



European Securities and Markets Authority
103 rue de Grenelle
75007 Paris

Paris, 21th June 2012

AFG RESPONSE TO ESMA'S DISCUSSION PAPER: AN OVERVIEW OF THE PROXY ADVISORY INDUSTRY

The Association Française de la Gestion financière (AFG)¹ is grateful for the opportunity to respond to ESMA's discussion paper on the Proxy Advisory Industry.

Please find below AFG's response below AFG detailed comments.

¹ The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 416 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups. AFG members manage 2,600 billion euros in the field of investment management, making the French industry the leader in Europe in terms of financial management location for collective investments (with over 1,300 billion euros managed from France, i.e. 20% of all EU assets managed in the form of investment funds), wherever the funds are domiciled in the EU, and second at worldwide level after the US. In the field of collective investment, our industry includes – beside UCITS – employee savings schemes and products such as regulated hedge funds/funds of hedge funds, private equity funds, real estate funds and socially responsible investment. AFG is of course an active member of the European Fund and Investment Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

- **1st question: How do you explain the high correlation between proxy advice and voting outcomes?**

If French investors' votes tend to go in the same direction, this is not the consequence of an abnormal correlation between proxy advisors' advices and investors' behaviour; rather, this is due to the fact that investors have common principles that they implement when voting.

It would be paradoxical to blame investors for voting, while a few years ago most of them tended not to vote at all.

This positive evolution towards a better implementation of the shareholder democracy must be consolidated by avoiding that the voting exercise is turned into an obstacle course: if on some issues shareholders' votes converge on certain resolutions, it may be due to the fact that these issues have been left out by the company and should be better taken into consideration.

- **2nd question: 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?**

We do not consider that proxy advisors exercise a "significant" influence on the results of the votes in general meetings.

Proxy advisors act in accordance to the majority of their clients' requirements who follow various publications such as the OECD principles, ICGN reports, European directives and Recommendations of various entities (e.g. AFG recommendations on corporate governance).

- **3rd question: To what extent can the use of proxy advisors induce a risk of shifting the investor's responsibility and weakening the owner's prerogatives?**

Investors use proxy advisors as information providers, in the same way they use the press and listed companies' annual reports, which have the advantage of focusing on specific topics and analyse them thoroughly: each asset management company will decide on the resolutions proposed to the vote in view of these combined elements.

France-based asset management companies, which are strictly regulated, have to establish a voting policy to be applied during general meetings.

This voting policy is applied for votes on resolutions by the teams of the management company dedicated to that vote. Asset management companies therefore keep control over their votes. We believe that such an obligation for a voting policy as required by the French system should be promoted, in Europe and in other parts of the world, as it ensures shareholding democracy.

- **4th and 5th questions: 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?**

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?

In practice, to our knowledge, there has not been any proven case of proxy advisors' conflicts of interest.

Actually, proxy advisors' conflicts of interest might happen if a proxy advisor is too accommodating towards an issuer with which it had, otherwise, business connections.

In any event, in order to prevent any potential conflicts of interest, proxy advisors should set up prudential and management rules and strictly comply with Chinese walls and procedures in place. Meanwhile, issuers could usefully commit not to put any unjustified pressure on proxy advisors that issue recommendations.

- **6th question: To what extent and how do you consider that 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?**

Local market specificities can be adequately taken into account provided that information supplied by issuers is detailed enough. Dialogue between the concerned parties is of course indispensable.

Dialogue between proxy advisors and investors that are their clients, does actually exist (scientific committees...).

As for it, dialogue between proxy advisors and issuers tends to develop. It would be appropriate if it started well ahead of general meetings and not just before the general meetings; however, not all issuers have adopted such an approach yet.

We should bear in mind that, in any event, investors will keep control over the final vote whatever the proxy advisors' opinion.

- 7th question: To what extent do you consider that there could be improvement, also as regards to transparency, in:
 - a) the methodology applied by the 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 advisor staff?

Transparency could usefully be extended to investors' voting policies taking the example of the framework applying to French asset management companies (cf. response to question 3).

The methodology applied by proxy advisors is well-known.

As for dialogue, it cannot be just decided upon; rather, it has to be the result of exchanges developed over the time.

Issuers could certainly be encouraged to start dialogue also outside periods of general meetings in order to make it more productive.

As regards the organisation of proxy advisors' staff, it is of their own responsibility. In any case, if the quality of the studies supplied by proxy advisors is not in compliance with the requirements of the investor, the latter will no doubt change suppliers (please never forget that the system applying to proxy advisors is different from that applying to rating agencies that are paid by issuers). Here competition can play fully.

- 8th to 11th questions:

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.

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

If you support EU-level intervention, which key issues should be covered?

What would be the potential impact of policy intervention on proxy advisors, for example, as regard to: a) barrier to entry and competition, b) inducing a risk of shifting the investor responsibility and weakening the owner's prerogatives; c) any other areas?

The deficiencies found in the USA result from regulations that are different from those existing in Europe. Indeed, US regulation encourages putting the outcome of investors' vote in the hands of proxy advisors. Actually the use of proxy advisors by European and American investors relates to different.

Option 2, by encouraging proxy advisors to elaborate some standard rules, seems the best solution in. In any event regulations should not be excessive so as to raise prohibitive barriers to entry in the business.

The best way to act positively towards effective and sound competition is to promote the development of proxy advising, to encourage complementary activities for independent analysis companies and the development of research centres. Additionally, obstacles to voting - such as share blocking- that still exist though the practice of certain European sub-custodians or through powers of attorney - should be removed.

The role of proxy advisors is not the most acute issue: improving the voting process, decreasing its cost, reaffirming its confidentiality, making sure that issuers exercise no unjustified pressure would be more priority objectives.

- **12th question: Do you have any other comments that we should take into account for the purposes of this discussion paper?**

We believe that the current functioning of the entire chain between beneficial owner and issuer should be treated as a priority at EU-level.

As for the subject of proxy advisor industry, we would like also to reassert that, on the one hand, asset management companies are the proxy advisors' clients, and that, on the other hand, asset management companies have a fiduciary duty to their investors.

Actually, they expect proxy advisors to supply them with information allowing them to protect as far as possible the interest of their investors which prevails when they exercise their votes.

Proxy advisors as well as the press should be able to perform their business shielded from any pressure from those who might not agree with the opinions they express on the resolutions on the agenda of general meetings.

The more investors from various countries will be encouraged to define voting policies, therefore leading them to look for different information sources, the more proxy advisors will be enticed to develop in such a competitive environment.

Finally, shareholding democracy should absolutely be protected. In any event, only the final investor should have the rights relating to a share in order to avoid any risk of over voting, therefore protecting the principle «one share, one vote ».