

Position Paper
of the German Insurance Association (GDV)

**An Overview of the Proxy Advisory Industry – Considerations on
Possible Policy Options**

**Gesamtverband der Deutschen
Versicherungswirtschaft e. V.**

Wilhelmstraße 43 / 43 G, 10117 Berlin
P.O.Box 08 02 64, 10002 Berlin
Tel.: +49 30 2020-5416
Fax: +49 30 2020-6416

51, rue Montoyer
B - 1000 Brüssel
Tel.: +32 2 28247-30
Fax: +32 2 28247-39

Contact:
Dr. Helge Hartig / Legal Department
Dr. Christian Kemter / Assets

E-Mail:
h.hartig@gdv.de
c.kemter@gdv.de

Summary

The German insurance industry welcomes the opportunity to comment on ESMA's overview of the proxy advisor industry. One of the most important topics in this regard is transparency, for both issuers and investors. Therefore, any measures in the field of proxy advisory services should focus on the increase of transparency, in particular where proxy advisors not only give advice with respect to the general meeting but also provide other consulting services. This would help to review if there is a shifting of responsibility or if conflicts of interest may arise. However, as long as there is an alignment of interests between investor and proxy advisor, we do not see a risk of shifting shareholder's responsibility.

If it is decided to provide a regulation in the field of proxy advisory services, such regulation should be lean. In this regard, we would prefer an option pursuant to which quasi-binding EU-level regulatory instruments would be released upon which ESMA has the power to issue standards for proxy advisors. Proxy advisors should either comply with these standards or explain any deviations. The focus of the standards should be transparency.

1. Introduction

The German insurance industry welcomes the opportunity to comment on ESMA's overview of the proxy advisor industry. In the case that institutional investors rely on the guidance of proxy advice without taking into account own considerations, ownership and property rights (i.e. voting rights) fall apart. However, it should be made clear that shareholders cannot be obliged mandatorily to prepare for the voting themselves. Therefore, any measures in the field of proxy advisory services should focus on the increase of transparency, in particular where proxy advisors not only give advice with respect to the general meeting but also provide other consulting services.

2. Comments on the questions

2.1. Question 1: How do you explain the high correlation between proxy advice and voting outcomes?

The German insurance industry has reasons to believe that smaller investors follow the proxy advice without taking into account their own considerations. In our view, this is because smaller investors do not have own voting guidelines and/or do not employ sufficient amount of personnel.

2.2. Question 2: To what extent:

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

b) would you consider this influence as appropriate?

a) According to the experience of the German insurance industry, a proxy advisor in Germany has the power to prevent the approval of the AGM to certain agenda items (i.e. exclusion of subscription rights).

b) The influence becomes inappropriate as soon as one single proxy advisor can decide on the voting outcome. This is particularly true with a view to proxy advisors which act upon their own policies without receiving directions from their clients.

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

As long as there is an alignment of interests between investor and proxy advisor, we do not see a risk of shifting responsibility.

Moreover, we do not see a general risk of weakening the owner's prerogatives as the owner's interests depend on the respective agreement with the investor. Not all owners want the investors to participate actively in governance issues. (We assume that "owners" shall mean the owners of institutional investors).

2.4. Question 4: To what extent do you consider proxy advisors:

- a) to be subject to conflicts of interest in practice?**
- b) have in place appropriate conflict mitigation measures?**
- c) to be sufficiently transparent regarding conflicts of interest they face?**

We see conflicts of interests when proxy advisors provide additional services to issuers, such as IVOX does for corporate governance consultancy. This should only be allowed if there is a clear separation, i.e. by offering proxy advice and corporate governance consultancy for issuers via two different companies with different personnel (i.e. ISS and ICS). IVOX does not make any mitigation measures transparent. Therefore, one cannot be sure if conflicts of interest have arisen and how they were solved.

2.5. Question 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?**
- b) do you consider that these conflicts lead to impaired advice?**

No comment.

2.6. Question 6: To what extent and how do you consider that there could be improvement:

- a) for taking into account local market conditions in voting policies?**
- b) on dialogue between proxy advisors and third parties (issuers and investors) on the development of voting policies and guidelines?**

a) The German insurance industry observes an improvement of ISS in taking into account local market conditions, e.g. regarding its voting policies for supervisory board elections (with respect to the particularity of employee representatives and independency requirements). In this regard, it should be con-

sidered that proxy advisors should consult with issuers in order to understand local markets better or to give the opportunity to correct errors.

Moreover, there is still room for improvement, such as the definition of independency. It is not possible to comply with all independency requirements of the relevant proxy advisors.

b) ISS has established a formal dialogue with issuers which helps to consider local market conditions before entering into the dialogue with their clients (investors) and finalizing their guidelines. We are not aware of a similar process at IVOX. If a dialogue takes place, then spontaneously and on very short notice.

2.7. Question 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?

b) the dialogue with issuers when drafting voting recommendations?

c) the standards of skill and experience among proxy advisors staff?

a) At first, voting recommendations should have a sufficient reasoning in order to understand the background of the recommendation. Moreover, from an issuer's perspective, it is most important that a dialogue process with the issuer is established. Such dialogue could take place before voting recommendations are delivered to clients. This would help to correct inaccuracies. Moreover, it could be considered that the issuer has the possibility to comment on the proxy advisor's draft recommendations. After that, the proxy advisor could deliver its recommendations to its clients, where possible together with the comments of the issuer. This would help investors to understand certain recommendations better. However, from an investor's perspective, such dialogue process should be designed in a way that inappropriate influence is not exerted.

b) See answer to question 6b).

c) It is important that work prepared by temporary staff is subject to supervision and reviewed by senior analysts.

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

We prefer option three pursuant to which quasi-binding EU-level regulatory instruments would be released. An EU Regulation could confer to ESMA the power to issue standards for proxy advisors. Proxy advisors should either comply with these standards or explain any deviations. However, any regulation should be lean. Therefore, the focus of the standards should be transparency.

2.9. Question 9: Which other approaches are do you deem useful to consider as an alternative to the presented policy options? Please explain your suggestions.

No comment.

2.10. Question 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.

The following points are key in this regard:

- increase transparency
- proper management of conflicts of interest
- fostering competition between proxy advisors

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

- a) barriers to entry and competition;**
- b) inducing a risk of shifting the investor responsibility and weakening the owner's prerogatives; and/or**
- c) any other areas?**

Please explain your answers: (i) EU-level; (ii) national level.

No comment.

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

No.

Berlin, 22 June 2012