

BY EMAIL: consultation@bppgrp.info
Best Practice Principles for Governance Research Group

27 December 2013

Dear Sirs

BEST PRACTICE PRINCIPLES FOR GOVERNANCE RESEARCH PROVIDERS

I am writing to comment on the above consultation paper on behalf of RPMI Railpen, the investment monitoring arm of the Railways Pension Trustee Company Limited, the corporate trustee of the UK railway pension funds with approximately £20 billion of assets under management and 350,000 beneficiaries. We have reviewed the detailed submissions from the IMA and the NAPF to your consultation which we generally endorse and have taken the opportunity in this response to add our own emphases.

As a major institutional investor, we have a long history of active voting and make use of governance research in reaching our proxy voting decisions although it is not a substitute for our own responsibility to vote in an informed manner. We agree in principle with the European Securities & Markets Authority that the proxy industry should seek to improve understanding and transparency of the role of service providers in the proxy research space which we see as a far better alternative to more prescriptive regulation which we feel would have both unforeseen and unhelpful consequences. It follows that we welcome this consultation and support the development of the Principles which seek to set minimum standards of conduct and transparency in the proxy research industry.

Responses to Specific 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.

Although supportive of the collective approach amongst potential signatories, and the appointment of an independent chair of the Working Group, we share the reservations of the IMA about the absence from the process of clients who actually buy and use the research although we acknowledge that this consultation is intended to seek our views. Going forward we would like to see the establishment of a manifestly independent body to oversee the ongoing governance of the Principles including monitoring them and reviewing them. It would be helpful if this body also included representatives from companies and the institutional investor community.

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

We are generally in favour of the comply or explain approach as it offers greater flexibility than more prescriptive regulation and is easier to update in response to changing circumstances. We feel that is appropriate to apply this approach to these Principles, given the range of approaches and the different business models of the various firms in the industry.

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

It is perhaps easier to answer this question once the Principles have been in operation for a preliminary period and it is something that the independent on-going governance body could and should review. However, at this stage we share the concern of the IMA and the NAPF that the draft Principles and supporting guidance are somewhat brief and rather high level.

5. Do you believe the Principles and/or supporting Guidance conflict with obligations under legislation or other best practice principles? If yes, please elaborate and provide specific examples and/or suggestions.

No, we do not consider that the Principles and supporting Guidance conflict with other legal obligations and best practice requirements. We also feel that they would be compatible with the UK Stewardship Code. However, the Working Group should consider taking legal advice and in any event review the position in the light of the EU Rights Shareholder Directive which may be published before the finalisation of the Principles.

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

We support the proposed procedures. Like the IMA and the NAPF we favour a central disclosure point and agree that the BPP website would be an obvious place for this.

7. What should the regional scope of the Principles be, in terms of signatories and services provided? For example, do you think that the Principles should be global?

We agree that the Principles should aspire to be global. The majority of the clients of the signatories are likely to be global investors investing in companies who commonly have global operations and share registers. However, we feel that as a practical matter it may be helpful to road test them in Europe first before rolling them out globally.

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.

We have some reservations about the definition but note the drafting difficulty in trying to catch everything. Nevertheless we feel that the definition of ‘governance research services’ is much too wide. We would also like to see a distinction made between ‘proxy advisory or research providers’ and wider ‘governance research services’. The Principles should certainly apply to the former but not to the latter. However, we consider the definitions of “vote agency services” and “engagement and governance overlay services” are sufficiently clear and helpful in indicating that they are beyond the scope of the Principles.

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

We strongly agree that the Principles should not be extended to investors who are users of the service. The Principles are intended to cover the service providers not the users who are often subject to other regulations and other soft law best practice requirements such as the Stewardship Code which we believe is complementary to the Principles.

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

Yes, Principle One on Service Quality should help the market understand how signatories approach and conduct their proxy research. We agree with the IMA that it would be useful if they were also required to disclose their ownership structure and the general types of service they provide so that both investors and companies can identify and understand any potential conflicts of interest.

14. Do you see any issues of service quality that are not addressed in this section? If so, please provide examples and specific information on the purpose and merits of any additional disclosures.

We consider that the significant issues of service quality have been largely answered. However, we do see merit in the NAPF’s suggestion to make a clearer distinction between transaction activity and other governance issues. We agree that where the firm provides recommendations in relation to transactions, it should make clear on what areas it considers it has the expertise to advise upon.

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

Yes, up to a point. We believe that proxy research providers and advisors should be transparent about the methodology and guidelines they are utilising to determine their recommendations. However, we agree with the IMA that it would be useful to add “and how this has been achieved” in order to avoid otherwise hard to verify assertions that the signatory has considered local market conditions.

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

Subject to our points in 14 and 15 above, we consider the scope and content of the proposed research-related to be generally clear. However, we agree with the NAPF's point that some disclosure on the resources available for analysis would be helpful.

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.

We agree that the Guidance to Principle Two generally addresses the main issues relating to potential conflicts of interest. We also support the proposed conflict management and mitigation procedures and particularly welcome establishing independent oversight committees together with transparent policies and procedures. However, we agree with the NAPF's suggestion that the 'Issuer-Client' influence on signatories' should be given greater prominence and that potential conflicts arising from a parent company should also be included.

22. Please express your views on the scope and content of the proposed policy disclosure under this principle with respect to:

- a. Issuers; and
- b. Media and the public

We would expect signatories to disclose clearly their approach to engagement with issuers. Such disclosure should make clear who would undertake any engagement, when any engagement would take place and on what issues any communication would take place and in what form.

We agree with the NAPF that it is reasonable to give companies an opportunity to respond and correct any factual errors or provide a concise explanation which can be included within any report to investors. However, this should not be seen as an opportunity to negotiate a favourable voting recommendation which must be a judgement call by the signatory. It is imperative that the signatory's primary obligation remains to their investor clients.

It is to clients that signatories owe their first duty which is to ensure that appropriate information is provided in sufficient time for votes to be informed and thus executed in an appropriate manner. We also strongly agree with the IMA that signatories should be required to disclose to clients the nature of any dialogue with issuers and the actual outcome (which the IMA notes is consistent with Principle 2.iii in ESMA's final report).

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.

Please see 22 above.

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.

This is a major reputational issue and signatories need to have processes and procedures for dealing with the media. We consider this has been generally covered adequately in the Guidance. We accept that signatories cannot necessarily be held responsible for the unauthorised use or re-use of their materials but perhaps should be encouraged to take appropriate steps in extreme cases to deal with this through, say, legal action or public rebuttal.

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.

We have no further comments to make on this.

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

See 22 above.

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

No.

I hope that these comments are helpful. Please contact me if they need clarification or you feel that we can otherwise be of assistance. In the meanwhile, we look forward to seeing the final principles in February 2014.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Frank Curtiss'.

Frank Curtiss
Head of Corporate Governance
RPMI Railpen