



European Securities and
Markets Authority

Call for Evidence

**Impact of the Best Practice Principles for Providers of Shareholder
Voting Research and Analysis**



Responding to this Call for Evidence

ESMA invites comments on all matters in this paper and in particular on the specific questions presented throughout the paper. Comments are most helpful, if they:

- a. respond to the question stated;
- b. indicate the specific question to which they relate; and
- c. contain a clear rationale.

ESMA will consider all comments received by 27 July 2015.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the Call for Evidence, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you, if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this Call for Evidence

This Call for Evidence will be of relevance to persons and entities participating in the voting chain, particularly proxy advisors, investors, companies listed in Europe, proxy solicitors and consultants.

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Acronyms used

BPP	Best Practice Principles for Providers of Shareholder Voting Research and Analysis
BPPG	Best Practice Principles Group
EEA	European Economic Area
ESMA	European Securities and Markets Authority
EU	European Union

1 Executive Summary

Reasons for publication

As foreseen in its February 2013 Final Report on the role of the proxy advisory industry, ESMA has embarked on a review of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis published by an industry group in March 2014. The purpose of this Call for Evidence is to gather information on how stakeholders perceive the most recent proxy seasons – i.e. after the Best Practice Principles were published – to have evolved and to assess the extent to which new trends or changes in proxy advisors' approaches have developed.

Contents

Section 2 sets out the background to ESMA's review exercise and explains the structure and purpose of the Call for Evidence in more detail. Section 3 presents general questions intended for all stakeholders while sections 4-7 present questions targeted at specific stakeholders – proxy advisors, investors, issuers and other.

Next Steps

Responses to this Call for Evidence are requested by 27 July 2015. ESMA intends to publish the final results of its review at the end of 2015.

2 Introduction

2.1 Background

1. In March 2012 ESMA published a Discussion Paper¹ seeking the views of stakeholders on several key issues relating to the proxy advisory industry and on the appropriate policy response in relation to those issues. This reflected concerns held by some industry participants about possible market failures resulting from the activities of proxy advisors.
2. Following consideration of the responses and further discussions with stakeholders, ESMA published its Final Report² in February 2013. This concluded that ESMA had not been provided with clear evidence of market failure in relation to how proxy advisors interact with investors and issuers. ESMA's view on this basis was that the introduction of binding regulatory measures would not be justified at that time. However, ESMA considered that there were several areas, in particular relating to transparency and disclosure, where a co-ordinated effort from the proxy advisory industry would help to foster greater understanding and assurance on the part of other stakeholders as to their appropriate expectations towards proxy advisors. ESMA therefore concluded that the appropriate approach was to encourage the proxy advisory industry to develop its own Code of Conduct ('Code').
3. As part of its Final Report ESMA drafted a set of principles and accompanying rationales to offer guidance to the industry in its development of the Code. The areas covered by the principles were:
 - 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; and
 - e. Providing information on engagement with issuers.
4. In addition, the Final Report contained a commitment by ESMA to review the development of the Code by two years after the Report's publication (this was subsequently amended to require a review within two years of publication of the Code). The purpose of this review clause was to enable ESMA to assess the extent to which the Code had satisfactorily addressed the objectives underlying the principles set out in the Final Report. ESMA stated that, if for any reason the application of the Code had not achieved this aim or if subsequent market developments were to have caused concerns

¹ ESMA (2012), available at: <http://www.esma.europa.eu/system/files/2012-212.pdf>

² ESMA (2013), available at: <http://www.esma.europa.eu/system/files/2013-84.pdf>

that the Code could not adequately address, it might reconsider its policy position and proceed with more formal measures.

5. Following the publication of ESMA's Final Report, a number of proxy advisors established an industry group (the Best Practice Principles Group ('BPPG')) to draft the Code as recommended in the Report. The first draft of the Code was published for consultation in October 2013 and the final version, following consideration of responses, was published by the BPPG in March 2014 as the Best Practice Principles for Providers of Shareholder Voting Research and Analysis ('BPP')³. A number of the firms participating in the BPPG have in the course of the last year individually published statements which set out how they comply with the BPP.

2.2 Stages of ESMA's review

6. Against this background, ESMA is currently reviewing the development of the BPP, as it committed to doing in its Final Report. As indicated above, the purpose of the review is to assess the extent to which the BPP have helped bring about the changes identified by ESMA as desirable. Furthermore, the review will consider whether a satisfactory governance structure for the maintenance and monitoring of the BPP has been established.
7. The review will consist of an assessment of both the *width* of the BPP's impact, more specifically how many proxy advisors have signed up to the BPP compared to the universe of proxy advisors, and the *depth* of changes brought about by the BPP. The assessment of this latter element is structured in three principal stages:
 - Stage 1: An assessment of the extent to which the BPP address the areas identified in ESMA's Final Report as needing change.
 - Stage 2: An assessment of the extent to which the individual compliance statements published by the signatories to the BPP correspond to ESMA's Final Report. This step will also involve an examination of how each signatory has implemented the principles and guidance set out in the BPP themselves. The stage 2 assessment will be based on an analysis of signatories' compliance statements supplemented with bilateral discussions with the signatories to seek further information or clarification where needed.
 - Stage 3: An assessment of signatories' actual practice to determine the extent to which the conduct of the industry has changed following the publication of the BPP.

³ BPP (2014), available at: <http://bppgrp.info/wp-content/uploads/2014/03/BPP-ShareholderVoting-Research-2014.pdf>

8. Stage 3 is particularly important for the overall review because the BPP can only be determined to have had an impact if signatories have, where necessary, been adjusting their actual approach in the areas identified by ESMA since the publication of the BPP. This assessment needs to be informed by the views of as wide a range of stakeholders as possible.

2.3 Purpose and structure of the Call for Evidence

9. ESMA therefore believes that a Call for Evidence is integral to Stage 3 and to the review as a whole. The Call for Evidence needs to reflect both the broad nature of the proxy advisory industry as well as the range of different stakeholders who have an interest in it. While the scope of the BPP is not entirely equivalent to the understanding of proxy advisors applied by ESMA in its Discussion Paper and Final Report, the Call for Evidence aims at encompassing firms falling within the BPPs' wider definition. Therefore, throughout the Call for Evidence the focus is on all firms providing research, advice or recommendations to investors on voting in relation to European⁴ listed companies (hereinafter for simplicity referred to as proxy advisors or proxy advisory industry). The purpose of this approach is to cast the net wide, thereby obtaining both input from and information about all firms under the BPP that cover European listed companies.
10. The objective of the Call for Evidence is to gather information on how stakeholders perceive the most recent proxy seasons – i.e. after the BPP were published – to have evolved, particularly in comparison to previous seasons, and to assess the extent to which new trends or changes in proxy advisors' approaches have developed. In this connection, ESMA observes that the Call for Evidence is not seeking views on whether any change in its policy stance should be made.
11. In terms of structure, section 3 of the Call for Evidence presents a set of questions which are common to all categories of stakeholders and aimed at investigating the general views of such on the effectiveness and impact of the BPP on the proxy advisory industry as well as its structure and dynamics.
12. The ensuing sections set out questions designed specifically for the following groups of stakeholders (although individual stakeholders are free to respond to any other parts):
 - a. Proxy advisors;
 - b. Investors;
 - c. Issuers;
 - d. Other stakeholders, for example proxy solicitors and consultants involved in the industry.

⁴ Here and in the following, references to 'Europe' or 'European' cover both the EU and the EEA countries.

13. The main areas where evidence is sought are those covered by the principles set forth in the ESMA Final Report, as referenced above in paragraph 3.
14. The questions are set out in sections 3 to 7. Each section is introduced separately to help respondents understand the type of evidence that ESMA is seeking. ESMA would like to emphasise the importance of answers being factual and, to the widest possible extent, supported by clear evidence. Respondents disclosing confidential or commercially sensitive information are asked to follow the instructions regarding publication of their response as set out on page 2 of this document.

2.4 Next steps

15. Responses to this Call for Evidence are requested by 27 July 2015. Following a roundtable and consideration of all responses to the Call for Evidence, ESMA will publish the final results of its review at the end of 2015.

3 General questions

3.1 Introduction

16. This section sets out questions of a general nature which ESMA invites all stakeholders in the proxy advisory industry to respond to, whether they are proxy advisors, investors, issuers, proxy solicitors, consultants or play another role in the industry. The questions aim to uncover stakeholders' perception of the effectiveness and impact of the BPP on the proxy advisory industry in Europe. In addition to this section, sections 4-7 present questions specifically targeted at certain groups of stakeholders, i.e. proxy advisors, investors, issuers and other stakeholders.
17. In connection with this first collection of questions, ESMA would like to reiterate the invitation for respondents to provide factual answers which are supported by clear evidence and examples to the widest extent possible.

3.2 Questions

3.2.1 Background

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

3.2.2 The BPP on paper

- Q4: What is your view on the width and clarity of the scope⁵ of entities covered by the BPP (i.e. do you consider that the BPP cover the European proxy advisory market appropriately)? Please explain.

⁵ The definition of scope in the BPP is the following (BPP (2014), page 9): "Signatories analyse the corporate disclosures of listed companies with a view to informing investors' voting decisions. Services include the provision of research, advice or voting recommendations, that relate specifically to the exercise of voting rights. The services may exhibit one or more of the following characteristics:

- Data and analysis
- Company-specific research, advice or opinions

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.

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

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? 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.

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.

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.

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

4 Questions for proxy advisors

4.1 Introduction

18. The following section presents questions addressed to all firms offering research, advice or recommendations on voting in relation to companies listed in Europe. While the questions under section 4.2.2 are directed at proxy advisors which have not signed the BPP, the questions under section 4.2.3 are directed specifically at BPP signatories, taking into account information already obtained by ESMA in the course of bilateral discussions with such. Section 4.2.1 contains a series of background questions intended for all proxy advisors.

4.2 Questions

4.2.1 Background

Q13: Where are your company's headquarters?

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

Country	Number of listed companies covered	Percentage of listed companies in national stock market covered

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?

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.

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

Country	Turnover from proxy advisory services	Turnover from consultancy services	Turnover from other services	Country percentage of your global turnover

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

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.).

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

4.2.2 Questions for non-signatories to the BPP

Q22: What made you decide not to become a signatory to the BPP?

Q23: Though you are not a signatory to the BPP, has your practice in the following areas changed since the publication of the BPP? If yes, why and how did it change? 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.

4.2.3 Questions for signatories to the BPP

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

- 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.
- 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.

5 Questions for investors

5.1 Introduction

19. The questions in the following section are targeted specifically at investors who make use of the services of proxy advisors, whether research, advice, recommendations or any combination thereof.
20. As indicated in the Final Report, *ESMA considers that the role of proxy advisors is to be understood as facilitators for institutional investors to help them to discharge a specific part of the investors' stewardship responsibilities more efficiently, namely where these responsibilities relate to the investors' ownership rights and voting activities*⁶. In the Report, ESMA also clarified that while investors can legitimately use advice to inform their voting decisions, proxy advisors cannot be held responsible for the way investors use their advice.
21. The purpose of the section is to collect views of investors on the effectiveness and impact of the BPP thus far, in particular referring to the 2015 proxy season.

5.2 Questions

- Q27: Please describe the way your institution currently uses services from proxy advisors, in particular as regards:
- type of services;
 - number of proxy advisors contracted and, if applicable, reasons for choosing several rather than one provider.
- Q28: When using services from proxy advisors, how often do you deviate from their research/advice/recommendations in your voting choices? Please differentiate your answer across agenda items (e.g. say on pay, balance sheet approval, appointment of directors).
- Q29: When selecting a proxy advisor from whom to purchase services and/or in the course of your contractual relationship with a proxy advisor, do you place any importance on whether the entity is a signatory to the BPP? If no, please explain why. If yes, have you been in dialogue with the proxy advisor(s) you are making use of as regards its (their) application of the BPP?

⁶ ESMA (2013), pg. 7.

Q30: 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.

Q31: In your experience, to what extent have the BPP enhanced clarity as regards proxy advisors' methodologies and the nature of their information sources, thereby making it easier for you as an investor to better assess the accuracy and reliability of their research, advice and/or recommendations? Please provide examples to support your response.

Q32: In your experience, have the BPP enhanced:

- a. proxy advisors' level of awareness of local market, legal and regulatory conditions which the companies you invest in are 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.

Q33: In your experience, to what extent have the BPP enhanced clarity as regards the manner in which proxy advisors will disclose their communication with issuers to clients? If you consider there has been a change, has this affected the way you make use of their research, advice and/or recommendations? Please provide examples to support your response.

6 Questions for issuers

6.1 Introduction

22. The questions in the following section are directed at issuers, i.e. European listed companies. ESMA's Final Report highlighted in particular: i) that proxy advisors should, in principle, not be understood to be engaging with issuers on behalf of their investor clients on general matters of stewardship, and ii) that direct contacts between proxy advisors and issuers should be focused on helping the other to better understand the basis for their positions in the voting process.

23. 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.

6.2 Questions

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).

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.

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.

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.

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.

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.

7 Questions for other stakeholders

7.1 Introduction

24. The questions in this last section are directed at stakeholders in the proxy advisory industry which are not already covered by sections 4-6, for example proxy solicitors, consultants and auditors. The purpose of the questions is to obtain the view of such stakeholders on the effectiveness and impact of the BPP so far, in particular referring to the 2015 proxy season.

7.2 Questions

Q40: In your experience, to what extent have the BPP enhanced clarity as regards proxy advisors' conduct in the following areas? 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.

Q41: To what extent has the publication of the BPP had an impact on the following areas? Please provide examples to support your response.

- a. Your business practice;
- b. Your interaction/relation with proxy advisors;
- c. Your interaction/relation with any of your clients or service providers.