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Holzminden, June 22, 2012

Re: Discussion Paper on the development of the proxy advisory industry in Europe

Ladies and Gentlemen,

We do herby submit our answers to the questions contained in **Annex I** to the Discussion Paper mentioned above and kept the numbering and sequence of the questions to allow a better understanding of the answers given.

You may understand that we are not in the position to provide you with evidence regarding our observations of the development of the proxy advisory industry in Europe at this stage of the consultation process. Such evidence would require the disclosure of the identity of involved investors, banks and proxy advisors, which we feel is not adequate at the moment.

Nevertheless we trust that the feedback provided from an issuer's perspective is of help for you.

Yours sincerely,

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Tobias Erfurth

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Markus Sattler

Section IV.II. (Correlation between proxy advice and investor voting behaviour)

1) How do you explain the high correlation between proxy advice and voting outcomes?

To large extent institutional investors do not form their own, sufficiently independent judgement of the voting recommendations they receive. On the one hand they can't, because they do not have the required resources on the other hand there is not much benefit for them. Proxy advisors allow institutional investors to outsource complexity and to cut down costs for non-productive research functions. From there it is not convincing that institutional investors spend money for more than one proxy advisor and undertake some own research in addition. It's too expensive. Agenda items of general meetings mainly deal with administrative things and facts from the past. This is not of any interest for institutional investors anymore. Institutional investors are interested in the future. Here they can make profit and here the allocation of resources may pay off. One may note that those individuals at institutional investors, who talk to issuers every day, are different from the "corporate governance guys" in the back-office (if any) who take care of the execution of voting rights in general meetings. The latter ones do not have direct access to issuers. They have to rely on indirect information. Because of this it is more than convenient for them to follow recommendations given by proxy advisors. From the perspective of an institutional investor this makes perfectly sense.

2) To what extent:

a) Do you consider that proxy advisors have a significant influence on voting outcomes?

See answer above. We consider that proxy advisors have a significant influence on voting outcomes. Currently it is a fact that their recommendations will be followed. If investors would try to double-check recommendations given by proxy advisors, they would lose the benefit from the outsourcing again.

b) Would you consider this influence as appropriate?

No. It is our experience that proxy advisors do not have the competence to deal with various jurisdictions and industries appropriately. We fully support the observation that proxy advisor staff numbers tend to vary due to the highly concentrated and seasonal nature of the general meeting season and from year to year. As the general meetings advisory business is seasonal, it does require the employment of temporary staff to save costs. As a consequence temporary staff (which does not show the same scope of experience and qualification like full time employees) is trying to judge matters, which to some extent require a legal qualification irrespective of the fact that said qualification is not given. They follow a "one size fits all" approach and overlook that this approach may harm the investments. Since there is no liability of proxy advisors for such failure they have no need for a "tailor made" assessment and voting recommendation.

Section IV.III. (Investor responsibilities)

3) To what extent can the use of proxy advisors induce a risk of shifting the investor responsibility and weakening the owner's prerogatives?

Shareholders, as investors, have taken a risk through their investment. From there it is surprising to see that they tend to outsource the right to vote. An explanation might be that they believe there is no other practical way of implementing voting across a diversified portfolio. From the issuer's perspective this is regrettable, because proxy advisors do not create value. By providing all-in assessments plus a voting recommendation for a significant number of different companies from different jurisdictions and industries they create the impression that they can judge what is adequate for the investor in a specific situation. They simply can't. A lack of understanding for the individual issuer bears the risk that voting recommendations given by proxy advisors put the investment of investors at risk.

Section V.I. (Conflicts of interest)

4) To what extent do you consider proxy advisors:

a) To be subject to conflicts of interest in practice?

We consider proxy advisors to be subject to conflicts of interest in practice. Proxy advisors are aware of the fact that institutional investors are following the voting recommendations given by proxy advisors to a large extent. Thus proxy advisors can anticipate the outcome of voting's. This is triggering a significant insider problem. In addition they offer corporate governance advisory services, which need to be sold. Without demand no such sale. As all other businesses too, proxy advisors tend to create demand.

b) Have in place appropriate conflict mitigation measures?

Because of the lack of transparency we cannot comment on this one. We can only hope that this is the case.

c) To be sufficiently transparent regarding conflicts of interest they face?

We are not aware of any transparency. It appears to be part of the business model of proxy advisors to be in-transparent.

5) If you consider there are conflicts of interest within proxy advisors which have not been appropriately mitigated:

a) Which conflicts of interest are most important?

Insider topics are the most important issues, followed by a creative way of "fundraising" for "the development of the proxy advisor business in the interest of issuers". It appears to be another "perpetuum mobile" that the ones who create corporate governance guidelines without any democratic legitimacy are the same who judge thereafter, whether the standards have been fulfilled.

b) Do you consider that these conflicts lead to impaired advice?

Yes, but we are not in the position to provide any evidence with respect to this fact.

Section V.II. (Voting policies and guidelines)

6) To what extent and how do you consider that could be improvement:

a) For taking into account local market conditions in voting policies?

We fully support the criticism made to you that proxy advisors do apply a one-size-fits-all approach and do not sufficiently take into account local market conditions, such as business practices and regulatory regimes. To some extent proxy advisors provide legal advice. They need to proof that they employ people, who have the qualification to judge whether an issuer complies with local business practices and regulatory regimes.

b) On dialogue between proxy advisors and third parties (issuers and investors) on the development of voting policies and guidelines?

We would appreciate a mandatory consultation procedure in advance of issuing voting policies through proxy advisors to allow issuers, who are subject to various laws and regulations, to make their point. Today half of the proxy advisors are refusing to talk to us at all and we have only asked for any comments or questions regarding the agenda of our general meeting. They claim that they "do not want to be lobbied". Assuming this is correct, we do then need an supervisory authority which assures that all of the arguments are considered and disclosed to allow all interested parties to see why a proxy advisor is making a specific voting recommendation and what potential counter arguments have been (if any).

Section V.III. (Voting recommendations)

7) To what extent do you consider that there could be improvement, also as regards to transparency, in:

a) The methodology applied by proxy advisors to provide reliable and independent voting recommendations?

The methodology applied by each proxy advisor must be publicly accessible.

b) The dialogue with issuers when drafting voting recommendations?

See above 6 b. We would appreciate a mandatory consultation procedure in advance of issuing voting policies.

c) The standards of skill and experience among proxy advisor staff?

See above 6 a. Proxy advisors need to prove that skill and experience among proxy advisor staff is appropriate to judge whether a certain voting recommendation is adequate from the shareholder's perspective. In our case "the specialist who takes care of Germany" could not speak German, had to acknowledge that more than one third of the facts about us were incorrect and incomplete and was finally not allowed to communicate directly with us. We believe that said proxy advisor has no "specialist who takes care of Germany".

Section VI.IV. (Policy options)

8) Which policy option do you support, if any? Please explain your choice and your preferred way of pursing a particular approach within that option, if any.

We opt for option four. We would prefer a binding EU-level legislative instrument. We seek for consistent standards for all market participants in Europe. Proxy advisors play a significant role and to the extent they provide adequate and transparent voting recommendations they play an important role too. Because of the consequences and effects their voting recommendations may have (comparable to rating agencies), we believe that it is adequate to have them supervised by the adequate financial services authority in each member state. This would also allow solving the skill problem regarding the proxy advisor's staff as well as potential insider issues.

9) Which other approaches do you deem useful to consider as an alternative to the presented policy options? Please explain your suggestion.

None.

10) If you support EU-level intervention, which key issues, both from section IV and V, but also other issues not reflected upon in this paper, should be covered? Please explain your answer

Transparency with respect to the reasons and arguments of a voting recommendation given should be covered. Disclosure of potential corporate governance advisory services offered to issuers and investors should also be covered. Certain minimum requirements regarding the required qualification of proxy advisor's staff are necessary. We could think about a similar approach like implemented in the banking sector, i.e. post qualification experience, specific capital markets experience, proven reliability etc. We would need a form of sanctions in the event that proxy advisors do not act compliant.

11) What would be the potential impact of policy intervention on proxy advisors, for example, as regards:

a) barriers to entry and competition;

No other than for all other players in the financial sector and proxy advisors are playing in the financial sector.

b) inducing a risk of shifting the investor responsibility and weakening the owner's prerogatives; and/or

Assuming that we will have something like the UK Stewardship Code for all member states, we could live with a procedure that requires a mandatory dialogue between investors, proxy advisors and issuers whenever proxy advisors implement new guidelines. This would assure that all relevant parties at least have the option to address certain issues. Such a consultation process would also help to stress the point that it is finally the investor who has full responsibility to vote in the best interest of the shareholding.

c) Any other areas?

None.

12) Do you have any other comments that we should take into account for the purposes of this Discussion Paper?

A far deeper problem for stock listed companies – neither bearer shares nor registered shares – is that companies do not know who really owns the company. And even if shareholders attend the Annual General Meeting they can hide themselves behind proxy agents or banks.

In the end companies have no idea <u>who</u> voted, <u>why</u> and <u>which way</u>.

This "black box" is the opposite of transparency which is constantly requested by the companies from the capital markets.