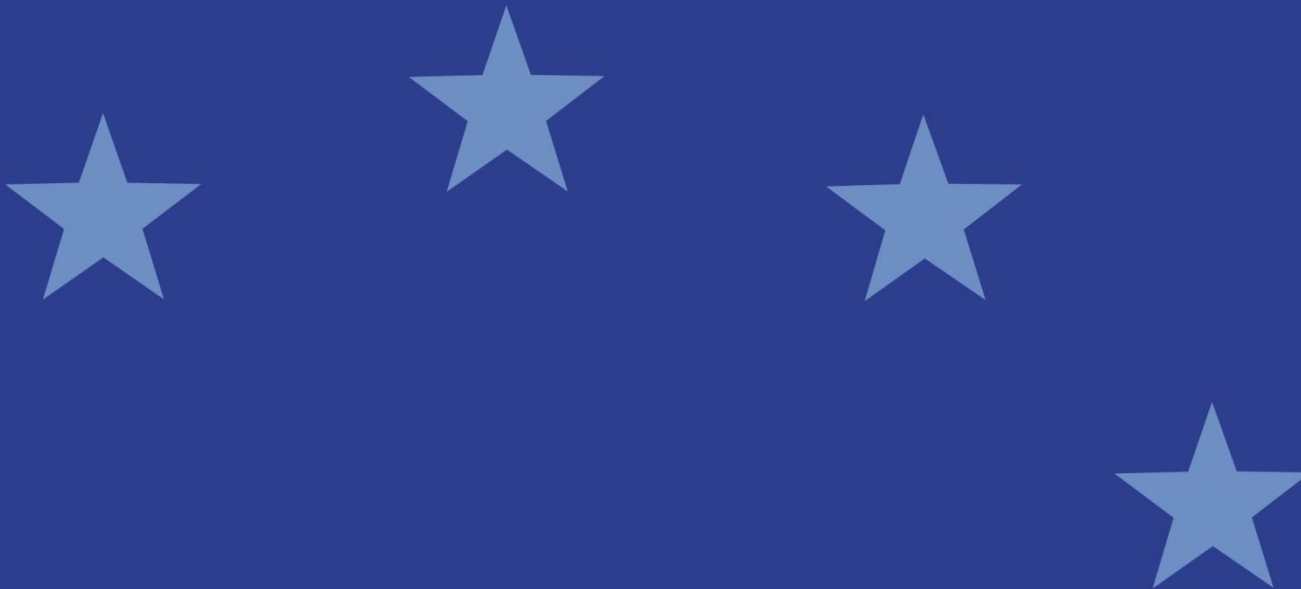




European Securities and
Markets Authority

L'autodisciplina in materia di proxy advisors e il ruolo dell'ESMA

Valerio Novembre, ESMA



- Il ruolo dell'ESMA in materia di Corporate Governance
- ESMA e Proxy Advisors
- ESMA review dei Best Practice Principles
 - Mercato di riferimento
 - Contenuti dei BPP e dei compliance statements
 - Governance dell'autodisciplina
- Art. 3(j) SRDII
- Conclusioni e spunti di discussione

Background – Il ruolo dell’ESMA in materia di corporate governance

- Mandato ibrido: Art. 1(2) vs. 1(3) Founding Regulation
- Shareholder Rights Directive non compare nella Founding Regulation
 - Il testo finale della revised SRD assegna all’ESMA un ruolo di monitoraggio sull’implementazione delle nuove norme (Art. 3(f) e Art. 3(k)(2)) e la gestione di un registro sulle soglie nazionali di limitazione della SI (Art. 3(a)(7)).
- Il lavoro degli ultimi anni in materia di CG e’ stato “own initiative” e si e’ focalizzato su:
 - Remuneration report (Art. 9(b)) - 2016
 - Identificazione degli azionisti e sistemi di comunicazione (Art. 3(a)(b)) – 2017
 - Proxy advisors (Art. 3 (j)) – varie fasi

- Numerosi interventi fin dalla nascita dell'Istituzione:
 - Fact Finding (2011)
 - Discussion Paper (2012) – fallimenti di mercato e opzioni regolamentari
 - ESMA Final Report (2013) – ESMA suggerisce l'opzione di autoregolamentazione e invita il mercato a farsi promotore di un codice di autodisciplina
 - Best Practice Principles (2014)
 - ESMA (early) review of BPP (2015)



ESMA (early) review of BPP (2015) - 1

- Monitoraggio e review della fase di avvio dell'autodisciplina (BPP e BPPG)
 - Early stage e own initiative
 - Successiva review sara' obbligatoria, potra' contenere proposte regolamentari e dovra' essere conclusa entro 6 anni da entrata in vigore SRDII
- Scopo della review:
 1. Valutare ampiezza dell'impatto (numero ed entita' dei partecipanti al BPPG)
 2. Valutare profondita' di impatto (i.e. se il codice di autodisciplina predisposto dall'industria fosse in linea con le raccomandazioni ESMA)
 3. Verificare efficacia della "governance" del BPPG e piu' in generale del sistema di autodisciplina

ESMA (early) review of BPP (2015) - 2

1. Analisi del mercato di riferimento e' stata complicata da questioni di confidenzialita' relative ad alcuni dei dati 
2. Tre piani di analisi per verificare la profondita' di impatto:
 - BPP vs. ESMA principles and expectations
 - Fully fulfilled
 - Broadly fulfilled
 - Partly fulfilled
 - Compliance statements vs. ESMA principles and expectations 
 - Fully fulfilled
 - Broadly fulfilled
 - Partly fulfilled
 - Actual practice (preliminary and qualitative assessment basato su public feedback)
 - Main impact on transparency
 - Lower impact su practice, e.g. conflicts of interests and local market conditions

3. Governance del sistema di autodisciplina

- La governance del processo di drafting dei principi e' stata in linea con le aspettative dell'ESMA
 - Nomina presidente indipendente e forte trasparenza del processo verso ESMA
- La governance relativa al funzionamento dei BPP successivamente alla pubblicazione e' meno positiva e costituisce la principale raccomandazione della review ESMA anche al fine di facilitare nuove adesioni al BPPG
 - In particolare, ESMA raccomanda una struttura piu' robusta ad esempio attraverso la nomina di un chair indipendente o un allargamento del board a componenti ulteriori rispetto ai rappresentanti dei PAs aderenti
 - ESMA raccomanda inoltre una struttura piu' chiara per quanto concerne il monitoring on-going dei principi
 - Comparative framework
 - Feedback mechanism
 - Review biennale

SRDII – Art. 3(j) – Transparency of proxy advisors

- Adozione da parte del Parlamento Europeo il 14 Marzo.
- Riferimento regolamentare all'autodisciplina
- Meccanismo CoE
- *1 – “Member States shall ensure that proxy advisors publicly disclose reference to a code of conduct which they apply and report on the application of that code of conduct. Where proxy advisors do not apply a code of conduct, they shall provide a clear and reasoned explanation why this is the case. Where proxy advisors apply a code of conduct but depart from any of its recommendations, they shall declare from which parts they depart, provide explanations for doing so and indicate, where appropriate, any alternative measures adopted. (...)”*
- *2 - (...) The information referred to in this paragraph shall be made publicly available on the websites of proxy advisors and shall remain available free of charge for at least three years from the date of publication. The information does not need to be disclosed separately where it is available as part of the disclosure under paragraph 1.”*

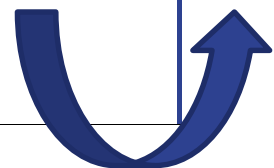


Conclusioni e spunti di discussione

- Regulation vs. self-regulation
- US vs. EU
- Business models dei PAs europei molto diversi
 - locali vs. globali
 - custom policies vs. standardised
 - dimensione
 - dialogo con emittenti
 - attività di consulenza
- Trend di concentrazione di mercato?
 - Ivox (DE), Shareholder Support (NL)

Indicatori usati nella valutazione della profondità di impatto

Level 1: Best Practice Principles			Level 2: Compliance statements	
Dimensions	Indicator	Assessment	Indicator	Assessment
1. Identifying, disclosing and managing conflicts of interest	1.1.a PAs should seek to avoid conflicts of interest with their clients	Broadly fulfilled	2.1.a Signatory declares that it will seek to avoid conflicts of interest with clients	Partly fulfilled
	1.1.b Where a conflict effectively or potentially arises, PAs should adequately disclose this conflict and the steps which they have taken to mitigate the conflict	Broadly fulfilled	2.1.b Signatory declares that it will disclose potential and actual conflicts of interest and steps taken to mitigate them to clients	Broadly fulfilled
			2.1.c Signatory publicly discloses details of its procedures of mitigating potential and actual conflicts of interest	Broadly fulfilled
2. Fostering transparency to ensure the accuracy and reliability of the advice	1.2.a PAs should provide investors with information on the process they have used in making their general and specific recommendations	Fully fulfilled	2.2.a Signatory provides details of its process of ensuring the accuracy and reliability of its advice, e.g. by disclosing details on its procedures and staff's experience and qualifications	Broadly fulfilled
	1.2.b PAs should provide investors with information on any limitations or conditions to be taken into account on the advice provided so that investors can make appropriate use of the proxy advice	Fully fulfilled	2.2.b Signatory provides details of its method of informing clients of limitations or conditions to be taken into account regarding the advice provided	Partly fulfilled



Indicatori usati nella valutazione della profondita' di impatto

2.i Disclosing general voting policies and methodologies	1.2i.a PAs should, where appropriate in each context, disclose both publicly and to client investors the methodology and the nature of the specific information sources they use in making their voting recommendations	Fully fulfilled	2.2i.a Signatory provides details of its methodology for making voting recommendations	Broadly fulfilled
	1.2i.b PAs should, where appropriate in each context, disclose both publicly and to client investors how their voting policies and guidelines are applied to produce voting recommendations	Partly fulfilled	2.2i.b Signatory provides details of the information sources utilised in developing voting recommendations	Fully fulfilled
			2.2i.c Signatory provides details of how voting policies, [whether house, client or custom,] are applied to produce voting recommendations	Partly fulfilled
2.ii Considering local market conditions	1.2ii.a PAs should be aware of the local market, legal and regulatory conditions to which issuers are subject	Partly fulfilled	2.2ii.a Signatory declares that it is aware of local market, legal and regulatory conditions	Fully fulfilled
	1.2ii.b PAs should disclose whether/how these conditions are taken into due account in their advice	Fully fulfilled	2.2ii.b Signatory provides details of its method of informing clients of whether/how it takes local conditions into account	Broadly fulfilled
2.iii Providing information on engagement with issuers	1.2iii.a PAs should inform investors about their dialogue with issuers and of the nature of that dialogue	Fully fulfilled	2.2iii.a Signatory declares that it will disclose communication with issuers, including nature of such communication (e.g. frequency, format), to clients	Broadly fulfilled



Numero e dimensione dei signatories del BPPG

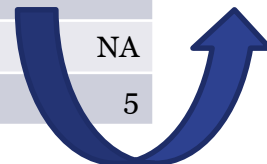
29. März 2017 | | Location,City

Table I: Signatories' staff numbers

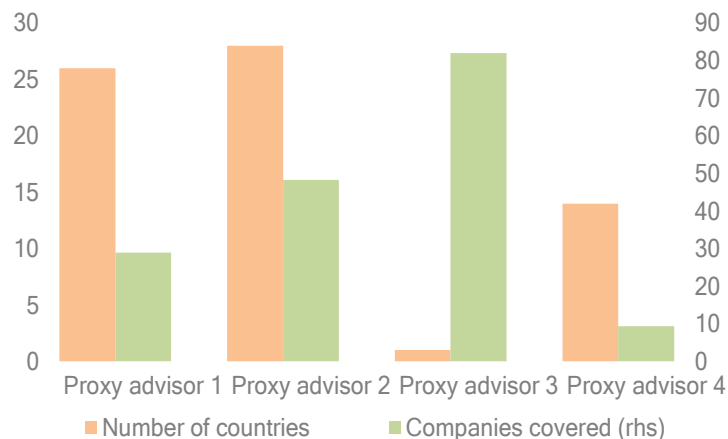
Proxy advisor	Staff number	Of which seasonal/temporary employees
Glass, Lewis & Co. (global number)	+360	NA
ISS (global number)	987	220
IVOX	10	2
Manifest	55	NA
PIRC	40	NA
Proxinvest	14	6

Table II: Non-signatories' staff numbers provided through the call for evidence

Proxy advisor	Staff number	Of which seasonal/temporary employees
Eumedion	4	NA
IVIS	11	5



Ulteriori analisi sul mercato dei proxy advisors



Note: Number of EU countries where proxy advisors are active and average number of companies covered (rhs), in % of total listed companies.
 Sources: ESMA.

