

2017 BPP CONSULTATION: QUESTIONNAIRE

Best Practice Principles for Shareholder Voting Research "BPP"

Introduction

Thank you in advance for your valuable feedback on the [Best Practice Principles \(BPP\)](#). The closing date for comments is **15 December 2017**. There are two ways in which you can submit your views:

- By completing this online survey (15 minutes participation time); or
- By submitting comments in writing - please see all details on this webpage <https://bppgrp.info/2017-consultation/>.

All responses will be published on the website at the end of consultation period, unless respondents specifically request that they be treated as confidential.

Information on Respondent

1. Name of Organisation

AFEP (French Association of Large Companies / Association française des entreprises privées)

2. Type of organisation [select one]:

- Investor
- Company
- Governance advisory / voting research service (investor advisors)
- Company advisor
- Representative body**
- Other (please specify)

3. Main country / region of operation

France

4. Are you currently a client of a voting research provider? [Yes/ No] NO

5. All responses will be posted on the Review website unless requested otherwise.

- Please indicate below if you wish your comments to be treated as confidential.

6. If you would like to be informed of the outcome of this consultation please provide a contact email.

o.de.brosses@afep.com

General questions on the Principles

7. Were you previously aware of the Best Practice Principles? [Yes/No]

YES

8. If yes, how would you rate the positive impact of the Principles since they were introduced in 2014? [Scale of 0-5 where 0 is no impact, 5 is very positive]

0 no impact

1

2

3

4

5 very positive

Please give a reason for your rating

Thanks to the BPPs, proxy advisors are more aware of the necessity to be more transparent about their business practices and the way they operate. Their websites have been seriously improved and it is easier to find relevant information as regards for instance voting policy updates.

However, the three key principles (“Service quality”, “Conflicts of interest management” and “Communication policy”) are still too broad. They must also be supplemented as regards each information item to be disclosed under art. 3j of the revised Shareholder Rights Directive (2007/36/EC), which are: the essential features of the methodologies and models they apply; the main information sources they use ; the procedures put in place to ensure the quality of the research, advice and voting recommendations and qualifications of the staff involved; whether and if so, how they take national market, legal, regulatory and company specific conditions into account; the essential features of the voting policies they apply for each market; whether they have dialogues with companies which are the object of their research, advice or voting recommendations and with the stakeholders of the company and, if so, the extent and nature thereof.

In addition, some proxy advisors actually do not comply with the current BPPs even if they are signatories. In particular, ISS, in its compliance statement, considers that it fully complies with the three principles of the code whereas it is public knowledge that conflicts of interests arise when its fully owned subsidiary ICS provides corporate governance advice to issuers whilst ISS provides governance research about the same issuers. ICS is putting a lot of pressure on issuers to sell them their services, sometimes close to harassment. The way it works overall is that ISS implies they will vote against a resolution whilst ICS tells the issuer they can help get a positive vote. These practices are well known and it must be noted that a recent consultation of the Swiss Stock Exchange concluded that there is a need to regulate to avoid conflicts of interests stemming from the exercise of two different activities by certain proxy advisors which are governance consulting activities for issuers and the voting advisory activities for investors.

9. If you are a user of voting research services, do you, or will you in future check whether a service provider had signed up to the Principles before appointing them? [Yes/No]

10. Would it be beneficial to have a set of principles that are capable of being applied in all markets? [Yes/No]

Overarching principles in the BPPs are generic enough to be applied to at least all European markets. However, they should provide that voting policies shall be tailored to each country, taking into account local legislation, regulation and practices.

Scope and Structure of the Principles

11. At present the Principles address three areas: service quality (which includes duties to clients, research methodology and voting policy); managing conflicts of interest; and communications with issuers, the media and other stakeholders (see the BPPG website here). Are there other issues or activities that should also be covered by the Principles [tick each that applies]

- Intermediary vote processing and confirmation
 ESG advisory services and indices
 Governance engagement services
 Other (please specify)

Each item to be disclosed under art. 3j of the revised Shareholder Rights Directive (2007/36/EC) should be developed. Proxy advisors should not provide advisory services to issuers (on corporate governance, ESG, etc.), as these activities are a potential source of conflict of interest.

12. Each Principle is accompanied by guidance which sets out practices to be followed and information to be disclosed, on a "comply and explain" basis. Is this structure clear and appropriate? [Yes/**No**]

We support the "comply or explain" principle. However, the way it is applied is not satisfactory yet.

13. If no, how might it be improved?

Application of the "comply or explain" principle should be improved. Proxy advisors referring to the BPPs should report in detail on the implementation of these principles and, if applicable, provide an explanation of the reasons why they have deviated from any of them. The explanation to be provided when a provision has not been applied must be comprehensible, relevant and detailed. It must be substantiated and adapted to the proxy advisor's particular situation and must convincingly indicate why this specific aspect justifies an exemption. It must state the alternative measures that have been taken, if applicable, and must describe the actions that allow the advisor to comply with the aims of the relevant provision of BPPs. If a proxy advisor intends to implement a provision in the future from which it has provisionally deviated, it must state when this temporary situation will come to an end. Proxy advisors must indicate in a specific section or table the provisions that they have not implemented and the respective explanations.

The Content of the Principles (1: Service quality)

Principle 1: Service quality

14. If you are a client of one or more signatories, do you consider that this Principle deals adequately with the various service commitments that you expect? [Yes/No]

15. If no, how might it be improved?

16. Depending on the wishes of their individual clients, those signatories that make voting recommendations will follow either bespoke or house voting policies. How satisfied are you with the process used by signatories to develop their house voting policies? [Scale 0 to 5, where 0 is dissatisfied and 5 is very satisfied]

- 0 dissatisfied
- 1
- 2
- 3
- 4
- 5 very satisfied

17. How might the process be improved?

There should be more transparency regarding the way the voting policy is developed.

Voting policies should be tailored to each country, taking into account local legislation, regulation and practices and when the policies are applied they should take into account the specific circumstances of the company to which the recommendation relates. Most of the time, all of this is ignored by proxy advisors. For instance, French law lets companies' Board choose between combining and separating the functions of CEO and Chairman of the Board whilst ISS systematically opposes uniting the functions.

Regarding the essential features of the voting policies they apply for each market, proxy advisors should publish at the latest in November an update of their voting policies on their website. It is also important that the updates be published in a consolidated format, otherwise there are ambiguities whether some provisions are still valid or not. The methodology used to update the voting policies should be disclosed together with a synthesis of the responses received when a consultation process is launched.

Voting policies, guidelines (e.g. ISS P4P methodology) and Q&As should be written in a plain and clear language so that they are understandable both for issuers and investors. A definition of the different notions used should be disclosed. Issuers encounter more and more difficulties to understand some technical aspects of the voting policy such as: the "ISS P4P methodology" (due to the reference to a TSR criterion, P4P alignment can vary each month according to market conditions), the "burn rate ratio" (a US concept not applied in the US market), how the rate of independent directors is calculated, how the companies' peer groups are constituted, how vested LTIs are valued. These difficulties are triggered by the fact that ISS does not use public information, but makes its own calculations.

The quality of the information provided by ISS should be improved. With regards to its QualityScore, ISS proposes to issuers that they check and update the information provided. In most cases, the data are generally not updated at all since the last AGM, the questions are standard, which means that some are not adapted to the French market, the terminologies used are not defined so that the understanding of the perimeter of the executives remains uncertain etc.. In addition, it is impossible to know the criteria used by ISS to define its QualityScore (which constitutes the first part of the voting recommendations report).

We fear that the only purpose of this race to complexity is to invite issuers to use consulting services such as those provided by ICS. For instance, P4P calculation is impossible to check without an ICS tool, and around 15000€ must be paid to ICS to get to the result and explanation.

18. In addition to national law and listing rules, which, if any of these considerations should signatories take into account when deciding whether to adjust their house policies for different markets? [Tick all that apply]

- Standards in national corporate governance codes and equivalent
- Views and practices of local companies
- Views of local and international investors
- X Other (please specify)

Voting policies should be tailored to each country, taking into account local legislation, regulation and practices. When proxy advisors develop a methodology or issue a recommendation, they should take into account the specific circumstances of the company to which the methodology or the recommendation relates. In this regard, a particular attention should be paid to identifying companies' peers, company sizes and sectors.

19. How informative are signatories' descriptions of their research methodologies (see BPPG website here), including how they ensure that the research is reliable? [Scale 0 to 5, where 0 is uninformative and 5 is very informative]

X 0 uninformative

- 1
- 2
- 3
- 4
- 5 very informative

20. While recognising the need for signatories to protect their intellectual property, how might the statements be made more informative?

See Q17

The Content of the Principles (2: Conflicts)

Principle 2: Conflicts

21. The Principle does not attempt to eliminate potential conflicts, but to ensure that the signatories disclose the procedures by which they are managed. Is this an adequate approach? [Yes/No] **NO**

22. If no, how might it be strengthened?

Regarding management of conflicts of interest, proxy advisors should disclose any relationship (i) with the issuer who is subject to voting recommendations, (ii) with shareholders who have tabled resolutions, (iii) and with any persons who control directly or indirectly the issuer or the shareholders mentioned previously. Proxy advisors should disclose precisely how they prevent conflicts of interest when they offer different services (consulting services, voting platform...).

We agree that it is an important step to disclose how conflicts of interest are managed. But this is not sufficient to tackle the issue. The fact that ISS recognises that the only significant relationships that exist are those involving corporate issuers that are clients of ICS is of little help when a company is confronted with the reality of the situation. Conflicts of interests should be properly addressed and resolved.

There are obvious cases of conflicts of interest that are not tackled:

- **ISS P4P methodology:** issuers wishing to get full access to the calculation method of the P4P earlier than 15 days prior to the AGM are indirectly forced to pay for the services of ICS. Indeed, ISS refers to ICS services, which may give access to the analysis, underlying data and feedback on the model, provided that issuers pay important fees (around EUR 15,000).

- **ICS QualityScore:** in the ISS' voting recommendation report, the first pages are drafted by ICS and are presented as such. They include notably the QualityScore and the comparison with peers. According to the ISS website, QualityScore methodology is a numeric, decile-based score that indicates a company's governance risk relative to their index or region. A score in the 1st decile (QS:1) indicates relatively higher quality governance practices and relatively lower governance risk. Conversely, a score in the 10th decile (QS:10) indicates a relatively higher governance risk. Companies receive an overall QualityScore and a score for each of the following four pillars: Board Structure, Compensation/Remuneration, Shareholder Rights, and Audit & Risk Oversight. Companies have access for free to their own evaluation which is provided by ISS. However, they are also invited to subscribe to advice provided by ICS in order to improve their rating or to assess whether their resolutions respect ISS voting policy.

- **Environment and Social component to QualityScore:** ISS will launch it on 22 January 2018. There is a total confusion between the roles of ISS and ICS in this initiative. Indeed, issuers have been invited both by ISS and ICS to correct data (240 information items to check). This means that the system put in place by ISS consists in creating again new questionnaires, complex rating systems that stack on top of each other, while simultaneously offering their services to help issuers correct the pre-existing data. This extortion-like approach is unacceptable, as it seeks to induce a person to take on paid services to avoid or reduce a risk that ISS has control over.

- ICS gets access to the ISS contacts database, as issuers' staff in charge of these subject are directly contacted and sometimes very insistently.

It appears clearly that there is absolutely no Chinese Wall between ISS and ICS activities.

- We consider that the solution cannot be reached by strengthening the procedure but by a clear separation of duties: a proxy cannot be a governance advisor or a governance rating agency. In any case, we consider that issuers should have the possibility to refer conflicts of interest to an independent body, the "Monitoring board" (see infra).

23. The Principles include the following non-exhaustive list of potential sources of conflict:

- A signatory's ownership or shareholder base/structure, such as when a signatory is owned by an investor that owns shares in companies under coverage or when the investor is owned by an issuer under coverage;
- A signatory's employee activities, such as board memberships, stock ownership, etc;
- Investor-client influence on the signatories, such as when an investor who is a client of the service provider is a shareholder proponent or is a dissident shareholder in a proxy contest;
- Issuer-client influence on the signatories, such as when signatories provide consulting services to companies under coverage for research; and
- Influence of other investor clients.

Are there any others that should be included in this list? **Yes**

24. If yes, please identify them.

Conflicts of interest might also arise when the signatory provides to the same entity advisory and voting services.

25. If you are a client of a signatory, how satisfied are you with the information you receive on how potential conflicts are being managed? [Scale 0 to 5, where 0 is dissatisfied and 5 is very satisfied]

- 0 dissatisfied
- 1
- 2
- 3
- 4
- 5 very satisfied

26. How might procedures be improved?

The Content of the Principles (3: Communications policy)

Principle3: Communications policy

27. How satisfied are companies with their communication with signatories? [Scale 0 to 5, where 0 is completely dissatisfied, 5 is very satisfied]

- 0 completely dissatisfied
- 1
- 2
- 3
- 4
- 5 very satisfied

28. How might communication be improved?

BPP provisions concerning dialogue with issuers should be strengthened. We believe that the BPPs should not leave it to proxy advisors to choose whether or not to engage in dialogue with issuers but should require that proxy advisors have an engagement policy with issuers and disclose its main features in their compliance statement. This is the only solution to prevent proxies from sending inaccurate reports to their clients and to avoid factual errors and misunderstandings about facts and law used in the draft resolutions, which are unfortunately extremely frequent and may lead to serious consequences. In case of factual errors and misunderstandings the proxy advisor should commit to inform its customers about them as soon as possible.

More precisely, the engagement policy should state that companies should have sufficient time to analyse the draft recommendation report (a minimum of 2 days) provided that the company has disclosed its AGM agenda with the draft resolutions at least 35 days before the AGM. Proxy advisors should insert companies' quotes in their recommendation report provided that these quotes are concise enough and can enlighten shareholders on the draft resolutions submitted to the vote. The proxies should correct all factual errors in due time and in any case, before the report is sent to their clients. Engagement policies with issuers should be correctly applied when they exist.

Proxy advisors should clearly disclose in their report the following information, as it must be brought to the attention of its customers: conflict of interests, whether or not the pre-report is communicated to the issuer (if so, on what date, and if not, why), the outcome of the discussion

with the issuer (companies quotes accepted or not), the documents of the issuer studied by ISS to form its analysis.

According to our members, theoretically ISS establishes dialogue with companies before AGMs and commits to handling its preliminary report for comments. Several issuers praise the benefits of these exchanges since sometimes they lead to changes in voting recommendations. However, complaining about a non-demonstrable lack of time, ISS occasionally does not transmit any preliminary report; or does but only accepts issuers' comments within a very limited period of time. Usually ISS accepts written comments but refuses conference calls in most cases. This method cannot efficiently replace in-depth dialogue, especially regarding complex topics that require an extensive understanding of companies. Moreover, one may question ISS' recent rule of procedure which provides that the preliminary report should not be transmitted when a dissenting resolution is tabled. The need for dialogue and understanding remains the same here. This matter should be reassessed by ISS.

Glass Lewis is changing its policy as regards communication: Glass Lewis accepts to dialogue with issuers ahead of the proxy season. In addition, Glass Lewis has given access to an 'Issuer Data Report'. In this report, GL collects data regarding the main corporate governance issues such as composition of the board, related-party transactions, directors' remuneration, say on pay... At this stage, GL gives issuers the opportunity to check (partially) the accuracy of certain data but does not indicate its voting recommendations and is not willing to engage with issuers during the solicitation period. The report must be bought by the issuer ex post only (around 4500€).

Companies regret Proxinvest's decision to stop consulting companies prior to the publication of its report. The only potentially available document is a one-page-summary of voting recommendations (yes or no) that is not argued. Therefore their advisory letter is sent directly to their investing clients without any prior dialogue with issuers. The only way for companies to obtain this advisory letter is to pay a bill. Consequently Proxinvest may be brought to publish warnings based upon inaccurate information. Issuers can only refute or correct that information retrospectively, which is too late.

29. If you are a company, have you used the procedures set up by one or more signatories to make a complaint or provide feedback on their research on, or engagement with, your company?
30. If yes, how satisfied were you with how your complaint was handled? [Scale 0-5 where 0 is not at all satisfied, 5 is very satisfied]
- 0 not at all satisfied
 - 1
 - 2
 - 3
 - 4
 - 5 very satisfied

Please give a reason for your rating

31. Many companies consider they should have the opportunity to comment on the analysis and recommendations in research reports before they are finalised. If you are an investor, which of these statements most closely reflects your view? [Tick one only]

- I find it helpful to know the company's views on the research report before deciding how to vote, ahead of the custodian cut-off
- I have no objection in principle to this practice, as long as it does not reduce the amount of time I have to make voting decisions or impact on costs
- Companies already have opportunities to explain their case in their annual reports, the papers for the general meeting and direct engagement with their shareholders; they do not need another one
- It is not appropriate for companies to have a right to review or comment on draft research reports of which they are the subject
- Other (please specify)

Reporting on the Principles

32. At present, signatories are required to produce a public statement on how they have applied the Principles, which they update as necessary; some have chosen to update the statement every year. Signatories also produce a summary in a standard format for purposes of comparison ([see BPPG website here](#)).

Do the statements adequately cover all the matters that signatories are supposed to report on under the Principles? [Yes/No] **No, it depends of the subjects. Some are adequately covered such as the engagement policy with issuers, others insufficiently (e.g. management of conflicts of interest).**

33. If no, please identify which matters are not adequately reported on

Areas identified	ISS	Glass Lewis
a. Identifying, disclosing and managing conflicts of interest;	The statement brings clarity about certain conflicts of interest. ISS acknowledges that services provided by its subsidiary ICS to issuers might give rise to potential conflicts of interests, but that they are mitigated by firewalls and the fact that each voting research report issued by ISS contains a disclaimer indicating that the subject of the analysis or report may be a client of ICS. In addition, ISS provides institutional clients the ability to obtain information regarding ICS' dealings with corporate issuers, including the amount of compensation that the firm has received or will receive from the issuer. However, the	The statement brings clarity about conflicts of interest. Unlike ISS, Glass Lewis does not offer consulting services to issuers. GL discloses statistics about its conflicts of interests.

	<p>compatibility of ICS and ISS services is not put into question, although for instance, ICS proposes to issuers to assess if their resolutions respect ISS' voting policy. In addition, the first part of ISS' voting recommendation reports that includes the issuer's Quality Score is clearly provided by ICS. An independent study would be welcome on that aspect.</p>	
<p>b. Fostering transparency to ensure the accuracy and reliability of the advice;</p>	<p>The statement brings useful information about the relations of ISS with its clients. ISS covered in 2016 40,000 AGMs in over 117 developed and emerging markets with a team of 370 researchers. This represents an average of 108 meetings per researcher. One may wonder how this team is able to provide an accurate and reliable analysis of each resolution tabled by each issuer. Controls designed to ensure the quality of the advice are listed but no statistics are provided.</p>	<p>The statement brings useful information about the relations of Glass Lewis with its clients. GL issued in 2016 22,859 reports but the team dedicated to the research is not disclosed. It is only said that GL employs 360 employees. The statement is also very vague about controls designed to ensure the quality of the advice.</p>
<p>c. Disclosing general voting policies and methodologies;</p>	<p>The statement gives more details about ISS' methodologies. Its research coverage and delivery methods show a very mechanical approach to recommendations, without taking into account the specific circumstances of the company. ISS states that issuers' explanations on deviations from "comply or explain" corporate governance codes are taken into account, which appears not to be true in practice. ISS policy updates (by regions and not by country) are disclosed on its website.</p>	<p>The statement gives more details about GL's methodologies. It insists on the fact that GL policies are formulated via a bottom-up approach that involves extensive discussions with a wide range of market participants, including investor clients, corporate issuers, issuers organisations, academics... However, issuers do not seem to be involved in discussions about the formulation of its policies. GL policies for each market are disclosed on its website.</p>
<p>d. Considering local market conditions;</p>	<p>ISS claims to take into account local regulation and soft regulation, but the reality is different (e.g. separation of the functions of Chair and CEO is a choice of the Board and not of the AGM).</p>	<p>GL better takes into account local regulation and soft regulation. It claims not to apply the guidelines in a "one-size-fits all" manner, but with respect to the unique characteristics of each company.</p>
<p>e. Providing information on engagement with issuers.</p>	<p>The statement shows that ISS may undertake dialogue with issuers for the sole purpose of improving quality and substance of ISS'</p>	<p>The statement explains that GL is not open to dialogue during the solicitation period which begins on the date the notice of meeting is</p>

	<p>meeting analyses, research and vote recommendations. ISS generally allows issuers in France to comment on draft reports subject to certain conditions (the issuer has to submit a written request; materials relating to AGM should be available 35 days before the GM...). However, the statement does not show the reality of these limited contacts with very tight time constraints and the 24- hour deadline to review the report (which is already too short) is not always applied. ISS refuses discussion with issuers, as they are understaffed.</p>	<p>released and ends on the date of the meeting. GL provides only the Issuer data report to companies, which is used in the development of research and recommendations on subject companies. GL is now open to dialogue before the proxy season.</p>
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34. How informative and useful are the statements? [Scale 0-5 where 0 is uninformative, 5 is very informative]

- 0 uninformative
- 1
- 2
- 3
- 4
- 5 very informative

35. How might the statements be made more useful?

See Q 33

Monitoring the Application of the Principles

36. As part of this review, the BPP Group intends to introduce an independent element into the monitoring arrangements. Which of the following features should be part of the arrangements for monitoring the implementation and impact of the Principles? [tick all that apply]

- Oversight body including members independent of the sector
- Surveys of market participants
- Third party certification of how the Principles have been implemented by signatories
- Other (please specify)

It could be usefully to have:

- a survey/study to collect data about the way the BPPs are applied;
- explanations given in case of deviation from the principles;
- an oversight by an independent body.

37. If you have specific suggestions for how the Principles should be monitored, please provide details

- **The implementation of the Principles should be monitored by a separate entity. Monitoring could be done by an *ad hoc* dedicated body, the ‘Monitoring Board’, which should be composed of independent personalities representing various stakeholders such as market regulators (national and/or ESMA), issuers, shareholders.**
- **The ‘Monitoring Board’ should be in charge of monitoring the code’s implementation and issuer an annual report. It should assess the explanations in case of deviation from the Principles and make recommendations in order to improve their quality. In addition, in order to prepare future developments of the Principles, it should highlight best practices.**
- **Issuers or their representatives as well as shareholders should have the possibility to submit to the ‘Monitoring Board’ issues that relate to their relations with signatories (dialogue, erroneous data, content of voting policies, conflicts of interest...).**
- **The ‘Monitoring Board’ should have a website where its report, recommendations and warnings should be published. It should apply the ‘name and shame’ principle.**

38. Have you ever used the complaints procedure to complain about a breach of the Principles ([see BPPG website here](#)) [Yes/No] **NO**

39. If yes, how satisfied were you with how your complaint was handled? [Scale 0-5 where 0 is not at all satisfied, 5 is very satisfied]

- 0 not at all satisfied
- 1
- 2
- 3
- 4
- 5 very satisfied

Please give a reason for your rating

How can an issuer complain when: 1) it does not receive the report; 2) it is rated by one department of a proxy advisory firm and voting recommendations on its resolutions are issued by another department of the same firm. Issuers are in too weak a position to complain except if an oversight body is in charge of regulation.

Signing-Up Process

40. The process of signing up to the Principles is being looked at as part of this review. Other than a commitment to apply and report on the Principles and to be subject to the monitoring arrangements, are there other criteria that service providers should have to meet in order to be accepted as signatories? [Yes/No]

41. If yes, please specify

Other comments

42. If there are any additional comments you would like to make as part of this consultation, please do so here: