

AMF Recommendation 2011-06 Proxy voting advisory firms

Background regulation: Article 1844 paragraph 1 of the French Civil Code

Introduction

- (1) The Autorité des Marchés Financiers has consistently been supportive of shareholders exercising their voting rights at general meetings. In that respect, the AMF recalls that asset management companies are accountable to shareholders and investors in the collective investment schemes they manage for their practices as regards exercising their voting rights in the sole interest of investors only and to provide an explanation if they do not exercise these rights¹.
- (2) Exercising voting rights is the responsibility of the investors. The report published by the AMF working group in 2005 « on improving the exercise of voting rights in France » set out the following recommendation, still in effect: *“the exercise of voting rights is a great responsibility for investors. It shall be preceded by an in-depth review of the meaning and scope of the proposed resolutions, which should help investors form an educated opinion on them. It shall not restrict itself to indiscriminately applying a predefined analytical interpretation or recommendations put forward by proxy advisory firms. It is recommended that institutional investors and/or their management companies put in place the means necessary to analyse the resolutions of the companies in which they hold shares in order to exercise an informed vote.”*² Consequently, the AMF urges French and international institutional investors to define their own voting policies and to vote at the general meetings.
- (3) When exercising their voting rights, investors also play a positive role in improving the governance of listed companies by ensuring compliance with the rules set out in the market codes, the implementation of which is monitored by the AMF. The primary activity of proxy advisors is to analyse the resolutions presented at the General Meetings of listed companies in order to submit positive or negative voting recommendations on these resolutions to their customers, namely institutional investors. However, it is important to emphasise that proxy advisory firms do not relieve their customers (institutional investors) of liability.
- (4) Institutional investors often rely on the services of proxy advisory firms, commonly referred to as “proxy advisors”. The primary activity of proxy advisors is to analyse the resolutions presented at the General Meetings of listed companies in order to submit positive or negative voting recommendations on these resolutions³ to their customers, namely institutional investors. However, it is important to emphasise that proxy advisory firms do not relieve their customers, institutional investors, of liability.
- (5) The AMF also advises issuers to keep the members of their Board or Directors or Supervisory Board informed of any discussions with proxy advisory firms and their recommendations.

¹ Article L.533-22 of the Financial and Monetary Code: *“Asset management companies shall exercise the rights associated with the shares held by collective investment schemes under their management in the sole interest of the shareholders or unitholders investing in these collective investment schemes. They shall report on their practice as regards exercising voting rights pursuant to the provisions of the AMF General Regulation. In particular, when they do not exercise these voting rights, they shall explain shareholders or unitholders in the collective investment schemes why they did not exercise them.”*

² *“On improving the exercising of voting rights by shareholders in France” – September 2005 report by the AMF working group.*

³ They sometimes offer additional services aimed at facilitating the voting process for their customers, such as providing an electronic voting platform.

- (6) The AMF furthermore calls on French investors and issuers and their representatives to take part in international debates on good governance in order to help improve the standards and recommendation in force, which will subsequently serve as a reference for proxy advisors.
- (7) The AMF acknowledges the important role of proxy advisors, their market structure and the fact that the services they provide and the recommendations they issue are part of a contractual relationship with their customer. However, it appears that the voting recommendations issued by one or more such firms can have an impact on certain resolutions passed at General Meetings. This is why the AMF considers it necessary to ensure that this profession is exercised under transparent conditions, by firms that provide high-quality work.
- (8) As the authority responsible for monitoring the quality of information provided to investors, the AMF has issued this recommendation for proxy advisors. The recommendation addresses the issues of establishing and implementing voting policies, issuing voting recommendations, communicating with listed companies, and preventing conflicts of interest. The AMF encourages the relevant parties to make their best efforts to implement this recommendation as of 2011 and to mention this compliance on their website, and in any event, recommends implementing these provisions for the 2012 general meetings season. The AMF also requests that proxy advisors submit a progress report on their implementation of this recommendation.
- (9) Given that various firms provide proxy advisory services in several different countries, the AMF would like to see the initiative it has taken through this recommendation matched by a similar initiative within Europe and at a broader international level.

1. Establishing and issuing the voting policy

It is vital that the voting policy implemented by a proxy advisor be transparent insofar as, overall, it clearly states the advisory firm's opinion on issues likely to be presented at the shareholders' General Meeting and, more specifically, as it helps investors and issuers better understand the reasons behind the proxy advisor's positive or negative recommendation on a given draft resolution. For this reason, the AMF recommends that all proxy advisors publish their general voting policy on their website.

This recommendation also applies to all partial or complete updates of the voting policy. In this event, it is recommended that, no later than December, the proxy advisor publish a consolidated version of its voting policy applicable to General Meetings for the following year, and not just the updated or revised sections.

As regards the proxy advisor's voting policy, the AMF recommends that it include a definition of any specific notions or concepts used by the firm, and any other relevant information which may contribute to understanding its content and scope.

The AMF also recommends that the voting policy be established through a transparent process, taking into consideration the opinions of the investors who will receive the analysis reports, as well as those of any other parties involved.

In a transparent and consistent manner, the proxy advisor shall apply the voting policy thus defined and published on its website.

2. Establishing and submitting voting recommendations to investors

The AMF recommendation provides that the proxy advisory firm should dispose of the appropriate skills and resources to provide the relevant services, and especially to analyse draft resolutions. The persons in charge of examining draft resolutions must have adequate skills and experience to conduct this type of analysis. The AMF recommends that the proxy advisor define rules of procedure to be followed by its teams as a basis for establishing their analyses, and that it ensure compliance with these rules. The proxy advisor shall post the adopted policy covering all these aspects on its website.

In its analysis report, the proxy advisor shall explain the reasons supporting its voting recommendations for each resolution, particularly with regard to its published general voting policy.

3. Communicating with listed companies

The AMF recommends that the proxy advisor submit its draft report to the relevant company for review, failing which the proxy advisor shall clearly state in its analysis report that the draft was not submitted for review and explain the reasons why.

The AMF also recommends implementing the following rules:

- The company shall be allowed at least 24 hours to submit any feedback or comments, as long as the company has submitted its draft resolutions, related committee reports and any other necessary documents to the proxy advisory firm at least 35 days before the date of the General Meeting.
- At the company's request, the proxy advisor shall include the company's comments on the voting recommendations in the analysis report that it submits to the investors, on the condition that these comments are concise, help the shareholders understand the draft resolutions on which they are to vote, and do not include discussion on the general voting policy;
- If needed, the proxy advisor shall correct any substantive error found in its analysis report and reported by the company, and ensure that the correction is submitted to the investors as quickly as possible.
- The proxy advisor shall publish on its website its adopted rules on communication with companies, particularly rules on submitting the draft analysis report.

The AMF recommends that the proxy advisor send the concerned company its final analysis report as soon as possible and at the same time as it is submitted to customers.

4. Preventing conflicts of interest

The AMF recommends that the proxy advisor define, and post on its website, reasonable and appropriate measures to prevent potential conflicts of interest involving the firm, its executive directors or its analysts, specifying procedures to be followed should any conflicts of interest arise, particularly when multiple activities are involved (advising issuers, providing a voting platform, proxy solicitation, etc.).

The AMF advises the proxy advisor to include these measures in a Charter of Ethics or Code of Conduct. The proxy advisor may designate a person to be responsible for ensuring the implementation of these measures and verifying the compliance thereof.

More specifically, the AMF recommends that the proxy advisor expressly state any ties of interest it may have with:

- the company whose draft resolutions it is analysing;
- any shareholder who has submitted items for the agenda or draft resolutions for the General Meeting for which the proxy advisor is preparing the analysis report;
- the persons who directly or indirectly control the company or the shareholders designated in the previous paragraphs.

If such ties exist, the proxy advisor shall state in its report how these ties of interest have been managed in accordance with the measures defined in the Charter or Code of Conduct.