



27 July, 2015

Dear Sir, Madam,

Call for Evidence: Impact of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis

Thank you for giving us the opportunity to take part in the above Call for Evidence. I am pleased to enclose The Investor Relations Society's response to the below questions.

The Investor Relations Society represents members working for public companies and consultancies to assist them in the development of effective communication with financial markets and to create a level playing field for all investors. It has over 700 members drawn both from the UK and overseas, including the majority of the FTSE 100 and much of the FTSE 250.

Q1: What is the nature of your involvement in the proxy advisory industry (proxy advisor, investor, issuer, proxy solicitor etc.)? To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in and your interaction with the industry.

The Investor Relations Society's mission is to promote best practice in investor relations; to support the professional development of its members; to represent their views to regulatory bodies, the investment community and government; and to act as a forum for issuers and the investment community. As such, through our members, we have direct experience of working with proxy agents both in the EU and globally.

Q2: Have you previously had concerns with the functioning of any areas of the proxy advisory industry? If yes, please specify.

The development of the proxy advisory industry in Europe in recent years is a key issue for investor relations practitioners and listed companies more generally. We understand that nearly all institutional investors subscribe to one or more proxy advisers, and that in the case

of all but contentious resolutions, or in corporate actions, institutional investors will regularly follow the recommendations of the research provider. Therefore, we support this review of the BPP for governance research providers.

Given the regularity with which many of our members had reported issues of factual inaccuracies and/or selective use of information by proxy agencies, combined with unreasonably short deadlines to respond, we are not confident that proxy advisers always provide robust and adequately informed judgments in guidance to their clients. We consider that on certain sensitive areas these advisers are not always sufficiently versed with the nuances of company policy issues, and we would encourage them to engage more directly with corporate issuers.

On behalf of our members (issuers and their advisers), we have previously summarised our key concerns regarding the governance research industry as follows:

- Evident factual inaccuracies and overall lack of fact checking by governance research providers
- The lack of accountability and transparency over proxy advisory decisions with potentially significant implications for issuers
- Apparent lack of direct and open dialogue between companies and governance research providers
- No right to response - issuers are either unable to comment on the factual accuracy of proxy research or given insufficient time to respond
- Lack of discretion applied by investors with an increasing blanket acceptance of proxy advisor recommendations

Q3: Did you become aware of the BPP at the time of their publication, i.e. March 2014? If yes, how did you become aware of the BPP? If no, when did you become aware of the BPP and how?

As a representative for the investor relations industry and corporate issuers, we were aware of the ESMA review and discussion paper of the proxy industry in 2013, and the subsequent consultation from the BPP in developing its own Code of Conduct, to both of which we have responded.

3.2.2 The BPP on paper

Q4: What is your view on the width and clarity of the scope 5 of entities covered by the BPP (i.e. do you consider that the BPP cover the European proxy advisory market appropriately)? Please explain.

Q5: In your view, are the BPP drafted in a way so that they address the following areas identified in ESMA's 2013 Final Report? Please provide examples to support your response.

- a. Identifying, disclosing and managing conflicts of interest;**
- b. Fostering transparency to ensure the accuracy and reliability of the advice;**
- c. Disclosing general voting policies and methodologies;**
- d. Considering local market conditions;**
- e. Providing information on engagement with issuers.**

We support the principal signatories should disclose their research policies and guidelines, and we would like to see further evidence that a process is put in place to ensure that research providers are validated and verified to ensure they are carrying out the highest quality service on behalf of their clients. We would like to reiterate that final reports issued publicly should be reviewed and approved by experienced agency staff, in addition to the author/researcher. It is not apparent that such quality controls are currently in place at all proxy agencies. Further transparency on the personnel that carry out the research e.g. qualifications and experience would also be welcomed by the issuers.

Q6: What is your overall assessment of the quality of the signatory statements? Please provide examples referring to the areas identified under Q5.

While we understand there is a role for proxy advisers and commend the efforts undertaken by BPP to develop an industry standard and signatory statements, our members continue to voice their concerns around the transparency and methodologies employed by proxy advisers. With that in mind however, since the development of the BPP in 2014, it is still too early in the development process to clearly evaluate the impact of the BPP.

3.2.3 The BPP in practice

Q7: In your view, are there proxy advisors which possibly fall within the scope of the BPP and have not signed the BPP?

Issuer members of the IR Society have most experience with the following proxy agencies, all of whom are signatories of the BPP: Glass Lewis, PIRC, ISS, and Manifest.

Q8: How would you describe the impact which the BPP have had on the proxy advisory industry in practice? Please provide examples to support your response.

As a Society, we would like to note that in general the 2015 AGM season has passed relatively quietly, and compared to 2014, where there was much focus on remuneration, it is still too early to compare the development of the BPP since its inception in 2014.

Q9: Have you observed any changes in signatories' practices in the areas mentioned under Q5 since the publication of the BPP in March 2014 and specifically during the 2015 proxy season? Please provide examples to support your view and specify whether these changes addressed the concerns you mentioned in response to Q2, if any.

In spite of the above mentioned point, early indications from recent issuer member feedback suggests that the BPP has had no significant impact on the proxy advisory industry in practice, and issuers continue to voice our earlier concerns about proxy advisors, and the lack of prominence given to the BPP.

It is worth noting a recent Institute of Chartered Secretaries and Administrators (ICSA) survey, where 58% still perceive the influence of proxy advisors on shareholder engagement with a company as negative. Only 14% see proxies as a positive influence. (FT-ICSA Boardroom Bellwether survey – Summer 2015)

Q10: To what extent do you consider the conduct of BPP non-signatories in relation to the areas identified under Q5 to be different from that of BPP signatories? Please provide examples to support your view. N/A

Q11: Do you consider other measures than the BPP necessary to increase understanding of and confidence in the proxy advisory industry? If yes, please explain why and specify the measures which would in your opinion be suitable.

As we voiced in our 2013 response to the BPP consultation, we strongly believe there is a need for a forum or professional industry body (e.g. Investor Relations Society, ESMA), which can represent corporates and with whom issuers can feel comfortable lodging legitimate concerns or issues regarding the governance research industry. Our concern is that the BPP mechanism doesn't appear to engage with corporates on their issues and is too

inward-looking. The perspective of the proxy agencies is focused on themselves rather than on the fundamental principle of market openness and integrity.

Our members continue to report they have ongoing concerns that proxy advisors do not correct inaccuracies or do not do so in a timely manner and cite the quality of service being provided by the proxy industry as the main focus of their concern. This is a crucial point in transactions where timetables are compressed. Therefore, in order to represent the views on both sides of the industry (corporates and proxy services), there needs to be a representative body that both sides can respect and whose judgments will carry authority, and where issues can be heard and resolved accordingly.

Q12: Do you have any other general comments that ESMA should take into account for the purposes of its review?

The IR Society would like to reiterate that in general the 2015 AGM season has passed relatively quietly, and compared to 2014, where there was much focus on remuneration, it is too early to compare the development of the BPP on a like for like basis. However, issuers indicate there has been no notable change in the way proxy advisors operate since the BPP came into effect.

6 Questions for issuers

With the following questions, ESMA would like to obtain issuers' view on the effectiveness and impact of the BPP thus far, in particular referring to the 2015 proxy season.

Q34: As regards your experience with proxy advisors before and after the publication of the BPP, please describe:

a. whether proxy advisors have provided research, advice and/or recommendations on your company;

Our issuer members receive research and recommendations on the whole from the BPP signatories, ISS, PIRC, Manifest and Glass Lewis.

b. whether you have used services from proxy advisors (please specify which services, e.g. research, consultancy).

Q35: In your experience, to what extent have the BPP enhanced clarity as regards the expectations issuers can have towards communication with proxy advisors? Please provide examples to support your response.

Issuer feedback indicates that the level of service provided by proxy advisors is still quite varied and there are quite different practices employed between the proxy advisors, which does not help issuers. Some examples include:

- **Lack of engagement from proxy advisors.** In several instances, issuers have voiced their concerns around the lack of response from advisors despite early engagement on specific issues. One issuer noted that having provided ISS with a copy of shareholder documents they then made multiple attempts through IR, the Company Secretary's office and the Remuneration Chair to seek a meeting or call with representatives of ISS. ISS repeatedly failed to respond to requests to engage before publication of the report. Their draft recommendations on AGM resolutions included a number of factual inaccuracies and led to them recommending a vote against the issuer's Remuneration Report. The issuer was finally able to respond and clarify the inaccuracies after which ISS changed their recommendation to being in favour for all resolutions. However, early and proactive engagement would have avoided this situation.
- **Time to respond.** Issuers continue to comment on the short timeframe to respond to a report. Issuers frequently cite being given as little as two days to respond to a report, which is simply not practical when the response required inputs from around the organisation. Some issuers commented that with such short timeframes, proxy advisors rarely change their views and question whether this is a tick box exercise rather than an active two way discussion.
- **Factual inaccuracy and report quality.** There continues to be deep concerns around the factual errors contained in some reports and the overall quality of reports generated by the proxy advisors. Limited engagement with issuers and tight response times does not help. It is not apparent that all final reports are reviewed and approved by experienced agency staff in addition to the author/researcher. We have come across examples of unverified and inaccurate reports having been given to the press – a practice which causes problems for both companies and proxy advisors.

In addition a particular concern to our members arises where there is a high proportion of US investors who rely on proxy advisors such as ISS for their vote recommendations. Many issuers have little or no scope to overturn ISS's recommendations except in the most extreme circumstances. Therefore, in our view shareholders are not being well served by the lack of engagement and lack of quality analysis being provided.

- **Advisors charging issuers for reports.** This does not enable transparency or the ability to respond to the report. Furthermore there are examples of proxy advisors charging issuers for reports. The Society feels strongly that charging issuers to see their own reports is a process that will disengage corporates.

Notwithstanding the above mentioned points, some issuer members have referenced PIRC and ISS as examples of where proxy advisors have this year been more proactive in providing draft reports for comments than in previous years.

Q36: Has your approach to seeking or maintaining dialogue with proxy advisors within or outside the proxy season changed in any way as a result of the publication of the BPP (e.g. in terms of frequency, nature, circumstances)? If yes, please provide examples and quantitative evidence.

As mentioned above.

Q37: In your experience, to what extent have the BPP improved proxy advisors' procedures for managing and disclosing conflicts of interest, and specifically the following two types?

- a. The proxy advisor provides services to both the investor and the issuer;
- b. The proxy advisor is owned by an institutional investor or by a listed company to whom, or about whom, the proxy advisor is providing research, advice and/or recommendations.

Please provide examples to support your response.

As we mentioned in our last response in 2013 to the BPP consultation, as a Society we are not aware that potential conflicts of interest within the governance research industry are high on the discussion agenda with corporate issuers. Although there is a potential for conflicts of interest in practice if a governance research agency is providing advisory and voting services while advising listed companies on corporate governance issues, there should be complete and total separation of these two businesses. Many businesses within the capital markets have to manage conflicts of interest e.g. investment banks, and have no difficulty doing this; so we see this as a matter of course for the governance research industry too.

Q38: In your experience, to what extent have the BPP enhanced clarity as regards proxy advisors' methodologies and the nature of their information sources, thereby allowing you to better assess the accuracy and reliability of the proxy advisors' research, advice and/or recommendations as regards your company?

Please provide examples to support your response.

Feedback from issuer members highlights that on the whole they have seen no change in the clarity of proxy advisors' methodologies and nature of information sources following the development of the BPP. The outcome of the analysis conducted by the proxy advisors still feels uncertain and unpredictable from an issuer perspective. One issuer member noted that there have been instances this year where, during prior consultation with a proxy advisor they were able to change their mind on a few matters where it was considered the proxy advisor was taking an unreasonable position. In other cases, the company was pleasantly surprised by the proxy advisor's reaction to some issues where they thought they might have concerns. This highlights the unpredictable nature and inconsistent approach of the proxy advisors that corporate issuers are currently experiencing.

Q39: In your experience, have the BPP enhanced:

a. proxy advisors' level of awareness of local market, legal and regulatory conditions which your company is subject to? N/A

b. proxy advisors' disclosure of the extent to which they take the above conditions into account? No comment.

In summary, the Society accepts that research providers have an important role to play, and on behalf of our members, our goal is to encourage a more open and engaged dialogue between the issuer and the governance research agency. We welcome this review by ESMA of current practices, if somewhat early in the process, to ensure that all parties are satisfactorily addressed in a transparent and accountable way. While we commend the efforts undertaken by BPP to develop an industry standard, we would encourage ESMA to undertake a comprehensive review of the BPP to ensure a robust set of principles to which signatories can adhere and a culture of engagement that we are seeking to create.

We hope you find these comments useful and please do not hesitate to contact me if you have any further questions.

Kind regards



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