27 July 2015

The European Securities and Markets Authority (ESMA)

103, rue de Grenelle

Paris 75007

France

By email: info@esma.europa.eu

Dear Sirs/Mesdames;

**Call for Evidence – Impact of the of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis (“The Principles”)**

Thank you once again for the opportunity to contribute to the on-going debate about the role of research and advice in the governance and stewardship of quoted companies.

As founder and chief executive of Manifest I write on behalf of my shareholders, my board and my colleagues to share our perspectives on the BPP process. We do not speak on behalf of our clients in our day to day work and so it would not be appropriate of me to say that this letter also represents their views. If they have them, they will make them known.

In the preamble to this latest consultation, ESMA highlighted that the Best Practice Principles for Shareholder Voting Research contained definition of the activities of the signatories which differed from the definition typically applied to the industry by its critics. We very much welcome this observation; we believe it makes a valuable contribution to improving understanding of the diverse ways institutional investors approach the Stewardship aspects of their role.

ESMA highlighted in its final report on proxy advisors that there was a need for greater transparency from the various actors in the corporate governance space in order to promote better understanding of the individual roles and responsibilities. We very much agree with this sentiment and it was for that reason that Manifest participated in the BPP process, even though we are not providing “default house voting recommendations”. As such we are not what the industry critics would call a “proxy advisor” indeed we have always described ourselves a proxy voting agency, a facilitator and provider of information and software tools to support investors rather than “taking control on their behalf.

Manifest has a strong commitment to bringing investors and companies together based on mutual trust and respect. Complete understanding and agreement is probably unlikely given the diversity of investors and companies.

Just as companies do not wish to be painted as one size fits all, neither do service providers, nor indeed their clients, the professional investors. Indeed, in the debate around the role of proxy advisors we are conscious that a very important constituency has been forgotten – our clients, the institutional investors, the shareholder and providers of capital.

The raging debate about proxy advisors has been extremely costly. It is not just a matter of our firms being distracted by the disproportionate effort required to defend our commercial interests, we are also having to indirectly defend the position of our clients, the people who pay our bills and who provide us with the inspiration and direction to do our jobs. Some, indeed most, have remained very quiet during the debate, many of them remain unclear what the fuss is about – as they put it, they’re the ones in the driving seat. If companies have anything to say about their voting practices then why do the insist on goint to the middlemen (or women)?

Those antagonistic towards proxy advisors may indeed have legitimate grievances or philosophical points to make, but the ad hominem attacks we are subject to are really nothing less than disrespect and disregard for our clients, the shareholders. Perhaps this “proxy war” on analysts has been a deliberate tactic– after all companies and their advisors complain about the intermediation by proxy advisors, perhaps they want investors to have a proverbial taste of their own medicine. Whatever the reason, the dogmatic “tit-for-tat” retaliation since this debate began is a long way from the European ideal of comply or explain.

Perhaps the attacks on proxy advisors are simply a reflection of the attitudes of some (not all) quoted companies – perhaps we should face up to the fact that they just don’t want to talk to shareholders at all. We’re confident that this is a minority of companies and that forward-looking boards really do welcome dialogue with their providers of capital.

Better investor communications is a strong theme which has been at the heart of the EC’s post financial crisis reforms and many agree that it this has the potential to make a great contribution to European capital markets.

If as much effort had been put in to “Fixing Stewardship” or “Vote Plumbing” as there has been “Fixing The Proxy Advisors” we are confident that we might now be much closer to achieving the EU’s better markets goals.

Better stewardship and governance seems a little like the elusive search for world peace or the end to famine, a work in progress. We recognise that there have been - and will continue to be – miss-steps along the way. We also recognise that there are genuine efforts from all sides to improve matters. It is very disappointing that the genuine efforts appear to be met with dismissal. We can sometimes only wonder if there is genuine intent on both sides.

We are confident that ESMA will receive negative feedback which paints the Principles and their development process as an unacceptable failure which demands further urgent regulation; or that we failed to heed the concerns of very interested parties who know exactly what needs to be done to us. This will come as no surprise, we hear these comments on a regular basis.

For example, at the July roundtable convened by ESMA in Paris to discuss the BPP process, a number of statements were made and serious and baseless allegations were levelled at proxy advisors. Most notably, the industry was accused of orchestrating a retaliation campaign against individual company directors because of their support for Loi Florange[[1]](#footnote-1). We are extremely grateful to the investors present who made it clear that the opposition to Florange (and other similar decrees in Europe) is reflective of a united and deeply-held belief of the overwhelming majority of investors[[2]](#footnote-2) that such rules entrench management and are not compatible with accountability.

In this regard we acknowledge the considerable efforts of ProxInvest and PhiTrust in raising awareness of the issues surrounding Florange[[3]](#footnote-3) - however, as the media commentary pointed out, the French fund management association and 11 of France’s largest companies were also supportive of the resistance to a law which opponents believe works against companies and shareholders’ best interests.

If the open expression of a considered point of view is now seen as unacceptable behaviour in Europe, or anywhere else, then fixing proxy advisors is probably the least of our concerns. It would seem that Europe has grown intolerant of the frank exchange of views between professionals and we find that deeply disturbing.

Votes against Florange or Decreto sviluppo imprese or directors are not simply a reflection of poor communication between boards and shareholders, nor are they a knee-jerk reaction to proxy advisor recommendations, they reflect a desire for fundamental reform of governance and stewardship.

The Florange Revolt of 2015, like the UK’s Shareholder Spring of 2012[[4]](#footnote-4), demonstrates that there comes a point when shareholders can and will speak up if they believe their views are being ignored.

It may surprise some critics that we actually agree on a number of points about how shareholder voting is working in practice. It is public knowledge that there are many shareholders who “auto-vote”[[5]](#footnote-5). This doesn’t only raise concerns for companies, it creates problems for the engaged investors who are perceived to take the same approach. We would suggest that if this auto-vote facility is creating such problems then it is for competent authorities to look at the existing fund manager regulation to understand how this has been allowed to happen. We note that the US Securities & Exchange Commission[[6]](#footnote-6). has recently issued guidance which clarifies that outsourcing research and voting does not mean outsourcing responsibility; a call which echoes the views of the Canadian Securities Administrators[[7]](#footnote-7).

In judging the success or failure of the Principles and developing our response we revisited ESMA’s 2013 report in which the industry was asked to develop a code of conduct .Specifically,[[8]](#footnote-8) (emphasis added is our own) :

13……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.

**14.** Such understanding and assurance will help to keep attention focused where it belongs,namely on how investors and issuers can, from their respective roles (in terms of fostering effective stewardship and robust corporate governance, can ensure efficient markets……..

The Principles were, therefore not only about the alleged behaviour of the signatories but about how a deeper understanding of how we fit in with other market participants.

The test of their success of the Principles is not just about how we have complied with the principles (which are comply/explain and not rules) but also how much others have taken up the challenge laid down by ESMA to use that information to foster better shareholder relations.

We have heard complaints that the BPP process was not sufficiently inclusive. Most processes could benefit from refinement, however in the context of other codes of conduct the BPP process had many governance characteristics others did not, for example the Index Industry or Head Hunters, and certainly proxy advisors were not consulted about any fund manager codes of conduct. We would also respectfully point out that ESMA asked the proxy advisor industry to undertake this work, not the whole market. A this early stage it was essential to get clarity in the process and very precise definitions. Governance Codes in Europe have taken the best part of 20 years and far greater resources than those at the disposal of a tiny industry to get to where they are today. We think it is important to keep things in proportion at this early stage.

The Group appointed an independent chairman Dr Dirk Zetzsche, and a series of roundtables were conducted with the industry participants during the busiest part of our year – proxy season. The BPP process was not always straightforward, we are all competitors and we do not always agree with one another or even all speak the same language. We do not always use the same definitions for similar concepts.

Dr Zetzsche therefore brought a great deal of inquiring scepticism to the process, and rightly so. He spent time talking with each of us individually to understand our points of agreement and divergence – he has been the only person in the European debate about proxy advisors to review our client service agreements to understand our precise service offerings and legal obligations. Very unusually for an industry code, he also produced his own independent and public review of the proceedings to articulate his own point of view[[9]](#footnote-9).

Even after all of this not all the participants agreed on all the issues, shareholder voting service providers are not a one size fits all industry. Nor should we be, divergence of views is a healthy and necessary component of a well-functioning market. However we did come to a consensus on the key issues of concern to the stakeholders – every principle and every piece of supporting guidance (which is integral, not simply anecdotal suggestions) was based on a thorough analysis of every piece of criticism received by ESMA about the industry during its various consultations and discussion papers.

At the end the first cycle of drafting a consultation was opened, the feed-back analysed, all the responses made public and then revisions were made. The final Principles were issued and made as widely available as possible, including the creation of a public website with a feedback mechanism. After the final Principles were published each signatory in the group had to pull together their respective policy documents to create a single statement. Some organisations may have also made adjustments to their internal procedures or invested in more training and technology.

Proxy Advisors are business information professionals, not public utilities nor do we operate as license holders to state franchises. We receive no subsidies from state or regulatory bodies, nor are we regulators, despite suggestions to the contrary. The cost associated with this process has been considerable, the return is highly uncertain. When critics of the industry say that we have no “skin in the game” they should realise that we are, for the most part private SMEs, not large multi-national corporations with infinite PR or lobbying resources. Our priority is to serve our clients to the best of our ability in a market place which has some unique and challenging features which are not of our making. Our reputation is our skin in the game, without a reputation for integrity we have very little to offer.

In addition to the costs of management time and travel expenses, there have been significant HR costs in terms of staff morale. Individuals who have acted towards their clients in and have enjoyed dialogue with them have had to be cut off from them so as to be able to demonstrate that no possible conflicts of interest could arise. It is extremely disappointing therefore that ESMA has not asked any questions about the cost implications or offered any cost/benefit analysis of the Principles or the impact of the proposals in the Shareholder Rights Directive.

In addition to the following public responses, private responses relating to confidential information have been sent under separate cover.

This response may be published in full on the ESMA website and circulated as required.

Questions for Proxy Advisors

**Q13: Where are your company’s headquarters?**

United Kingdom, Witham, Essex, CM8 2BL

**Q14: Does your proxy advisory business cover the global market or are you specialised in particular countries, regions and/or markets?**

Manifest provides a global shareholder voting research and data service, including a web-based end-to-end voting utilities to manage the entire AGM life-cycle. Our clients are geographically diverse although the majority are based in Northern Europe (including the UK).. Many European investors themselves invest in global securities but are only based in a single location such as London or Paris. As an internet-based service, location is really no barrier.

Manifest published its first reports and lodged first votes in proxy season 1996 and was the first UK service to offer the possibility of managing voting through a software platform using encrypted data feeds. The range of options available includes company or thematic (issues-based) research, analysis, voting guidelines, governance data and an electronic vote management platform.

Wherever possible, the Manifest system sends investors votes directly to the vote tabulator preferably, electronically, unfortunately some tabulators are still only working on fax or courier. The vote agency tools encompasses standardised agendas, portfolio reconciliations, translations, coding as well as provision of audit trails and custom reports to meet regulatory obligations such as The Principles of Responsible Investment, Stewardship Code etc.

As a vote agent our job is to facilitate an operational process for our clients by providing data and tools, not to become the shareholder or speak on their behalf. As the registrar or the stock transfer agent is to the company so a voting agency is to an investor – a provider of technology and data solutions. Since the launch of the Manifest service we have proposed and participated in a number of initiative designed to enhance the shareholder voting environment, most notably introducing the concept of “open standards, open access and neutrality in the execution chain. As part of our work on open standards Manifest proposed the idea of an “Investor ISIN” to facilitate shareholder ID. This concept has since evolved to become a reality with the Legal Entity Identifier.

We believe that when the term “proxy voting” became more prevalent after the first Shareholder Rights Directive was introduced and its meaning was not fully explained, just as the subtle differences between bearer shares, registered shares, immobilised shares and dematerialised shares have not universally understood in Europe. Consequently a number of assumptions were made, the most typical being that we are somehow “financial advisors by proxy” or “owners by proxy” or “backdoor activists”.

Very simply, as a voting agency[[10]](#footnote-10), we submit votes by electronic correspondence. They are called proxy votes because in most cases the ballot card is a “proxy appointment” which directs the chairman of the meeting to vote, as the proxy, in the way s/he is directed in the event of a poll vote (rather than a show of hands or by acclamation).

In reality our day to day role is therefore one of complex logistics management, data analysis, IT services and policy research. We seek to reduce information asymmetries between the companies we cover and the investor by planning, organising, classifying and cleaning data. We are extremely focussed on understanding the provenance and lineage of all the governance and voting related data we managed in order to allow investors to do their job. In this regard our job is no different to a service such as Bloomberg, or Reuters or FactSet. Where the boundary is crossed into being a “professional advisor” has yet to be even questioned by regulators or critics.

We are able to accomplish our tasks because of the considerable skills and effort our talented team brings to the table on behalf of our clients. This is a significant commercial undertaking – designing complex IT solutions to address to accommodate the idiosyncrasies of over 20 global markets, thousands of disparate annual disclosures, hundreds of counterparties requires a level of competence which sometimes seems at odds with our numbers of staff. It is precisely because of our competence that we can be sparing in our resources. Manifest has designed its systems to do the work that other organisations undertake on a manual basis. This is why we resist the call for disclosure of our headcount – it is an apples and oranges comparison and potential clients who undertake “due-diligence lite” based on such disclosures are a significant concern as there is a natural tendency in financial services to default to Big rather than Better as a risk mitigation measure.

One of the unspoken problems of the responsible investment space is that there is not enough honest about the supply chain, not just about the plumbing but the analytical process as well. It is not just an issue for the governance component, the same applies to the ESG/SEE/SRI community; we not paid enough on either an absolute or relative basis for the complexity of what we do and the competencies we offer. This leads to potential moral hazards as much as paying traders too much.

In this regard, we agree with companies, the shareholder voting service industry should not be dependent on armies of interns hired at sub-minimum wage levels with only a few days training. For reference, please note that all Manifest’s seasonal temps are paid above the UK minimum wage at point of entry. We have also have resisted the obviously significant cost savings that would accrue from training and recruiting seasonal staff in March. All our data temps receive a full 12 weeks immersion in their specific tasks.

It is a testimony to our training program that Manifest alumni have achieved notable success in various professional fields including pension funds, company secretaries, financial officers and academia. Junior staff who have combined their academic studies with our agile employment program have subsequently attained the highest level of degree qualifications. With a female founder shareholder and CEO, a female head of research, 50% female team leaders (all of whom balance family responsibilities and have flexible working arrangements as standard) as well as a multi-lingual European staff, we really do bring a level of diversity to finance which is rarely found elsewhere in financial services or quoted companies. We therefore do see ourselves as a very responsible as well as agile employer.

Shooting messengers is extremely easy. We must not forget that most quoted companies employ their own messengers and an extraordinary level of intermediation in their dialogue with the markets: company secretaries, corporate brokers, lawyers, remuneration consultants, investor relations officers, proxy solicitors; board evaluation consultants; auditors all of whom are involved to a greater or lesser extent in helping to manage and deflect unwelcome messages, not to mention trade associations and professional lobbyists and politicians. Companies are not resource-constrained and hardly seem to be in need of protection from shareholder voting research organisations. The concerted campaign against proxy advisors really does look like a concerted abuse of minorities rather than a sincere attempt to build understanding.

Does the problem boil down to the idea that companies believe, but dare not say, that if an investor uses a service provider to support their stewardship they are not taking the ownership of their ownership seriously? If so, why not say so. A lot of time and effort could be saved and we could address the real concern and move on to more important issues in reforming financial markets.

**Q15: For each European country in which you conduct your proxy advisory business, what is the percentage of listed companies that you cover? Please fill in the table below.**

Manifest offers either complete coverage of all the securities that are included in a client’s stewardship program or discreet subsets, irrespective of client locale.

We do not track the % of listed companies in a national stock market as our clients’ benchmarking is undertaken against global indices, e.g. FTSEurofirst 300 or MSCI EAFE or MSCI World etc. We are index agnostic, that is to say we do not restrict our coverage to any particular brand of index.

Stock exchanges are no longer “national” benchmarks as capital movement across borders is encouraged in Europe. Therefore a UK incorporated company may have its headquarters in Switzerland but listed in Germany. As far as jurisdiction is concerned the applicable company law takes highest priority and stock exchange listing lower. Some companies may also have multiple listings e.g. a Primary listing in London and a secondary listing in France or dual primary listings e.g. London and Amsterdam.

ESMA may find it helpful to disaggregate coverage numbers by industry to determine how many securities are real corporations versus financial instruments (funds or trusts for example).

We will provide a tabular breakdown under separate cover.

**Q16: For each of the countries you have listed under Q15, can you provide the number of listed companies you had a dialogue with during or in relation to the 2015 proxy season?**

As much as there are misunderstandings about proxies and bearer shares, Stewardship, Engagement and Dialogue are not universally agreed or understood concepts either. We will therefore answer the question in the possible ways we know they could be interpreted:

1. **Do we talk to companies about their General Meeting disclosures?**
2. **Yes**. But only to the extent that an analyst has found a contradiction or an error that requires clarification. This is because our role as analysts is not to second guess the opinions of our clients who will have their own views. Nor do we seek to become information insiders. Consistent with European securities markets regulations we only work with public documents that have been provided to all shareholders. We believe that selective disclosure disadvantages minority shareholders and that any materials shared with one proxy advisor or sell side analyst should be made available via either the national securities news information service or through the company’s own communication channels, email, website etc.
3. **No**. We are not party to prior consultations with companies about the potential content of the reports, nor would we expect to be, we are not the shareholder, nor are we a corporate advisor.

If the publicly available facts suggest one course of action, which is different to the recommendation, by definition, the recommendation is based on facts that are not available.

1. **Do we provide feedback to companies about their General Meeting disclosures?**

**Sometimes**, if we have found either the individual documents or the collective set of documents particularly obstructive, for example.

1. **Do we “engage” with companies and given them opinions about the likely views of shareholders?**

**Sometimes:** We will provide generic feedback along the lines of “most investors would expect to see a disclosure of this or that sort”. We would not say “If you did that then N% of our shareholders are going to vote against”. Nor would we ask a company to change any aspect of their meeting materials in order to achieve a specific outcome unless it was ultra vires, as can happen when the disclosures are defective in the context of listing rules or company law. For example, we are currently reviewing a number of disclosures in the UK market all of which have some form of discrepancy against UK Listing Rules.

1. **Do we “engage” with companies and ask them to change their governance arrangements?**

**No**. It would be entirely inappropriate for our business model as a research organisation to claim to “represent” shareholders views. The difference lies with the “advisory” element which crosses a boundary.

Either model is a legitimate approach, provided it is understood what each is designed to accomplish. Outsourcing responsibility for stewardship is not the same as outsourcing the support functions of stewardship. This kind of rating through relationship creates more problems and potential for conflicts. If investors perceive that one organisation receives more beneficial access than another the natural temptation of a no-engaged investors is to gravitate towards to firm that can provide most information at the least cost, even when that information is not necessarily “inside” in the strictest MIFID sense, it is in its own way a form or “payment for shareholder access” problem.

We do ask them to change their arrangements to the extent that we for meeting materials to be sent to us directly and, for the most part, companies are happy to oblige. A significant on-going weakness of corporate disclosures is in the sustainability reporting and provision of the actual ballot cards. We do not rely on the materials passed up and down the chain of intermediaries and much prefer, for reasons of timeliness and accuracy, to use company original materials so that they can be correctly processed. There is no legal requirement for shareholders to use the chain of intermediaries, indeed the insistence of the custodians that we are forced to use their appointed intermediary is a significant hindrance to straight through processing as well as a barrier to competition which could improve the plumbing (including shareholder ID)

**Q17: Are you providing proxy advisory services only or do you also offer other services? If you offer other services, please briefly describe the role proxy advisory services play relative to the share of total business.**

Manifest provides data feeds, custom research projects, publications, vote agency and custom software services to a mix of client types. We consider our research reports to be professional business analysis with considerable valuable information. companies and their advisor do purchase licenses to use the data and analysis. We do not, however provide “consulting services” to companies.

**Q18: For each European country in which you conduct business, what was your turnover in 2014? Please fill in the table below.**

This information is company confidential and highly restricted. It has therefore been provided separately to ESMA on a confidential basis.

**Q19: What is your total number of clients investing in European listed companies and their approximate total assets invested in such companies?**

This information is company confidential and highly restricted under the terms of our client agreement letters. If ESMA wishes to speak to our clients directly to understand how they use our services we would be happy to provide references. As discussed during recent plenary sessions with ESMA, there are concerns that the BPP Principles Statements are being used for “RFP-Lite” purposes without establishing contact with vendors. This is a significant problem with the UK Stewardship Code for example as it has led to vicious cycle of “everyone uses N, N is large therefore N must be good, we must there use N”. The reasons for N becoming so large are also attributable to certain other aspects of their business model.

**Q20: Please estimate the percentage of clients using your proxy advisory services which request a custom policy. Have you noticed any trend in the services requested in recent years? Please differentiate across classes of investors (e.g. investment funds, pension funds, insurance companies etc.).**

All of Manifest’s clients use a custom policy. Custom vote guidance based on client specific metrics has been our sole purpose since launch.

However knowing about a custom policy says nothing about how the policy is used within the client organisation or who is responsible for voting, how much time is spent on each company, the extent to which auto voting takes place etc.

**Q21: Please indicate your number of employees during the 2015 proxy season and the percentage of seasonal employees.**

This information is company confidential and restricted. It has therefore been provided separately to ESMA on a confidential basis for the reasons discussed above.

The shareholder voting season is extremely variable ranging from 200 events in one week to only 10. Although it would be preferable to be able to maintain the same level of staff all year round it is not practical to do so.

There are a number of steps that quoted companies could take to improve their investor relations and relations with proxy advisors.

* Companies could change their year ends to embrace March or June so as to spread workloads – this would also benefit the audit and company registrar professions, not to mention the venues used for shareholder meetings. It could be argued that seasonality of the audit season contributed to the high levels of non-audit fee management consulting work offered to quoted companies and which contributed to the market inefficiencies and “stickiness” in that profession.
* The Shareholder Rights Directive 1 contributed significantly to the date crunch problem by requiring AGMs to be conducted within 6 months of the year end. In the UK that was previously 9 months.
* In some countries companies state that their AGM will be on “the fourth Thursday in April” or the “last Thursday in April”. This is akin to the Japanese situation of having all AGMs on the same day.
* Companies could make the full annual reports and shareholder agendas available much earlier. The situation has improved greatly in recent years and most companies could publish their annual report at the time of the audited final results statement however it is not possible to complete a full analysis until the notice of meeting, chairman’s letter etc are made available.
* Companies could do much more to make their annual reports more accessible. Human lapses in data entry will always be a feature of any business process. However they are not helped by badly designed an laid out annual reports that are not screen/human friendly.
* Regulators could assist by not increasing the overall workload without thinking of the implications for the end consumer. Proxy analysts are not the only ones affected – the entire supply chain and life cycle of the AGM is affected.
* If companies are so worried about the dominance of one or other of the US proxy advisors they could stop being deferential to them and, as the SEC and CSA in Canada have suggested, take matters into their own hands and establish direct dialogue with investors instead.
* Companies could respect the fact that outside of their “Top 10” shareholders there are investors who are thoughtful and have insights worth respecting. They may be owner 12 or 25 but that trance of shares could be a significant proportion of their portfolio and so that position is important to them and their clients.
* Companies could respect their shareholders by answering their concerns directly when communicated to them. Our clients frequently express concerns that even when they write to explain their voting rationale they receive no response
* Companies could respect their shareholders by ensuring that it is the non-executives who are asked to participate in calls with the company secretary and not treat governance as an offshoot of investors relations. Shareholders want to hear about the governance of the company, not what the CEO/FD/IR thinks the markets want to hear.
* Companies could respect their shareholders by understanding that some issues – notably “One Share One Vote” are non-negotiable issues which transcend local market practice and not a retaliation procedure devised by disgruntled proxy advisors.
* It is not reasonable or even logical to blame proxy advisors for the conduct of their clients. As service providers we are in no position to regulate our clients’ behaviour.
* Companies need to respect the copyright and intellectual property that is inherent in a legitimate business information service which requires a considerable investment to maintain. The Credit Rating Agency industry turned to a more conflicted model as a direct consequence of copyright abuse following the introduction of photocopiers.
* Proxy advisors may not be regulated but asset managers are. Shareholder voting by institutional investors is a “corporate action” and so is covered by, in the UK, the FCA’s conduct of business rules in addition to the Stewardship Code. A shareholder meeting is called a “voluntary corporate action” and it is fund managers who are responsible for their oversight, not intermediaries.

There is clearly an unresolved issue of trust on the subject of “auto voting” and the precise definition of “we look at every issue”. The British are masters of understatement which can often be misunderstood[[11]](#footnote-11).

If companies need assurance of fund managers’ actions it is within the power of regulators to review every single voting transaction to see where the discrepancies arise. Institutional investors, for example pension funds, could also ask more probing questions in order to understand how stewardship is integrated int he investment process rather than simply asking “do you vote” or “which proxy advisor do you use?”

**Q24: What made you decide to become a signatory to the BPP?**

A commitment to good governance which is integral to our commitment to the UN Principles of Responsible Investment, the UK Stewardship Code and our own company, Manifest “clearly apparent to the sight or understanding”

**Q25: Has your practice in the areas mentioned under Q23 changed since you signed the BPP?**

**If yes, how did it change?**

**Please provide examples, especially related to the 2015 proxy season, to support your response.**

**Conflicts of Interest:** No members of our research staff are able to see the names of clients in our research production management system where previously they could. Furthermore all research enquiries are channelled through non-research staff. This is to demonstrate that analysts cannot be unduly influenced by the size of the organisation or its possible revenue importance to the company. We are not convinced that this is entirely healthy as it has disconnected individuals. However it was the most straightforward way for us to arrange matters. This involved IT changes and training.

We continue to not sell consulting services to companies

**Reliance & Accuracy of Advice:** Manifest has operated an ISO9001 quality management system for over 15 years and 2015 was our 3 yearly re-certification year, in addition to re distributing our internal management responsibilities. We achieved recertification with only a small number of minor documentation recommendations. We also embarked on a cyber-security management program to separate our IT policies from research and voting in preparation for the UK’s requirements to achieve Cyber Essentials certification in order to bid for government contracts.

Accuracy of advice continues to vex us conceptually. Voting guidance and research is subjective opinion, not a statement of absolute certainty. All our clients operate custom policies and they are in full control of their voting decisions. We are not able to look through to their investment strategies and we are not involved in their other engagement work. To the extent that governance codes and standards are created by central bodies we have to assume that they have been accurately developed. We take utmost care in preparing our core materials and use quality testing methodologies to ensure that the information we work with is as reliable as possible – again assuming that company disclosures are accurate.

**Disclosing General Policies & Methodologies:** We published our Principles statement and through the UK’s ICSA attempted to arrange two round table meetings to discuss the Principles with companies and our application. Both meetings were cancelled due to lack of support. This was extremely disappointing.

**Local Market Conditions:** Manifest has always incorporated local market conditions in its research and every component of our research reports is fully justifiable in terms of either academic grounding, regulatory grounding or client request. We appreciate that companies do not always understand that investors will have “red line issues” which are points of principle they are unwilling to concede, for example joint chair/CEO roles unless due to exceptional circumstances. Shareholder governance opinions are not always framed by increasing the share price but also using governance as a hedge against downside risk. There is considerable evidence of the specific personality characteristics of CEOs which require balancing by an independent chairman[[12]](#footnote-12). These opinions are derived from social psychology and behaviour economics rather than the traditional economic models used by investment analysts. Governance is the business of sustainable long-term success, not meeting next quarter’s earnings estimates.

**Engagement with Issuers:** Manifest’s clients are specific that we are not to engage with companies, which we agree with entirely. We are aware that companies are still under the mistaken belief that we are charging them to “mark our work”. This is quite incorrect. If our staff were to enter the Witham Tesco store and take goods away “to test them for accuracy., reliability, fitness for purpose” we can guess what the result would be. We are distressed by abuses of copyright which undermine the integrity of the very kind of service that companies seem to wish there was more use of.

**Q26: Have you taken any other practical initiatives in direct response to, or generally reflecting, the introduction of the BPP which are still in the process of being implemented? If yes, please specify what these are and the time frame you are envisaging for their implementation.**

Manifest continues to be an active participant in the BPP process and we are working towards an implementation report and on-going governance framework. For the majority of the signatories the Principles have only been operational for one season. As the host of the BPP website we monitor activity on the various download pages, which remains very low and the feedback through the group email mechanism has been negligible. Manifest has had a small handful of questions about reports.

The dialogue has been mutually fruitful and the companies have found the explanations of where we found the data in the annual reports and how it was treated very helpful. Manifest remains very focussed on initiatives to improve straight through voting across European borders as we see direct investor and company communication to be of paramount importance to the proper functioning of capital markets.

In conclusion we would like to state that we remain optimistic that better understanding will be achieved and that the BPP has been an important step towards that goal by providing market stakeholders an opportunity to understand our role in serving our clients. Standardised and agreed definitions of roles and activities have been lacking until now, the BPP group has made an honest attempt to put those definitions into a standardised form. The opportunity is there for others to respond, to ask questions, seek understanding and take action.

We believe that the approach taken by the SEC in its last public statement on the use of proxy advisors by professional investors has considerable merit and may serve as a model for the European market.

Structural impediments to a more diverse market remain doggedly difficult to overcome and we welcome the recognition of the competition difficulties in the shareholder voting space by the Financial Conduct Authority.

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*The two words 'information' and 'communication' are often used interchangeably, but they signify quite different things. Information is giving out; communication is getting through.”*
Sydney J. Harris, American journalist and author

1. The 2014 Loi Florange created the possibility, not the absolute requirement, of undermining the principle of one share, one vote in France. Despite strong government-backing, the Law is not universally supported by French directors. [↑](#footnote-ref-1)
2. Despite the long standing aversion to weighted voting rights (or “one share one vote – “OSOV”) in the UK, such structures were only recently prohibited in May 2014 under the Listing Rules for companies with a Premium listing. Following a comprehensive public consultation, the Financial Conduct Authority (FCA) introduced Premium Listing Principle (PLP) 3 which enshrines “one share, one vote” (PLP 4 supports PLP 3 by ensuring that in the rare cases of companies with multiple share classes, voting rights are broadly proportionate to equity interests). The FCA estimated that only around 10 Premium listed companies had a non PLP 3-compliant voting structure. Deviations from OSOV is still permissible for companies with a Standard listing and for AIM-traded companies. The FCA’s PLP 3consultation paper expressly stated that companies with weighted voting structures are more suited to a Standard listing which operates much lower governance standards [↑](#footnote-ref-2)
3. #  Financial Times ”French companies fight back against Florange double-vote law” [http://www.ft.com/cms/s/0/05314dfe-e27d-11e4-ba33-00144feab7de.html](http://www.ft.com/cms/s/0/05314dfe-e27d-11e4-ba33-00144feab7de.html%20)  16 April 2015

 [↑](#footnote-ref-3)
4. Financial Times “Boards wake up to a shareholder spring” <http://www.ft.com/cms/s/0/a284e414-95ee-11e1-a163-00144feab49a.html> 4 May 2015 [↑](#footnote-ref-4)
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6. US Securities & Exchange Commission, Staff Legal Bulletin No. 20 (IM/CF) “Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms” 30 June 2015 <https://www.sec.gov/interps/legal/cfslb20.htm> (accessed 24 Jul 2015) [↑](#footnote-ref-6)
7. Canadian Securities Administrators National Policy 25-201 Guidance for Proxy Advisory Firms 30 April 2015 <https://www.securities-administrators.ca/aboutcsa.aspx?id=1348> (accessed 24 Jul 2015) [↑](#footnote-ref-7)
8. ESMA. “Final Report: Feedback statement on the consultation regarding the role of the proxy advisory industry.” 19 February 2013. Page 6 http://www.esma.europa.eu/system/files/2013-84.pdf (accessed 22 Jul 2015). [↑](#footnote-ref-8)
9. Zetzsche, Dirk A., Report of the Chairman of the Best Practice Principles Group Developing the Best Practice Principles for Shareholder Voting Research & Analysis (May 12, 2014). Available at SSRN: [http://ssrn.com/abstract=2436066](http://ssrn.com/abstract%3D2436066) or <http://dx.doi.org/10.2139/ssrn.2436066> [↑](#footnote-ref-9)
10. The Manifest Voting Agency Ltd is a wholly owned subsidiary of Manifest Information Services Ltd and performs all the voting-related work under very defined powers of attorney. [↑](#footnote-ref-10)
11. The Guardian “Needless battle caused by uncommon language” John Ezard <http://www.theguardian.com/uk/2001/apr/14/johnezard> 14 April 2001 [↑](#footnote-ref-11)
12. Management Today, “The importance of being a chairman” <http://www.managementtoday.co.uk/news/1295043/importance-chairman/> Andrew Saunders 02 June 2014 [↑](#footnote-ref-12)