of pension funds in the UK” (2013) 21(2) *Corporate Governance: An International Review* 165 at 173.

<sup>4</sup> See [ESMA Final Report](#), p. 30.

### 3 The Best Practice Principles

#### Principle One: Service Quality

Signatories aim to offer services that are delivered in accordance with agreed client specifications.

Signatories should have and publicly disclose a research policy and, if applicable, “house” voting guidelines.

#### Principle Two: Conflicts Of Interest Management

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 provisions of services.

#### Principle Three: Communications Policy

Signatories should have and publicly disclose their policy (or policies) for communication with issuers, shareholder proponents, other stakeholders, media and the public.

The Principles are, in turn, supported by Guidance that explains the background and relevance of the Principles.

Unless otherwise stated, all policies should be disclosed on the signatory’s website or made available on request.

## Principle One: Service Quality

Signatories aim to offer services that are delivered in accordance with agreed client specifications.

Signatories should have and publicly disclose a research policy and, if applicable, “house” voting guidelines.

### Guidance

Governance research and analysis should be relevant, accurate and reviewed by appropriate personnel prior to publication. Signatories should be able to demonstrate that their reports, analyses, guidance and/or recommendations are prepared to a standard that can be substantiated as reasonable and adequate.

Signatories should explain how they organise activities to ensure their research is developed in accordance with stated research policy, methodologies and, if applicable, voting guidelines; in addition, they should describe what reasonable efforts they make to ensure their research is independent and free from inappropriate bias or undue influence.

Institutional investors may assess investee companies’ governance arrangements and make voting decisions based on their own view or “custom” voting policy. In this case, they may contract with a signatory to receive governance research based on their own voting guidelines. Alternatively, investors may subscribe to governance research services developed based on a signatory’s proprietary or “house” voting guidelines and subsequently decide on the extent to which they incorporate that research in their own assessment and decisions.

### Responsibilities to Clients

A signatory’s primary responsibility is to provide services to clients in accordance with agreed specifications.

### Research Policy

Signatories should have and disclose a written research policy that outlines:

- The general approach that leads to the generation of research;
- The extent to which local conditions and customs are taken into account;
- The extent to which custom or house voting guidelines may be applied; and
- The systems and controls they deploy to reasonably ensure the reliability of the use of information in the research process, and the limitations thereof.

A signatory’s research policy does not need to disclose any information which could harm the signatory’s legitimate business interests, including, but not limited to, intellectual property.

## Voting Guidelines

Signatories may elect to provide governance research services that are developed based on a set of house voting guidelines. The voting guidelines typically provide a reference framework against which to assess governance arrangements and general meeting resolutions.

Signatories should disclose whether they have developed house voting guidelines. If so, they should disclose the guidelines, including, but not limited to, the extent to which local guidelines and standards are used (if at all).

Each signatory will have its own approach to house voting guideline development and review, which may include one or more of the following approaches:

- Client review
- Public consultations
- One-on-one/face-to-face discussions
- Expert/regulatory body reports
- Academic literature review
- Guideline exposure drafts
- Group discussions/webinars
- Discussion at industry conferences

Signatories should explain how their voting guidelines are developed and whether and how they incorporate feedback into the voting guidelines development process.

Signatories are not responsible for disclosing client research policies or voting guidelines and may have contractual obligations that preclude them from discussing any aspect of their client relationships, voting guidelines or intentions.

## Research Methodologies

In addition to a research policy and house voting guidelines, signatories may also develop research methodologies. Research methodologies provide a detailed framework on how to assess governance arrangements and general meeting resolutions in each specific instance.

Signatories should make their research methodologies available to clients. In making such disclosure, research methodologies do not need to contain information which could harm the signatory's legitimate business interests, including, but not limited to, intellectual property.

## Quality of Research

Signatories should have systems and controls in place to reasonably ensure the reliability of the information used in the research process to the extent possible, bearing in mind they cannot be responsible for disclosures published by issuers or shareholder resolution proponents that are the subject of their research.

Signatories should maintain records of the sources of data used for the provision of services to clients (to the extent legally or contractually possible).

Signatories should, where this is proportionate to their size, implement organisational features to achieve adequate verification or double-checking of the quality of research that is provided. These may include:

- Four-eyes principle (i.e. reports must be checked by a person independent of the research process itself)
- Issuer fact-checking
- IT-based consistency check
- Review by governance committee
- Review by senior analyst
- Review by senior management and/or executives

Signatories should be transparent regarding the research information provided to clients, including, when applicable, dialogue with issuers or shareholder proponents (see Principle 3). To that end, signatories should make reasonable efforts to ensure that use, inclusion or reproduction of external private, copyright-protected information be duly referenced, so clients can assess to what degree third-party input plays a role in the services they use.

### **Employee Qualification & Training**

Employee qualifications include desired requirements for education, skills, competence and experience. Signatories should make reasonable efforts to ensure staff are trained on the relevance and importance of their activities and on how they contribute to service delivery.

Where a signatory outsources any process that could affect service quality, the signatory should exercise control over such processes. The type and extent of control applied to these outsourced processes should be clearly explained.

### **Timeliness**

Signatories have a responsibility to provide clients with adequate and timely services, subject to the timely availability of source information from issuers and shareholder resolution proponents, as well as intermediary constraints (for example, vote deadlines and intermediary cut-offs). Signatories should make reasonable efforts to use the most up-to-date information available when developing research and vote guidance.

### **Complaints & Feedback Management**

Signatories should have and disclose their policies for managing and responding to complaints, comments or feedback about their services.

### **Client & Supplier Understanding**

The operational aspects of service delivery will generally form the basis of the service agreement between signatories and their clients.

Signatories should notify clients of the scope of the services provided, as well as any known or potential limitations or conditions that should be taken into account in the use of signatory services.

Limitations may include:

- Data availability issues, as not all markets require the same level of detail in disclosure;
- Missing, inaccurate or incomplete documents or disclosures, such as from issuers or shareholder proponents;
- Reliance on third parties that are beyond the control of the signatory; and,
- Inconsistencies and irregularities of information provided by intermediaries in the ownership chain, such as agenda information, vote deadlines, blocking procedures, etc.

Signatories should provide clients with a framework that enables them to fulfil their due-diligence requirements. The framework could include the following:

- Site visits;
- Interaction with research teams;
- Information on quality controls that govern the research development process;
- Information on the qualifications and experience of the signatory's staff; and,
- Information on how the research policy has been or will be applied and on which assumptions the research output has been based.

## Consultation Questions - Principle One

Principle One aims to explain the quality of services provided by signatories. It underlines the primary importance of loyalty and transparency toward clients. In compliance with this principle, signatories will prepare and disclose a written policy that outlines their general approach to their research.

Principle One also calls for the disclosure of research policies, voting guidelines and research methodologies, which will enable stakeholders to understand how signatories develop the services they offer. In drafting Principle One, a balance was sought between ensuring transparency on the research policy, voting guidelines and research methodologies and protecting the legitimate business interests of signatories and their clients.

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.
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.
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.
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
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.

## Principle Two: Conflicts of Interest Management

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 provisions of services.

### Guidance

The possibility for conflicts of interest can arise in all businesses. While conflicts cannot always be eliminated, they can be managed and mitigated. The overriding objective of this principle is to reasonably ensure that research and business conduct are independent, fair, clear, not misleading and free from possible bias or undue influence. With this in mind, signatories should make full and timely disclosure of potential conflicts that could reasonably be expected to impair their independence or interfere with their duty to clients.

### Possible Conflicts for Consideration

Signatories should consider how the following non-exhaustive list of potential conflicts may materially impact their operations and how these potential conflicts may be addressed:

- 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 proposal proponent or is a dissident shareholder in a proxy contest; and,
- Issuer-Client influence on the signatories, such as when signatories provide consulting services to companies under coverage for research.

### Conflicts of Interest Policy

Signatories should have and disclose a conflicts-of-interest policy that explains:

- How and when potential material conflicts will be disclosed to clients (for example on a website, contained within research reports, email bulletins, etc.);
- How signatories communicate their conflicts-of-interest policy and train employees in the operation of that policy; and,
- How conflicts will be managed.

## **Conflict Management & Mitigation**

Conflict management and mitigation procedures may include one or more of the following approaches:

- Code of ethics
- Division of labour
- Employee recusal
- Fire walls/IT systems and controls
- Independent oversight committees
- Information barriers and ring-fencing
- Physical employee separation
- Separate reporting streams
- Transparent policies and procedures

## **Conflict Disclosure**

If a signatory becomes aware of a conflict of interest that cannot be effectively managed, the signatory should:

- Disclose the conflict to the relevant client(s) without undue delay before or at the same time the service is delivered; and,
- Manage the conflict as further detailed in the signatory's conflicts of interest policy.

## Consultation Questions - Principle Two

Principle Two calls for specific disclosure to clients of all potential and actual conflicts of interest, as well as disclosure of the specific measures taken to manage potential and/or actual conflicts. Where a conflict is unavoidable, signatories maintain policies and procedures for their proper management.

The Committee considers that a written, publicly available conflicts-of-interest policy is the right instrument to ensure the independence and integrity of the service. The Guidance for this principle provides examples of conflicts, conflict-management and mitigation procedures, and conflict-disclosure procedures. (The list of examples provided is not considered exhaustive.)

Although the policy should be made public, it does not require public disclosure of specific conflicts, as such disclosures could conflict with information barriers put in place by a signatory to prevent a potential conflict from becoming an actual conflict. For example, some signatories may have established information barriers to prevent their research staff from being influenced by the provider's relationships or potential relationships with an issuer subject to their analysis and to guarantee an unimpaired judgment by the research staff. Therefore, each signatory may decide on a case-by-case basis whether disclosure of the conflict to the public is appropriate. Signatories should, however, disclose all potential and actual conflicts to their clients.

The Guidance to Principle Two follows established regulatory or professional models, i.e. a standard of integrity that is comparable to what any regulation would achieve notwithstanding the fact that signatories serve institutional investor clients on a confidential basis.

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.
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.
21. 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?

## Principle Three: Communications Policy

Signatories should have and publicly disclose their policy (or policies) for communication with issuers, shareholder proponents, other stakeholders, media and the public.

### Guidance

Signatories should explain their approach to communications with issuers, shareholder proponents, other stakeholders, media and the public.

It is for signatories to choose whether or not to engage in dialogue and in what format. If signatories choose to have such a dialogue, it is up to them to determine the objectives, timing, frequency and format of this dialogue.

Comments and statements in the press or public forums may have a significant impact and, as such, should be properly managed.

### Dialogue with Issuers, Shareholder Proponents & Other Stakeholders

Signatories should have a policy (or policies) for dialogue with issuers, shareholder proponents, other stakeholders and their advisors.

The policy should cover issues including, but not limited to:

- The circumstances under which such dialogue could occur;
- How signatories verify the information used in their analysis;
- Whether and how issuers are provided with a mechanism to review research reports or data used to develop research reports prior to publication to clients;
- Procedures for avoiding receipt of privileged, non-public information and, in cases where such information is received, procedures for managing such information;
- If/how signatories communicate during the voting period (defined as the period from release of the agenda until the general meeting);
- When and how signatories communicate to clients the nature of any dialogue with issuers, shareholder proponents or other stakeholders regarding voting issues under review; and,
- What steps are taken to protect signatories and their employees from undue pressure or retaliatory actions arising from the delivery of their services.

### Dialogue with Media & the Public

Signatories reserve the right to respond to general media enquiries about the nature of their services and about the companies or issues they cover. However, signatories should have and disclose a policy (or policies) for communication with the media and the public. This policy should include, at minimum, the following considerations:

- Which of the signatory's employees are permitted to make comments to the media and/or make public appearances; and,
- The signatory's policy toward the publication of public recommendations (if made) on any particular resolution prior to the publication of their reports to clients. Exceptions to this policy should be explained.

It should be noted that signatories cannot be held responsible for the unauthorised use or re-use of their materials.

At all times, signatories observe applicable laws or regulations regarding libel, slander, market abuse, insider trading, distribution of material non-public information, etc.

### Consultation Questions - Principle Three

Principle Three does not dictate whether or not signatories should engage in dialogue with issuers and/or shareholder proponents. This approach was taken because some founding signatories engage on a routine basis, while others enter into dialogue only on a case-by-case basis or for further information gathering as part of their research process. In order to safeguard proper management of these interactions, signatories should disclose and explain their approach in a communications policy that is publicly accessible and can be reviewed by clients, issuers, shareholder proponents and other stakeholders.

The Committee also seeks to achieve greater transparency with regard to signatories' media relations and to foster greater understanding and assurance among other stakeholders in terms of what they can rightfully expect from governance research providers. In order to achieve a balance between the stakeholders' interest in transparency and the legitimate interests of signatories and their clients, a written policy that is publicly accessible should set forth the framework for interaction with media and the public.

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 take into account? If yes, please elaborate and provide specific examples and/or suggestions.
25. 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?

### Consultation Questions - 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 finalising the Principles?

## 4 Summary of Consultation Questions

1.	What are your views about the principles development process?
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.
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.
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 procedures 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?
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. 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.
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.
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.
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.
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.
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.
16.	Please express your views on the scope and content of the proposed research-related disclosure under this principle with respect, to: <ol style="list-style-type: none"> <li>a. research policy</li> <li>b. voting guidelines</li> <li>c. research methodologies</li> </ol>

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.
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.
21.	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?
22.	Please express your views on the scope and content of the proposed policy disclosure under this principle with respect to: <ul style="list-style-type: none"> <li>a. Issuers; and</li> <li>b. Media and the public</li> </ul>
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 take into account? If yes, please elaborate and provide specific examples and/or suggestions.
25.	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?
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 finalising the Principles?

## **Appendix I: Charter Signatories**

Charter Signatories of the Drafting Committee of the Best Practice Principles for Governance Research Providers

- [Glass, Lewis & Co.](#)
- [Institutional Shareholder Services Inc.](#)
- [IVOX GmbH](#)
- [Manifest Information Services Ltd](#)
- [PIRC Ltd](#)
- [Proxinvest](#)

## Appendix II: Consultation Timetable

Monday 28 October 2013	Launch of public consultation
Friday 20 December 2013	Close of public consultation at 12.00 CET
Thursday-Friday 6-7 February 2014	Review of draft Principles in light of consultation responses.
28 February/early March 2014	Ratification and Adoption of final Principles by Drafting Committee Publication of Principles
September/October 2014	Committee meets for first review of Principles