

The European Securities and Markets Authority (ESMA)
103, rue de Grenelle
Paris 75007
France

info@esma.europa.eu

27 July 2015

Dear Sirs,

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

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of EuropeanIssuers, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Governance Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We welcome the opportunity to respond to this consultation.

We had previously submitted responses to ESMA's consultation on the proxy advisory industry (June 2012) and the Best Practice Principles (BPP) for Governance Research Providers Group consultation on the BPP (December 2013).

In general, we are interested in helping governance research providers carry out their services more effectively as this is good for the whole market and for our members, small and mid-size quoted companies. Many of our members perceive challenges and scope for improvement here.

We believe that it is very difficult to assess the impact which the BPP have had on the proxy advisory industry in practice, as it is difficult to assess and compare practice before and after since their adoption. While we believe that the BPP meet the policy principles set forth in ESMA's Final Report, we still believe that the principles could be improved by involving issuers and other stakeholder in the development process.

There should continue to be better engagement between issuers and proxy advisors leading towards an open, healthy and transparent dialogue and a deeper understanding and appreciation of each other.

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

We have responded in more detail below to the questions that we believe would most significantly affect our constituency.

Responses to specific questions

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.

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m. Our members, small to mid-size quoted companies, interact with the proxy advisory industry by having reports and research produced on them by proxy advisors.

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

We had previously submitted responses to ESMA's consultation on the proxy advisory industry (June 2012) and the Best Practice Principles (BPP) for Governance Research Providers Group consultation on the BPP (December 2013)¹.

We had noted in our response to the BPP Consultation, as a general comment, that there is a lack of transparency as to how the governance research and recommendation industry works, as well as lack of understanding and trust between issuers and governance research providers. This was evidenced in responses to our QCA/BDO Small and Mid-Cap Sentiment Index in 2012 and 2013².

In general, we are interested in helping governance research providers carry out their services more effectively as this is good for the whole market and for our members, small and mid-size quoted companies. Many of our members perceive challenges and scope for improvement here.

We support any measures which increase coverage of our members, as this stimulates interest in these companies which can often find it difficult to obtain good coverage and so are reliant on reports being accurate and appropriate for companies of their size.

We supported the production of industry principles of best practice to govern the provision of services from governance research and recommendation providers to their fund manager clients. However, we mentioned there were fundamental problems with the process through which these draft principles have been developed, as issuers and other stakeholders were not actively involved in the production of the draft principles or consulted with on them at an early stage.

¹ http://www.theqca.com/article_assets/articledir_125/62712/QCAResponsetoESMAProxyAdvisoryFinal.pdf, and http://www.theqca.com/article_assets/articledir_161/80502/QCAResponse_BPPGRPPinciplesGovResearchProviders_Dec13.pdf.

² <http://bdogcasentimentindex.co.uk/>. In our QCA/BDO Small and Mid-Cap Sentiment Index carried out in May 2012, we found that almost half (47%) of small and mid-size quoted companies and advisory firms to those companies were unable to determine whether proxy voting agencies play a positive or negative role in corporate governance. We asked the same question in our Index carried out in September 2013 and found that 44% of small and mid-cap quoted companies believe they play a negative role, with 36% unable to determine whether they played a positive or negative role in corporate governance.

In the two years since the development of the BPP there remains a need to improve quality, accountability and timeliness and, most importantly, develop a culture which accepts that mistakes may arise and is cognisant of the irretrievable damage that can be caused by such mistakes.

We emphasised that there are many areas where these principles can be strengthened, as well as the need to address how they will be monitored and reviewed. It is of the utmost importance that any principles must be 'fit-for-purpose' and carry weight so as to build trust and transparency between investors, issuers and governance research and recommendation providers. Without greater trust and transparency, there is a real risk that, rather than being a positive influence, the industry may cloud the conversations and engagement between an issuer and its institutional investors.

In our response to ESMA's consultation on the proxy advisory industry, we emphasised our concern that voting advice given by proxy advisory firms was often too rigid and did not take into consideration the specific circumstances which apply to small and mid-size quoted companies. Small and mid-size quoted companies are different from the larger and more heavily capitalised companies comprising FTSE 100 and FTSE 250. Accordingly, small and mid-size quoted companies usually apply different corporate governance practices.

Just as a "one-size-fits-all" is inappropriate in the context of corporate governance codes, we noted our concern that the application of such an approach to voting advice can undermine the basic concept of comply or explain and encourage a "tick box" mentality. We firmly believe that it is for each company to set out a sensible analysis of the reasoned governance decisions it has come to and for the investment community to form views on the application of best practice through the direct circumstances applicable to each company.

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?

Yes. Our Corporate Governance Expert Group monitors closely all developments and ESMA's and other institutions' roles in corporate governance policy, including regarding proxy voting.

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

As we had mentioned in our response to the BPP Consultation in December 2013, we believe that these principles should cover signatories that provide services in respect of issuers with securities admitted to markets in European Union Member States.

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.

Yes, we believe that the principles meet the policy principles set forth in ESMA's Final Report, as we had mentioned in our response to the BPP Consultation. However, there was not much detail included in

ESMA's Final Report and we still believe that the principles could be improved by involving issuers and other stakeholder in the development process.

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

We have no comments on this.

Q7 In your view, are there proxy advisors which possibly fall within the scope of the BPP and have not signed the BPP? If yes, please: a. identify such entities; b. explain why you consider them to be within the scope of the BPP; and c. indicate their size and the coverage of their operations within the European market.

We have no comments on this.

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.

We believe that it is very difficult to assess the impact which the BPP have had on the proxy advisory industry in practice, as it is difficult to assess and compare practice before and after since their adoption. It may be that the BPP have improved accuracy and reliability of research reports, although we have no evidence to support this view.

The BPP may have encouraged dialogue between investors and companies and facilitating transparency, although again we have no evidence to support this view. However, there should continue to be better engagement between issuers and proxy advisors leading towards an open, healthy and transparent dialogue and a deeper understanding and appreciation of each other.

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.

Please see our response to Q8.

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.

We have no comments on this.

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.

Yes.

Firstly, we believe that the effectiveness of the principles will be further enhanced by engaging with other stakeholders, especially issuers, on these principles. A line of communication with issuers and investors should be created for a more transparent and regular dialogue, leading towards better engagement.

Furthermore, independent review and monitoring would improve the confidence and increase understanding in the industry.

Finally, investors could be more accountable in respect of how they use proxy advisory firms, which would be useful from small and mid-size quoted companies' perspectives.

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

Our members have reported that some proxy advisors will only allow issuers to see a copy of a report issued about them on payment of a fee. We believe that good engagement requires that such reports be freely shared in advance of publication.

Companies find situations particularly offensive when they discover that votes have been taken based on voting recommendations containing factual inaccuracies. In such circumstances, the damage caused can be irreparable.

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

We have no comments on this.

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.

We believe that it is very difficult to assess the impact which the BPP have had on the proxy advisory industry in practice since their adoption, as it is difficult to assess and compare practice before and after.

At the moment, in our experience, we understand that there could be improvements in developing regular dialogue and building on trust to create a meaningful relationship. We understand that the expectations issuers have towards communications with proxy advisors are limited, although issuers are very keen to have open channels of communication.

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.

Please see our response to Q35.

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.

We have no comments on this.

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.

We believe that in regards to methodologies, proxy advisors should work with their customers on how the process could improve.

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? b. proxy advisors' disclosure of the extent to which they take the above conditions into account? Please provide examples to support your response.

We have no comments on this.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'TW', is positioned above the typed name of the signatory.

Tim Ward
Chief Executive

Quoted Companies Alliance Corporate Governance Expert Group

Edward Craft (Chairman)	Wedlake Bell LLP
Colin Jones (Deputy Chairman)	UHY Hacker Young
Nathan Leclercq	Aviva Investors
David Isherwood	BDO LLP
Eugenia Unanyants-Jackson	BMO Global Asset Management (EMEA)
Nick Graves	Burges Salmon
Nick Janmohamed	Charles Russell Speechlys LLP
David Fuller	CLS Holdings PLC
Nicholas Stretch	CMS Cameron McKenna LLP
Louis Cooper	Crowe Clark Whitehill LLP
Nick Gibbon	DAC Beachcroft LLP
Tracy Gordon	Deloitte LLP
Andrew Hobbs	EY
Melanie Wadsworth	Faegre Baker Daniels LLP
Rob Burdett	FIT Remuneration Consultants
Richie Clark	Fox Williams LLP
Michael Brown	Henderson Global Investors
Bruce Duguid	Hermes Equity Ownership Services
Julie Stanbrook	Hogan Lovells International LLP
Bernard Wall	
Claire Noyce	Hybridan LLP
James Hodges	Hydrodec Group PLC
Peter Swabey	ICSA
Jayne Meacham	Jordans Limited
Eric Dodd	KBC Advanced Technologies PLC
Eleanor Kelly	LexisNexis
Jane Mayfield	
Anthony Carey	Mazars LLP
Mebbs Dossa	McguireWoods
Peter Fitzwilliam	Mission Marketing Group (The) PLC
Cliff Weight	MM & K Limited
Caroline Newsholme	Nabarro LLP
Jo Chattle	Norton Rose Fulbright LLP
Julie Keefe	
Amanda Cantwell	Practical Law Company Limited
Kelly Millar	PricewaterhouseCoopers LLP
Dalia Joseph	Stifel
Marc Marrero	
Philip Patterson	TMF Corporate Secretarial Services Ltd
Edward Beale	Western Selection Plc
Alexandra Hockenhull	Xchanging PLC