

s47F

From: Dickson, Tom
Sent: Friday, 23 April 2021 11:45 AM
To: s47F
Subject: RE: Proxy Adviser Consultation Paper - Seeking Input [~~SEC=PROTECTED;~~
~~CAVEAT=SI:CABINET~~]

PROTECTED//CABINET

Thanks s47F

Will the part on super cover off on the dynamic between compulsory Super and proxy advice as per TO request?

Tom Dickson

Assistant Secretary, Branch Head
Corporations Branch
Market Conduct Division, Markets Group
[The Treasury](#), Langton Crescent, Canberra, ACT, 2600
P +61 2 6263 2868
M s 47F

PROTECTED//CABINET

s22



s22



From: s47F [redacted]@TREASURY.GOV.AU>
Sent: Friday, 23 April 2021 4:02 PM
To: s47F [redacted]@TREASURY.GOV.AU>
Cc: s47F [redacted]@TREASURY.GOV.AU>; s47F [redacted]@TREASURY.GOV.AU>;
s47F [redacted]@TREASURY.GOV.AU>
Subject: RE: Draft only - input on proxy consult paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

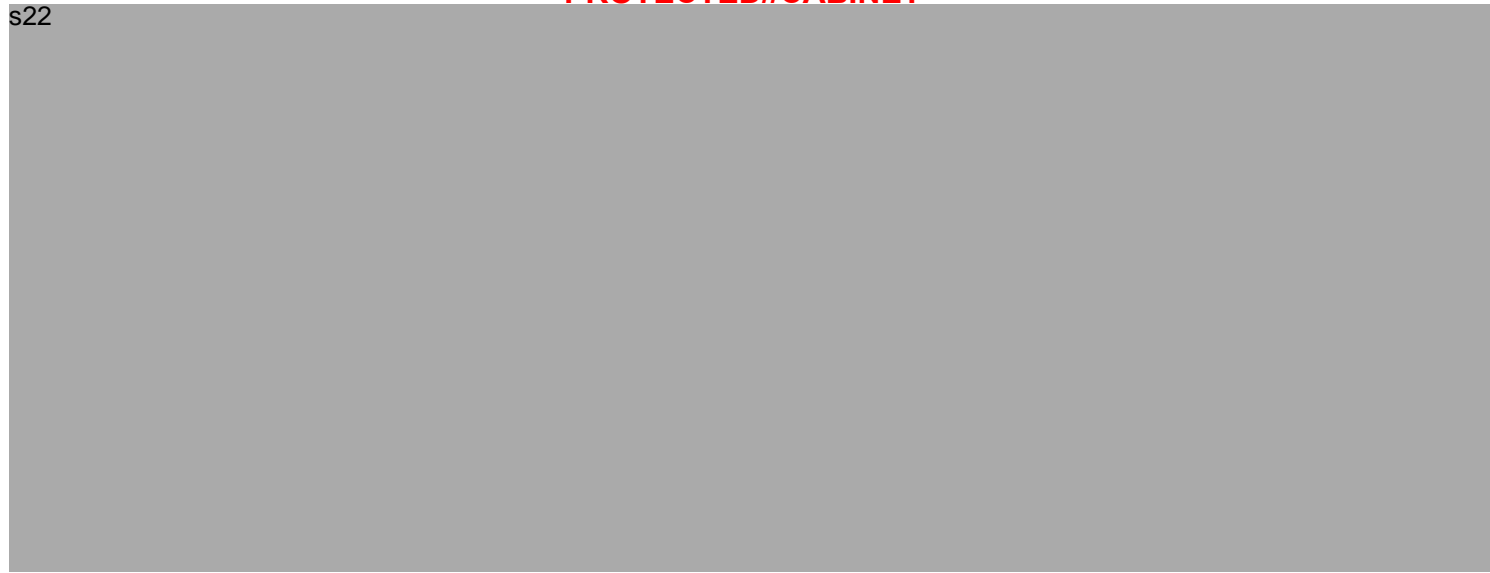
Great, thanks s47F [redacted]

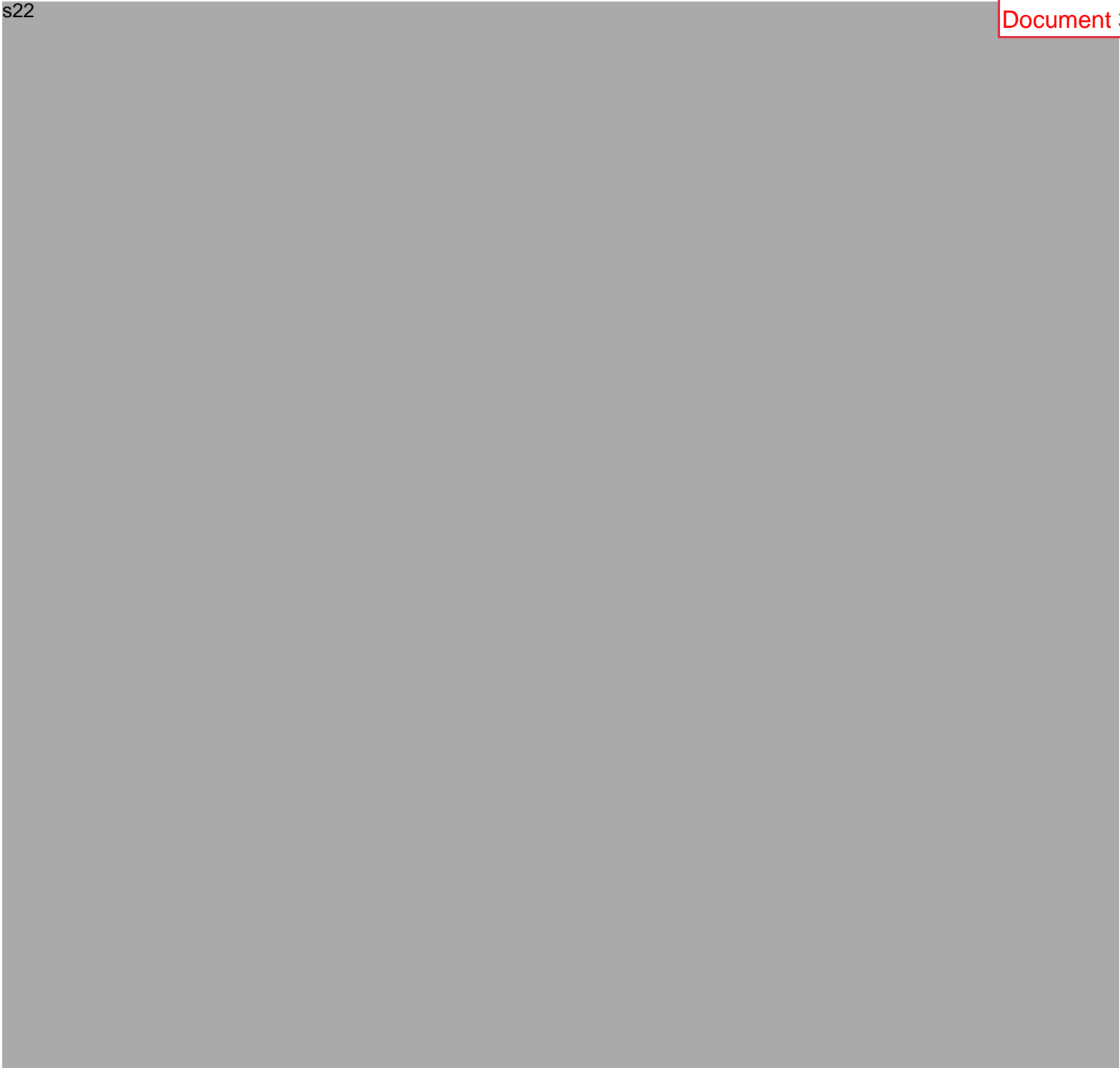
However, the advice provided by proxy advisers may consider objectives other than maximising financial returns.

s47F [redacted]

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From: s47F [redacted] @TREASURY.GOV.AU>
Sent: Friday, 23 April 2021 1:01 PM
To: s47F [redacted] @TREASURY.GOV.AU>
Cc: s47F [redacted] @TREASURY.GOV.AU>; s47F [redacted]
s47F [redacted] @TREASURY.GOV.AU>; s47F [redacted] @TREASURY.GOV.AU>
Subject: RE: Proxy Adviser Consultation Paper - Seeking Input {~~SEC=PROTECTED, CAVEAT=SH:CABINET~~}

~~PROTECTED//CABINET~~

Discuss any issues you want ot discuss with LD along the way, but I’ve flagged with LD I’ll be sending it ot them for a look-over once we have the draft.

Also, Tom wanted me to add that a key message the Office wants drawn out is the engagement of peoples’ compulsory super contributions with the proxy advice sector. I’m sure the compulsory nature of super features in a lot of your materials...

~~PROTECTED//CABINET~~

s47F

From: s47F
Sent: Friday, 23 April 2021 4:00 PM
To: s47F
Cc: s47F
Subject: RE: Proxy Adviser Consultation Paper - Seeking Input {SEC=PROTECTED; CAVEAT=SH:CABINET}

PROTECTED//CABINET

Hi s47F

For option 5 we do indeed 😊

- What level of independence is adequate? E.g. ownership interest; control; conflict of interest; or having independent directors.

s47F

s47F

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From: s47F @TREASURY.GOV.AU>
Sent: Friday, 23 April 2021 3:58 PM
To: s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @treasury.gov.au>
Cc: s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; Dickson, Tom <Tom.Dickson@TREASURY.GOV.AU>; s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>
Subject: RE: Proxy Adviser Consultation Paper - Seeking Input {SEC=PROTECTED, CAVEAT=SH:CABINET}

PROTECTED//CABINET

Hi s47F

Thanks for the opportunity to review this early version. The options as they are expressed look okay to me. I just have a couple of small points for consideration:

- To assist with your engagement on option 5, I assume you'll include a question along the lines of: *What would be the sort of arrangements that would be sufficiently independent, for example, prohibitions on ownership interest, control, conflict of interest, etc?*
- As general point, we also suggest checking that terms used in the document are consistent with the legislation / as expressed on the regulators websites/ guidance.

We would be grateful for the opportunity to review the consolidated version once other areas have provided input.

Kind regards

s47F

Legislative Adviser

Law Design Office

The Treasury, Langton Crescent, Parkes ACT 2600

Phone: s47F Mobile: s47F Email: s47F [@treasury.gov.au](mailto:s47F@treasury.gov.au)

The Treasury acknowledges the traditional custodians of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to Elders both past, present and emerging.

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From: s47F [redacted] <s47F@TREASURY.GOV.AU>
Sent: Friday, 23 April 2021 9:53 AM
To: s47F [redacted] <s47F@TREASURY.GOV.AU>
Subject: Proxy Advisers - Consultation Paper Outline [SEC=PROTECTED, CAVEAT=SH:CABINET]

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Hi s47F [redacted]

Please see a skeleton for the consult paper, feel free to amend:

Background

- a) High level information about companies being accountable to shareholders [MCD input]
- b) The role of the AGM [MCD input]
- c) Proxy adviser services [MCD input]

- e) Australian market (high level information about the four main proxy advisers and their various engagement policies) [MCD input]
- f) Regulation proxy advisers currently face (required to hold an AFSL for part of their service) [FSD input]
- g) Superfunds (how the funds use proxy advisers, background to ACSI) [RIPD input]
- h) Developments in the UK and US [MCD input]

Consultation Objectives

- a) Brief overview of the purpose [MCD input]

Potential Reforms

- a) Ensure independence between superannuation funds and proxy advice [RIPD input]
 - Option 1. Require RSE's to make public and keep up to date when and how the superannuation fund exercised its voting rights in Australian listed companies.
 - Option 2. Require RSE's to make public and keep up to date whether the vote exercised was consistent with any advice received.
 - Option 3. Require RSE's to make public and keep up to date the details of the providers of any proxy voting advice received.
 - Option 4. Require RSE's to outline in their proxy voting policy, how they implement their existing trustee obligations and duties around independent judgment in the determination of voting positions.
 - Option 5. Require proxy advisers, if their client is an RSE, to be independent from that client.
- b) Facilitate engagement between companies and proxy advisers [MCD input]
 - Option 6. Require proxy advisers to provide their report containing the research and voting recommendations for resolutions at a company's meeting to the company that is the subject of the report up to five days before providing it to their clients.
 - Option 7. Require proxy advisers to notify their clients how to access the company's response to the report.
- c) Broaden proxy adviser qualifications and requirements [FSD input]
 - Option 8. Require proxy advisers to obtain an AFSL for the provision of proxy advice.

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Analyst

Business Conduct Unit | Market Conduct Division | Markets Group

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Sent: Wednesday, 28 April 2021 11:23 AM
To: s47F [redacted]@TREASURY.GOV.AU>
Cc: s47F [redacted]@treasury.gov.au; s47F [redacted]@TREASURY.GOV.AU>; s47F [redacted]@TREASURY.GOV.AU>; Leggett, Chris <Chris.Leggett@TREASURY.GOV.AU>; s47F [redacted]@TREASURY.GOV.AU>; s47F [redacted]@TREASURY.GOV.AU>; s47F [redacted]@TREASURY.GOV.AU>
Subject: RE: Proxy adviser draft consultation paper {SEC=PROTECTED, CAVEAT=SH:CABINET}

PROTECTED//CABINET

Hi s47F [redacted]

Thanks for the opportunity to review. Grateful if you could please make the following tweaks to the document:

- On p 3: suggest slight rephrase/ softening of language in the second para under the sub heading 'Existing Regulations' and propose that you use the following test: "Section 29QB of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and s 2.38(2) of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) set out requirements as to which documents and information need to be publicly disclosed."
- On p 6: deleting specific references to s 912A (general obligations) and 912B (related to compensation) and instead just refer to "An AFSL holder must comply with the general obligations under the Corporations Act including the following:".
- On p 2: I assume that this if this is ends up being the first reference in the document to the *Corporations Act 2001* that you'll add in the abbreviated form next to it ie "*Corporations Act 2001* (Corporations Act)" to reflect later use throughout the document.

As always, happy to discuss.

Kind regards

s47F [redacted]

s47F [redacted]

Legislative Adviser

Law Design Office

The Treasury, Langton Crescent, Parkes ACT 2600

Phone: s47F [redacted] Mobile: s47F [redacted] Email: s47F [redacted]@treasury.gov.au

The Treasury acknowledges the traditional custodians of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to Elders both past, present and emerging- **PROTECTED//CABINET**

s22



s47F

From: s47F
Sent: Tuesday, 27 April 2021 9:51 AM
To: s47F
Cc: s47F MG RIPD Data
Subject: RE: Fact check request [SEC=OFFICIAL]

OFFICIAL

Thanks s4 – the 20 per cent / 443.7 billion calculation is all good.

Can confirm the 9.5 stat is correct :P I'd go with something like "Australians have at least 9.5 per cent of their salary" to cover off the fact that over 20% of workers have more than the SG rate contributed by their employer.

You may also want to chuck in that the rate is "increasing to 12 per cent by 1 July 2025", if you wanted to emphasise the point that this is a big, growing chunk of money.

s47F

Retirement Income Review Secretariat
Phone: s47F
Email: s47F [@treasury.gov.au](mailto:s47F@treasury.gov.au)

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OFFICIAL

From: s47F @TREASURY.GOV.AU>
Sent: Tuesday, 27 April 2021 9:43 AM
To: s47F @TREASURY.GOV.AU>; MG RIPD Data <MGRIPDData@TREASURY.GOV.AU>
Cc: s47F @TREASURY.GOV.AU>
Subject: RE: Fact check request [SEC=OFFICIAL]

OFFICIAL

Thanks s47 . Another line to check is a reference to the SG rate below. For context this input will be in a consultation paper on proxy advisers, which we are working toward a release on the weekend.

Australians have **9.5 per cent** of their salary contributed towards their retirement and they should have confidence that trustees are acting to maximise their retirement savings, including when trustees exercise voting rights and in interactions with listed companies.

Regards,

s47F

Member Outcomes and Governance Unit
Retirement Income Policy Division | The Treasury
Phone: s47F
Email s47F [@treasury.gov.au](mailto:s47F@treasury.gov.au)

OFFICIAL

From: s47F @TREASURY.GOV.AU>
Sent: Tuesday, 27 April 2021 9:41 AM
To: s47F @TREASURY.GOV.AU>; MG RIPD Data <MGRIPDData@TREASURY.GOV.AU>
Subject: RE: Fact check request [SEC=OFFICIAL]

OFFICIAL

I'll have a look for you s47 :D

s47F

Retirement Income Review Secretariat

Phone: s47F

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s47F

OFFICIAL

From: s47F [@TREASURY.GOV.AU](mailto:s47F@TREASURY.GOV.AU)>

Sent: Tuesday, 27 April 2021 8:27 AM

To: MG RIPD Data <MGRIPDData@TREASURY.GOV.AU>

Subject: RE: Fact check request [SEC=OFFICIAL]

OFFICIAL

Hi all

Some tweaks to the correct the statement: As at 31 December 2020, superannuation funds with more than four members own **20 per cent or \$443.7 billion** of the Australian Stock Exchange (ASX) on behalf of their members.

Grateful if someone can please check the calculation this morning.

Regards,

s47F

Member Outcomes and Governance Unit

Retirement Income Policy Division | The Treasury

Phone: s47F

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OFFICIAL

From: s47F

Sent: Friday, 23 April 2021 5:07 PM

To: MG RIPD Data <MGRIPDData@TREASURY.GOV.AU>

Subject: Fact check request [SEC=OFFICIAL]

OFFICIAL

Hi data team

Can I request a fact check of the following:

- As at 30 December 2020, superannuation funds with four or more members own **20%/\$443.7 billion** of the Australian Stock Exchange (ASX) on behalf of their members.

The calculation is in Table 1d of the attached.

Timing – by **11am Tuesday morning**.

Regards,

s47F

Member Outcomes and Governance Unit

Retirement Income Policy Division | The Treasury

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OFFICIAL

s47F

From: s47F
Sent: Tuesday, 27 April 2021 4:44 PM
To: s47F
Subject: RE: Tom and s47 review - Draft proxy advice consultation paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Thanks s47F . I've used the following for the UK:

<https://www.fca.org.uk/markets/primary-markets/proxy-advisors>
<https://www.briefinggovernance.com/2019/06/new-u-k-rules-for-proxy-advisory-firms/>

s47F

Analyst
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Phone s47F
The Treasury, Level 29, 201 Kent Street, Sydney NSW 2000

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From: s47F @TREASURY.GOV.AU>
Sent: Tuesday, 27 April 2021 4:43 PM
To: s47F @TREASURY.GOV.AU>
Subject: FW: Tom and s47 review - Draft proxy advice consultation paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Thanks for all your work so far on this, [I've saved a track change version \(so it includes all your original input\) here.](#)

Do you have any public resources on the UK proxy adviser measures? A media release? FCA consultation?

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From: s47F
Sent: Wednesday, 28 April 2021 3:55 PM
To: s47F @TREASURY.GOV.AU>
Cc: Dickson, Tom <Tom.Dickson@TREASURY.GOV.AU>; s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>
Subject: RE: Proxy Adviser Consultation Paper - RIPD Input [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi s47F

We have made slight changes to the section relating to requiring proxy advisors to hold an AFSL. We have left the rest of the document untouched.

Kind regards

s47F

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From: s47F @TREASURY.GOV.AU>
Sent: Wednesday, 28 April 2021 1:41 PM
To: s47F @TREASURY.GOV.AU>
Cc: Dickson, Tom <Tom.Dickson@TREASURY.GOV.AU>; s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>
Subject: RE: Proxy Adviser Consultation Paper - RIPD Input [SEC=PROTECTED, CAVEAT=SH:CABINET]

Hi s47F

Thanks for the input you provided yesterday on possible AFSL requirements for proxy advisers. We've added some material to create a bit of a problem statement that introduces why AFSL requirements may be suitable for proxy advisers. Could you please have a look at what we've added and let us know if you have any comments or suggestions? I'd be happy to discuss over phone if easiest.

The material relevant to you is in the Regulation of Proxy Advisers (which we haven't substantially changed from what you provided) and under Require suitable qualifications for the provision of proxy advice, where we have supplemented what you provided with the aforementioned 'problem statement'.

Could you please get back to us by 4pm? Sorry for the short turnaround. We need to pull this all together for the Office by COB.

Thanks

s47F

s22

s47F

From: s47F
Sent: Wednesday, 28 April 2021 5:47 PM
To: s47F
Cc: s47F
Subject: Kelly, Lynn; Dickson, Tom; s47F ; Leggett, Chris; s47F
RE: Last chekc - consultation paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

Thanks s47F

In the Consultation Objectives para we refer to twice to super, with slightly different rationale for why they warrant additional scrutiny. Would you be comfortable removing the strikethrough text and adding the red? Apologies for not picking this up in the first draft.

And maybe 'acting in' should be affecting? That one's up to you though.

Given the role of proxy advisers in corporate governance in Australia **and the increasing influence of superannuation funds on Australian companies**, it is timely to consider whether the current light-touch regulation of proxy advisers is acting in the interests of companies and their shareholders, **including and interactions with** the superannuation funds who make decisions on behalf of the millions of Australians who have their superannuation savings invested in shares.

s47F

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Sent: Wednesday, 28 April 2021 5:16 PM
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Cc: s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @treasury.gov.au>; Kelly, Lynn <Lynn.Kelly@treasury.gov.au>; Dickson, Tom <Tom.Dickson@TREASURY.GOV.AU>; s47F @treasury.gov.au>; Leggett, Chris <Chris.Leggett@TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>
Subject: Last chekc - consultation paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

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Hi s47F and s47F

Could you please do a last check on whether there are any red line issues with the attached.

RIPD – there are no substantial changes to what you provided, most of the changes are to language under 'Options'.

s47F – I'll give you a call.

s47F

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To: s47F @TREASURY.GOV.AU>

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s47F [redacted]@TREASURY.GOV.AU>; s47F [redacted]@TREASURY.GOV.AU>;
s47F [redacted]@treasury.gov.au>; Kelly, Lynn <Lynn.Kelly@treasury.gov.au>; Dickson, Tom
<Tom.Dickson@TREASURY.GOV.AU>; s47F [redacted]@treasury.gov.au>
Subject: RIPD input on consult paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi s47F [redacted]

Please find attached our updated input on the consult paper.

It includes responses to the comments to explain where we got to but also very happy to discuss. In particular – we query whether the reform proposals should be limited to companies listed in Australia, and for the discussion questions about whether the independence requirement should be on trustees or proxy advisers, whether this should extend beyond super entities. As these go beyond the super sector, appreciate a steer on these.

Cheers
s47F [redacted]

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s47F

From: s47F
Sent: Wednesday, 28 April 2021 10:38 AM
To: s47F
Subject: RE: Proxy adviser draft consultation paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

FYI Response below:

Good morning s47F

Thanks for this copy. Suggest:

- On p 6: deleting specific references to s 912A (general obligations) and 912B (related to compensation) and instead just refer to 'An AFSL holder must comply with the general obligations under the Corporations Act including the following'.
- Suggest just doing a tense check
- On page 2: this has the first reference in the document to the *Corporations Act 2001* and just needs the abbreviated form next to it ie "*Corporations Act 2001* (Corporations Act)" as Corporations Act is used in abbreviated form throughout.

Research note for page 3 of the consultation documents

[Superannuation Industry \(Supervision\) Act 1993](#)

Subdivision B—Other obligations in relation to information

29QB Certain information required to be made publicly available

(1) An RSE licensee of a registrable superannuation entity must ensure that the following is made publicly available, and kept up to date, at all times on the registrable superannuation entity's website:

(a) details of the remuneration of:

- (i) if the RSE licensee is a body corporate—each executive officer in relation to the RSE licensee; and
- (ii) if the RSE licensee is a group of individual trustees—each trustee of the registrable superannuation

entity;

being details of a kind prescribed by the regulations;

(b) any other document or information prescribed by the regulations.

(2) A person commits an offence if:

(a) the person is:

- (i) a body corporate that is an RSE licensee; or
- (ii) a member of a group of individual trustees that is an RSE licensee; and

(b) the RSE licensee contravenes subsection (1).

Penalty: 50 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal liability and Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

[Superannuation Industry \(Supervision\) Regulations 1994](#)

2.38 Obligation to make information publicly available—RSE licensee of registrable superannuation entity

(1) This regulation is made for paragraph 29QB(1)(b) of the Act.

(2) The following documents and information relating to the registrable superannuation entity are prescribed (if applicable):

(a) both:

(i) a current version of the trust deed; and

(ii) any material not incorporated in the current version of the trust deed;

(b) the governing rules;

(c) rules relating to the nomination, appointment and removal of trustees or trustee directors;

(d) the most recent actuarial report for each defined benefit fund;

(e) the most recent product disclosure statement for each superannuation product (within the meaning of Chapter 7 of the *Corporations Act 2001*) offered by the entity;

(f) the annual report for the previous financial year;

(g) the financial services guide;

(h) a summary of each significant event or material change notice made to members within the previous 2 years;

(i) the name and Australian Business Number of each outsourced service provider who provides a service which may affect a material business activity of the entity;

(j) the following information about each executive officer of the RSE licensee of the entity or each individual trustee of the entity (**relevant person**):

(i) the relevant person's name;

(ii) the qualifications of the relevant person;

(iii) a summary of the relevant person's experience as a trustee or board member, including the periods during which the relevant person served as a trustee or board member;

(k) the record of attendance at board meetings for each director for:

(i) the last 7 financial years; or

(ii) if the director has served for a period of less than 7 years—that period;

(l) a register of relevant interests and a register of relevant duties;

(m) a summary of the conflicts management policy;

(n) the proxy voting policies;

(o) a summary of when, during the previous financial year, and how the entity has exercised its voting rights in relation to shares in listed companies.

(3) The following documents or information relating to the RSE licensee are prescribed:

(a) if the RSE licensee is a body corporate—the constitution;

(b) the annual financial statement for the previous financial year.

(4) In this regulation a requirement that is expressed to apply to a defined benefit fund may be met by the requirement being satisfied in relation to each defined benefit sub-fund in the defined benefit fund.

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Subject: Proxy adviser draft consultation paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi s47F [redacted]

Please see a draft consultation paper attached. I note that this is just an analyst-level draft, we'll send you a cleared version for turnaround tomorrow, but hopefully this is at least somewhat predictive of what will be in it, in case it's helpful for you to get a head-start.

Kind regards

s47F [redacted]

Corporate Conduct Unit | Markets Conduct Division
Treasury
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PROTECTED//CABINET

s47F

From: s47F
Sent: Friday, 30 April 2021 5:10 PM
To: s47F
Cc: Dickson, Tom; s47F
Subject: Greater Transparency of Proxy Advice - final paper [~~SEC=PROTECTED;~~
~~CAVEAT=SI:CABINET~~]
Attachments: Greater transparency of proxy advice - Consultation Paper Final.docx; Greater
transparency of proxy advice - Consultation Paper Final.pdf

~~PROTECTED//CABINET~~

Hi s47F

Please see attached the Word and PDF of the Consultation Paper. It says April on the front, there's one typographical edit and two paragraphs have been formatted so they don't cross over page breaks. It is otherwise what you sent through earlier.

Kind regards

s47F

Corporate Conduct Unit | Markets Conduct Division

Treasury

Ph: s47F | M: s47F | Email: s47F@treasury.gov.au

~~PROTECTED//CABINET~~

s22

From: s47F

Sent: Friday, 30 April 2021 10:06 AM

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Cc: Quinn, Meghan <Meghan.Quinn@TREASURY.GOV.AU>; Jeremenko, Robert

<Robert.Jeremenko@treasury.gov.au>; Dickson, Tom <Tom.Dickson@TREASURY.GOV.AU>; s47F

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s47F <[REDACTED]@TREASURY.GOV.AU>; s47F <[REDACTED]@TREASURY.GOV.AU>; Codina, Martin

<Martin.Codina@TREASURY.GOV.AU>; s47F <[REDACTED]@TREASURY.GOV.AU>

Subject: RE: MS21-000960 - Transparency of Proxy Advice - Consultation Paper {SEC=PROTECTED, CAVEAT=SH:CABINET}

Hi s47F

On the consultation paper we had one edit on the statistic for Australia's international funds pool ranking. RIPD had a few comments on some of the language in the super sections. We have a minor edit to the media release.

Is this likely to go out today or weekend/Monday? We'll have to update the month on the front cover accordingly.

Kind regards

s47F

Corporate Conduct Unit | Markets Conduct Division

Treasury

Ph: s47F | M: s47F | Email: s47F@treasury.gov.au

s22

Page 3 of Document 13 has been removed under section 22 as out of scope

s47F

From: s47F
Sent: Friday, 30 April 2021 2:55 PM
To: s47F
Cc: s47F
Subject: RE: MS21-000960 - Transparency of Proxy Advice - Consultation Paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Thanks s47F we'll fix it.

PROTECTED//CABINET

From: s47F @TREASURY.GOV.AU>
Sent: Friday, 30 April 2021 1:23 PM
To: s47F @TREASURY.GOV.AU>
Cc: s47F @TREASURY.GOV.AU>; s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>
Subject: FW: MS21-000960 - Transparency of Proxy Advice - Consultation Paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

We found a typo (which came from our content, so our bad). If there is scope to change it, are you able to?

While some funds publish detailed information on their voting, this is not consistent across the industry, and which rarely includes information on the proxy recommendation received

s47F
s47F

PROTECTED//CABINET
PROTECTED//CABINET

From: s47F
Sent: Friday, 30 April 2021 1:00 PM
To: s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>
Cc: s47F @treasury.gov.au>
Subject: FW: MS21-000960 - Transparency of Proxy Advice - Consultation Paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Approval for the paper to go out (which will happen at 9.30pm tonight).

The reference to 'insufficient information re legal obligations' and competition remain in the consult paper.

s
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s47F

From: s47F
Sent: Friday, 30 April 2021 1:15 PM
To: s47F
Subject: RE: MS21-000960 - Transparency of Proxy Advice - Consultation Paper
{SEC=PROTECTED, CAVEAT=SH:CABINET}

PROTECTED//CABINET

yep

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From: s47F @TREASURY.GOV.AU>
Sent: Friday, 30 April 2021 1:15 PM
To: s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>;
s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>
Subject: RE: MS21-000960 - Transparency of Proxy Advice - Consultation Paper {SEC=PROTECTED,
CAVEAT=SH:CABINET}

PROTECTED//CABINET

Reckon the 'which' is a typo? If so we could get s47F to change it prior to publication.

While some funds publish detailed information on their voting, this is not consistent across the industry, and which rarely includes information on the proxy recommendation received

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s47F

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From: s47F
Sent: Friday, 30 April 2021 1:00 PM
To: s47F @treasury.gov.au>; s47F @TREASURY.GOV.AU>;
s47F @TREASURY.GOV.AU>; s47F @TREASURY.GOV.AU>
Cc: s47F @treasury.gov.au>
Subject: FW: MS21-000960 - Transparency of Proxy Advice - Consultation Paper {SEC=PROTECTED,
CAVEAT=SH:CABINET}

PROTECTED//CABINET

Approval for the paper to go out (which will happen at 9.30pm tonight).

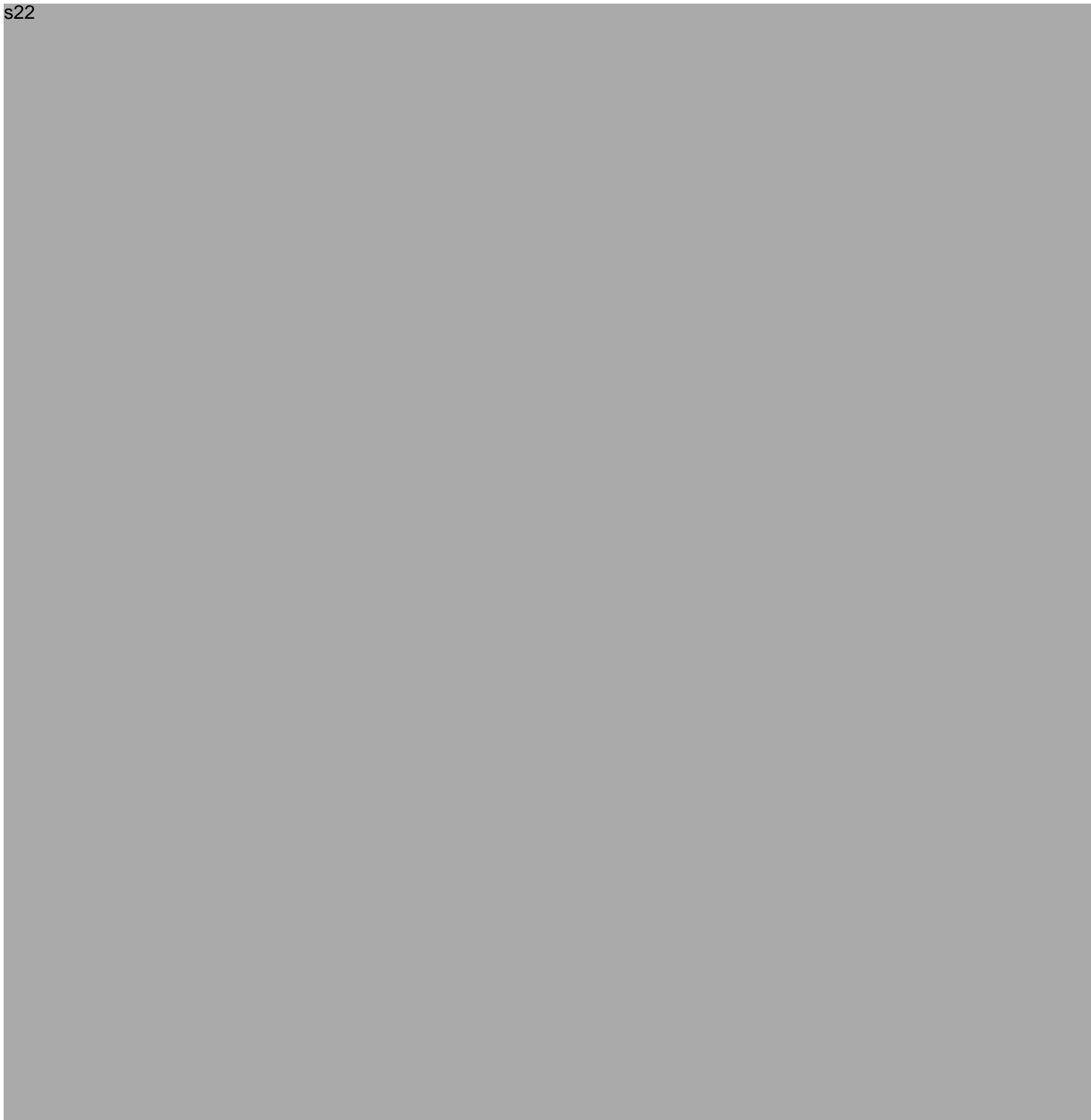
The reference to 'insufficient information re legal obligations' and competition remain in the consult paper.

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s22

s22



From: s47F [redacted] @TREASURY.GOV.AU>
Sent: Friday, 30 April 2021 8:54 AM
To: s47F [redacted] <s47F@TREASURY.GOV.AU>; s47F [redacted] <s47F@TREASURY.GOV.AU>
Cc: s47F [redacted] <s47F@treasury.gov.au>
Subject: Proxy adviser paper [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hey s47F [redacted] and s4 [redacted], I might flick some things to you for fact check as I go through s47F [redacted] edits to the paper. First:

While Australia has the fourth largest pool of managed funds in the world, there are more than 2,000 companies listed on the ASX.

Let me know if you can find anything to substantiate that.

~~PROTECTED//CABINET~~



Australian Government
The Treasury

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Greater transparency of proxy advice

Consultation Paper

May 2021



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Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this consultation paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect confidentiality of your submission.

View Treasury's [Submission Guidelines](#) for further information.

Closing date for submissions: **31 May 2021**

Email MCDproxyadvice@treasury.gov.au

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The Treasury
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PARKES ACT 2600

Enquiries Enquiries can be directed to MCDproxyadvice@treasury.gov.au

Greater transparency of proxy advice

Introduction

Part of the regulatory framework supporting good corporate governance is the requirement for companies to hold an Annual General Meeting (AGM), at which senior company officers engage with shareholders and put relevant matters to shareholders as resolutions for their approval by vote. Some resolutions are required under the *Corporations Act 2001*, and some may be required by the company's own constitution. There is a broad range of resolution types, including those related to strategic or commercial decisions, the composition of the Board and changes to a company's name, type or constitution. Three types of resolutions that have garnered particular public attention in recent years, including with respect to the role of proxy advisers, are director elections, executive remuneration, and shareholder-requisitioned resolutions, though proxy advisers offer their services to advise on all resolutions.

Many institutional shareholders – most particularly those with diversified holdings in many companies who use adviser services to assist in their portfolio management – use the services of proxy advisers to assist in arriving at a voting decisions.

Proxy advisers undertake research to provide voting recommendations on resolutions put at a company's meeting. They provide this information to a range of institutional investors, such as superannuation funds, asset owners, pension funds and other major investors, through a proxy advice report. Investors can use the proxy advice report as guidance to arrive at a vote decision. The research and recommendations by a proxy advisor can be influential to the outcome of a resolution, particularly given there are only four major proxy advisers in Australia providing their reports to a range of investors.

Proxy advice market in Australia

In Australia, there are four main proxy advisers: Institutional Shareholder Services, CGI Glass Lewis, Ownership Matters and the Australian Council of Superannuation Investors (ACSI). Each have their own proxy voting guidelines and policies that outline the underlying principles that guide the voting recommendations. Proxy advisers also abide by bespoke engagement policies that outline how they engage with companies. For example, one proxy adviser has a particular period where they do not engage with companies; another, provides their proxy advice report to the company for comment, prior to publication. These policies are publically available, however at times, are not strictly followed by the proxy advisers.

Apart from the proxy advice report, proxy advisers also provide other services such as data and analytics insights and governance advice.

Regulation of proxy advisers

Proxy advisers are required to hold an Australian Financial Services License (AFSL) for advice they provide to wholesale investors in respect of votes that relate to dealings in financial products.¹

However, proxy advisers also provide advice on other resolutions, such as remuneration reports, board appointments and governance arrangements, which are not currently covered by the AFSL as they do not fall within the meaning of a financial service.²

¹ ASIC report 578, page 4.

² ASIC report 578, page 4.

Proxy advisers are subject to misleading and deceptive conduct provisions³, which means that they must not engage in conduct in relation to a financial product or a financial service that is misleading or deceptive, or likely to mislead or deceive. This is regardless of whether they are engaging in a service covered by their AFSL or not.

Proxy advice in the superannuation sector

Background

Superannuation funds typically own shares in Australian listed companies as part of their investment strategy. As at 31 December 2020, superannuation funds with more than four members own 20 per cent or \$443.7 billion of the Australian Stock Exchange (ASX) on behalf of their members.

These shares have voting rights attached, and where superannuation fund trustees exercise voting rights they are obliged to do so in the best interests of their members (with legislation currently before Parliament clarifying that this obligation means members' best *financial* interests).

Australians have at least 9.5 per cent of their salary contributed towards their retirement (increasing to 12 per cent by 1 July 2025) and they should have confidence that trustees are acting to maximise their retirement savings, including when trustees exercise voting rights and in interactions with listed companies.

Given the volume of company resolutions a trustee may be entitled to vote on in a given year, for many funds it may be prudent business practice to engage proxy advisers to provide additional information and recommendations on how to exercise their voting rights. Such engagement assists many trustees to achieve an efficient use of the superannuation fund's resources. However, the advice provided by proxy advisers may consider broader or alternate objectives to those that a trustee must consider.

There is potential to improve member engagement with their savings by ensuring trustees provide simpler and clearer information about how funds manage members' money, including in the exercise of voting rights. Reforms could also ensure that the role of proxy advisers in advising and interacting with trustees is appropriate and transparent.

Existing regulations

Superannuation funds are currently required to publicly disclose and keep up to date at all times their proxy voting policies and a summary of when and how the fund exercised its voting rights at AGMs of listed companies for the previous financial year.

Requirements as to which documents and information need to be publicly disclosed are set out in S29QB of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and s2.38(2) of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations).

International developments

The regulation of proxy advisers has been the subject of recent reforms in the United Kingdom and the United States. The Securities Exchange Commission (SEC) in the United States consulted on proposed amendments to regulate proxy advisers between 2019 and 2020. The SEC adopted the final amendments which will be generally effective for the 2022 proxy season. The amendments include requiring proxy advisers to provide their advice report to companies for comment, considers failure to disclose certain information in the proxy advice report to be misleading and brings proxy advisers within the regulatory remit of the SEC.

³ *Corporations Act 2001*, s1041H

Similarly, the United Kingdom amended regulations in 2019 to require proxy advisers to disclose actual or potential conflicts of interests, disclose information about their research capabilities and how the research supports the advice and recommendations and disclose instances where there is deviations from the proxy adviser firm's code of conduct or why the firm has not adopted a code of conduct. Overall, the reforms are primarily focused on transparency, accountability and independence.

Consultation Objectives

Given the role of proxy advisers in corporate governance in Australia and the increasing influence of superannuation funds on Australian companies, it is timely to consider whether the current light-touch regulation of proxy advisers is acting in the interests of companies and their shareholders, including the superannuation funds who make decisions on behalf of the millions of Australians who have their superannuation savings invested in shares.

Given the size and compulsory nature of superannuation, it is critical that the voting rights attached to the members' superannuation assets are managed to maximise the retirement savings of Australians and for the sole purpose of retirement benefits. The purpose of the consultation is to identify reforms to improve the disclosure of trustees' proxy voting policies and records to members; and ensure the independence of trustees is reflected in the governance of proxy advisers.

This consultation will help the Government understand the adequacy of the current regulatory regime and help develop reform options that will strengthen the transparency and accountability of proxy advice.

Potential Reforms

Ensure independence between superannuation funds and proxy advice

Trustees of registrable superannuation entities should be held to the highest standards of governance and transparency to ensure assets are managed to maximise members' retirement savings.

This is consistent with the Government's *Your Future, Your Super* reforms, currently before Parliament, which will clarify that trustees have a duty to always act in the best financial interest of members. Transparency will also be enhanced through improved portfolio holdings disclosure requirements and more information being provided to members ahead of the Annual Members' Meeting (AMM).

Greater granularity in disclosure of the voting actions and policies of trustees is the next step to improve the transparency of information to members. While many funds publish detailed information, this is not consistent across the industry – attributable in part to a legislative requirement on trustees to publish only a summary of their proxy voting policies.

In the context of existing trustee obligation to their members and to maintain high standards of governance, it is also appropriate that there is meaningful independence between superannuation funds and proxy advisers.

In this context, stakeholder views are sought on the following options aimed at improving disclosure and governance in the area of proxy advice. Views on other options to achieve these objectives are welcome.

Options

Improved disclosure of trustee voting

Option 1: Greater granularity in the disclosure of trustee voting in listed companies.

This could include disclosing for each financial year, detail on:

- the exercise of voting rights;
- whether proxy advice was received and from whom; and
- whether the vote exercised was consistent with any advice received.

Demonstrating independence and appropriate governance

Option 2: Improve the visibility of and governance around how trustees use proxy advice.

To ensure that proxy advice is provided to and used by superannuation fund on an 'arm's length' basis, proxy advisers could be required to be meaningfully independent from a superannuation fund they are advising.

Trustees could also be required to outline publicly how they implement their existing trustee obligations and duties around independent judgement in the determination of voting positions.

Consultation questions

1. What impact would proposed options have on superannuation funds in complying with these regulatory requirements? Are there unintended consequences for existing obligations or practices?
2. What should be the regularity and timing of reporting? For example, should trustees be required to provide the proxy voting policy to members ahead of an AMM?
3. What other information on proxy voting should be disclosed by superannuation funds and why?
4. What level of independence between a superannuation fund and of a proxy adviser should be required? On whom should the obligation rest (superannuation fund or proxy adviser), and to which entities should the independence requirement apply? On whom should the obligation rest, and to which entities?

Facilitate engagement between companies and proxy advisers

Proxy advice reports are generally provided to investors 14 to 21 days prior to a company's meeting.⁴ Currently, proxy advisers are not required to engage with companies on their research, report and recommendations, either before or after providing their reports to investors. Business representative groups have raised the importance to companies of being able to engage with proxy advisers and being able to present their views to the investors who receive the reports, if they disagree with some of the research or recommendations in the reports. The opportunity to engage allows companies to point out any alleged factual inaccuracies and convey additional information to the proxy adviser that may impact the final voting recommendation.

Views into the following options aimed that are aimed to facilitate engagement and transparency are welcomed by stakeholders.

Options

Facilitate engagement

Option 3: Require proxy advisers to provide their report containing the research and voting recommendations for resolutions at a company's meeting, to the relevant company five days before

⁴ Australian Institute of Company Directors, *Institutional Share Voting and Engagement: exploring the links between directors, institutional shareholders and proxy advisers*, 2011

distributing the final report to subscribing investors. This would give enough time for both the company and proxy adviser to comment and for the proxy adviser to amend the report in response if warranted.

Alternatively, the report could be provided to the company and client simultaneously.

Ensure transparency

Option 4: Require proxy advisers to notify their clients how to access the company's response to the report. This could be through providing a website link or instructions to access the response elsewhere.

Consultation questions

5. How would the proposed options affect the level of engagement by proxy advisers with companies?
6. Would the proposed options mean that investors are more likely to be aware of a company's position on the proxy advice they are receiving?
7. What is the most appropriate method for proxy advisers to notify their clients as to where the company's response to its report is?

Subject proxy advice to AFSL requirements

As discussed earlier, proxy advisers provide advice on a range of company-related matters, many of which do not require specific licensing.

If an entity is required to hold an AFSL to provide financial services, they are required to comply with obligations under the Corporations Act and their licence conditions, unless relief is granted by ASIC or an exemption in the law applies. The AFSL is issued by ASIC under Chapter 7 of the Corporations Act in line with its regulatory responsibility for the financial services industry.

An AFSL holder must comply with the general obligations under s912A and 912B, including the following:

- (a) do all things necessary to ensure that the financial services covered by the AFS licence are provided efficiently, honestly and fairly;
- (b) have adequate arrangements in place to manage its conflicts of interest;
- (c) comply with AFS licence conditions;
- (d) comply with financial services laws; and
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws.

An AFSL holder is also required to comply with various conduct obligations, particularly in Part 7.6 of the Corporations Act, including:

- (a) notifying ASIC of significant breaches or likely breaches of certain AFS licensee obligations;
- (b) assisting ASIC in our regulatory oversight of the licensee;
- (c) complying with certain procedures when dealing with clients' money and other property; and
- (d) keeping financial records and preparing and lodging financial statements.

Options

Interested parties' views are sought on the following option:

Option 5: Require proxy advisers to obtain an AFSL for the provision of proxy advice.

Consultation questions

8. Is the AFSL regime an appropriate licensing regime through which to regulate the provision of proxy advice?
9. Would coverage under the AFSL regime result in an improvement in the standard of proxy advice?



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Greater transparency of proxy advice

Consultation Paper

May 2021



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Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this consultation paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

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Closing date for submissions: 14 June 2021

Email MCDproxyadvice@treasury.gov.au

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Enquiries Enquiries can be directed to MCDproxyadvice@treasury.gov.au

Greater transparency of proxy advice

Introduction

Part of the regulatory framework supporting good corporate governance is the requirement for companies to hold Annual General Meetings (AGMs), at which senior company officers engage with shareholders and put certain matters to shareholders as resolutions for their approval by vote. Some resolutions are required under the *Corporations Act 2001* (Corporations Act), and some may be required by the company's own constitution. There is a broad range of resolution types, including those related to strategic or commercial decisions, the composition of the Board and changes to a company's name, type or constitution.

Many institutional shareholders use the services of proxy advisers to assist in arriving at a voting decisions, particularly those with diversified holdings in many companies and that use adviser services to assist in their portfolio management.

Proxy advisers typically undertake research and provide voting recommendations on resolutions put at a company's meeting. They provide this information in a proxy report to a range of institutional investors, such as superannuation funds, asset owners, pension funds and other major investors. Investors can use the proxy advice report and other sources of information to arrive at a vote decision.

There are only four main proxy advisers operating in Australia that provide their reports to a broad range of investors. This gives these advisers a high degree of influence in the outcomes of company resolutions and therefore the conduct of business in Australia.

Proxy advice market in Australia

In Australia, the four main proxy advisers are Institutional Shareholder Services Australia, CGI Glass Lewis, Ownership Matters and the Australian Council of Superannuation Investors. There are other entities operating as proxy advisers to non-institutional investors¹. Entities that are offering proxy advice or proxy services to non-institutional investors are not the focus of this consultation.

Each of the four main proxy advisers have their own proxy voting guidelines and policies that outline the underlying principles that guide the voting recommendations. Proxy advisers also abide by bespoke engagement policies that outline how they engage with companies. For example, one proxy adviser has a particular period where they do not engage with companies; another, provides their proxy advice report to the company for comment, prior to publication². These policies are not legally binding on the proxy advisers.

Apart from the proxy advice report, proxy advisers also provide other services such as data, analytics, insights and governance advice.

Regulation of proxy advisers

Proxy advisers are required to hold an Australian Financial Services License (AFSL) for advice they provide to wholesale investors in respect of votes that relate to dealings in financial products.

¹ For example, the Australian Shareholders Association monitors companies and offers advice to its membership base of individual investors.

² Proxy adviser policies are publicly available from proxy adviser websites

However, proxy advisers also provide advice on other resolutions, such as remuneration reports, board appointments and governance arrangements, which are not covered by the AFSL as they do not fall within the meaning of a financial service.

Proxy advisers are also subject to misleading and deceptive conduct provisions³, which means that they must not engage in conduct in relation to a financial product or a financial service that is misleading or deceptive, or likely to mislead or deceive. This is regardless of whether the proxy adviser is engaging in a service covered by their AFSL or not.⁴

Proxy advice in the superannuation sector

Background

Superannuation funds typically own shares in Australian listed companies as part of an overall investment strategy. As at 31 December 2020, superannuation funds with more than four members owned 20 per cent or \$443.7 billion of the Australian Stock Exchange (ASX) on behalf of their members.

These shares have voting rights attached, and where superannuation fund trustees exercise voting rights they are obliged to do so in the best interests of their members (with legislation currently before Parliament clarifying that this obligation means members' best *financial* interests).

Australians have at least 9.5 per cent of their salary contributed towards their retirement (increasing to 12 per cent by 1 July 2025) and they should have confidence that trustees are acting to maximise their retirement savings, including when trustees exercise voting rights and in interactions with listed companies.

Given the volume of company resolutions a trustee may be entitled to vote on in a given year, for many superannuation funds it may be prudent business practice to engage proxy advisers to provide additional information and recommendations on how to exercise their voting rights. According to superannuation funds, such engagement assists many trustees to achieve an efficient use of the superannuation fund's resources.

Existing regulations

Superannuation funds are required to publicly disclose and keep up to date at all times their proxy voting policies and a summary of when and how the fund exercised its voting rights at AGMs of listed companies for the previous financial year.

Section 29QB of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and s 2.38(2) of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) set out requirements as to which documents and information need to be publicly disclosed.

International developments

The regulation of proxy advisers has been the subject of recent reforms in the United Kingdom and the United States. Overall, the reforms are primarily focused on transparency, accountability and independence.

The Securities Exchange Commission (SEC) in the United States consulted on proposed amendments to regulate proxy advisers between 2019 and 2020. The SEC adopted the final amendments which will come into effect December 2021. The amendments specify that proxy voting advice generally constitutes a solicitation. They also provide exemptions from the information and filing requirements

³ *Corporations Act 2001*, s1041H

⁴ ASIC report 578, page 4.

of the proxy rules, where the proxy adviser provides conflict of interest disclosure in their advice and has policies and procedures that⁵:

- ensure advice is made available to companies subject of their reports before or at the time it is provided to their clients; and
- they provide a mechanism for their clients to view any written statements by the companies in relation to their advice before the relevant meeting.

Similarly, the United Kingdom amended regulations in 2019 to require proxy advisers to disclose actual or potential conflicts of interests, disclose information about their research capabilities and how the research supports the advice and recommendations and disclose instances where there is deviations from the proxy adviser firm's code of conduct or why the firm has not adopted a code of conduct.⁶⁷

Consultation Objectives

Given the role of proxy advisers in corporate governance in Australia, it is timely to consider whether the current light-touch regulation of proxy advisers is affecting the interests of companies and their shareholders, and interactions with the superannuation funds who make decisions on behalf of the millions of Australians who have their superannuation savings invested in shares.

Given the size and compulsory nature of superannuation, it is critical that the voting rights attached to the members' superannuation assets are managed to maximise the retirement savings of Australians and for the sole purpose of retirement benefits.

This consultation is designed to help assess the adequacy of the current regulatory regime and help develop reform options that would strengthen the transparency and accountability of proxy advice.

Potential Reforms

Ensuring independence between superannuation funds and proxy advice

Trustees of registrable superannuation entities should be held to the highest standards of governance, transparency and efficiency to ensure assets are managed to maximise members' retirement savings.

Recent policy initiatives, including the Government's *Your Future, Your Super* (YFYS) legislative package, currently before Parliament, will continue to strengthen the superannuation system in these critical areas. For example, under the YFYS reforms, from 1 July 2021 trustees will have a duty to always act in the best financial interests of members. Transparency will also be enhanced through improved portfolio holdings disclosure requirements and more information being provided to members ahead of the Annual Members' Meeting (AMM).

There is potential to further improve transparency and member engagement by ensuring trustees provide simpler and clearer information about how funds manage members' money, including in the exercise of voting rights. While many funds publish detailed information, this is not consistent across the industry – attributable in part to a legislative requirement on trustees to publish only a summary of their proxy voting policies.

⁵ <https://www.sec.gov/news/press-release/2020-161>

⁶ <https://www.fca.org.uk/markets/primary-markets/proxy-advisors>

⁷ https://www.legislation.gov.uk/ukxi/2019/926/pdfs/ukxiem_20190926_en.pdf

There is scope to also ensure that the role of proxy advisers in advising and interacting with trustees is appropriate and transparent. Trustees have specific fiduciary and statutory obligations to their members, including to act in the best interests of members and to maintain high standards of governance. Proxy advisers are not subject to the same framework, and therefore may consider broader objectives than those that a trustee may consider. In this context, it is appropriate to consider whether there is need for meaningful independence between superannuation trustees and proxy advisers.

Options

Stakeholder views are sought on the following options aimed at improving independence of proxy advisers for the purposes of ensuring superannuation funds are held to the highest standards of governance and transparency. Views on additional and alternative options to achieve these objectives are welcome.

Option 1: Improved disclosure of trustee voting. Under this option, superannuation funds would be required to disclose more detailed information in relation to their voting policies and actions for each financial year. The details to be disclosed could include how votes were exercised, whether any advice was received from a proxy adviser and who provided the advice.

If proxy advice is received, disclosure could include whether the voting actions taken were consistent with the proxy advice.

Option 2: Demonstrating independence and appropriate governance. Under this option, proxy advisers would be required to be meaningfully independent from a superannuation fund they are advising to ensure that proxy advice is provided to and used by superannuation funds on an 'arm's length' basis.

Trustees could also be required to outline publicly how they implement their existing trustee obligations and duties around independent judgement in the determination of voting positions.

Consultation questions

1. How would the proposed options affect superannuation fund members?
2. What impact would the proposed options have on superannuation funds in complying with these regulatory requirements? Are there unintended consequences arising from interactions with existing obligations or practices?
3. What should be the regularity and timing of reporting? For example, should trustees be required to provide their proxy voting policy to members ahead of an AMM?
4. What other information on how voting is informed by proxy advice should be disclosed by superannuation funds and why?
5. What level of independence between a superannuation fund and a proxy adviser should be required?
6. Which entity should the obligation apply to (superannuation fund or proxy adviser), and to which entities should the independence requirement apply?

Facilitating engagement between companies and proxy advisers

Proxy advice reports are generally provided to investors 14 to 21 days prior to a company's meeting.⁸ Currently, proxy advisers are not required to engage with companies on their research, report and recommendations, either before or after providing their reports to investors.

⁸ Australian Institute of Company Directors, *Institutional Share Voting and Engagement: exploring the links between directors, institutional shareholders and proxy advisers*, 2011

Business representative groups have raised the importance of companies being able to engage with proxy advisers and being able to present their views to the investors who receive the reports, including in situations where a company may disagree with some of the research or recommendations in the reports. The opportunity to engage allows companies to point out any alleged factual inaccuracies and convey additional context or information to the proxy adviser that may impact the final voting recommendation. This is important given that there are only a few proxy advisers that are providing advice to what is a large proportion of their shareholder base for some companies.

Given that AGMs are not distributed evenly throughout the year, with a high proportion of Australia's AGMs happening in the last quarter of the year, large institutional investors may have limited capacity to engage with multiple sources of information in relation to each AGM. Having proxy advice accompanied by the company's response to that advice, or a simple direction on how to find it, would simplify accessing and contrasting information and perspectives.

Options

Views by stakeholders into the following options that are aimed to facilitate engagement and transparency are welcomed.

Option 3: Facilitate engagement and ensure transparency. Under this option, proxy advisers would be required to provide their report containing the research and voting recommendations for resolutions at a company's meeting, to the relevant company before distributing the final report to subscribing investors. For example, a period of five days would give enough time for both the company and proxy adviser to comment and for the proxy adviser to amend the report in response if warranted.

Option 4: Make materials accessible. Under this option, proxy advisers would be required to notify their clients on how to access the company's response to the report. This could be through providing a website link or instructions on how to access the response elsewhere.

Alternatively, the report could be provided to the company and client simultaneously, which would allow proxy advisers to operate on their existing process timelines, but would not facilitate the company's response being available at the same time to a proxy adviser's clients as the company response.

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7. How would the proposed options affect the level of engagement by proxy advisers with companies?
8. Would the proposed options mean that investors are more likely to be aware of a company's position on the proxy advice they are receiving?
9. What is the most appropriate method for proxy advisers to notify their clients as to where the company's response to its report is?
10. If proxy advisers were required to provide their reports to companies in advance of their clients, what would an appropriate length of time be that allows companies to respond to the report and for the report to be amended if there are any errors? Are there any requirements that should be placed on companies during this period, such as confidentiality?

Require suitable licensing for the provision of proxy advice

As noted above, proxy advisers provide advice on a range of company-related matters, much of which does not require specific licensing, in spite of the influence on the conduct of business in Australia. Making assessments on issues such as the appropriateness of a proposed executive

remuneration package, the performance of a director and whether they should be re-elected, and the outcome of a change in the company's constitution all require a nuanced understanding of business. The investors that proxy advisers sell their service to are for the most part seeking financial returns for their members and clients, especially superannuation funds that are required to act in the best financial interest of their members.

Australia's existing regime for financial services is the AFS Licensing regime, to which only a subset of proxy adviser activities is currently subject. If an entity is required to hold an AFSL to provide financial services, they are required to comply with obligations under the Corporations Act and their licence conditions, unless relief is granted by ASIC or an exemption in the law applies. The AFSL is issued by ASIC under Chapter 7 of the Corporations Act in line with its regulatory responsibility for the financial services industry.

An AFSL holder must comply with the general obligations under the Corporations Act, including the following:

- (a) do all things necessary to ensure that the financial services covered by the AFS licence are provided efficiently, honestly and fairly;
- (b) have adequate arrangements in place to manage its conflicts of interest;
- (c) comply with AFS licence conditions;
- (d) comply with financial services laws; and
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws.

An AFSL holder is also required to comply with various conduct obligations, particularly in Part 7.6 of the Corporations Act, including:

- (a) notifying ASIC of significant breaches or likely breaches of certain AFS licensee obligations;
- (b) assisting ASIC in our regulatory oversight of the licensee;
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- (d) keeping financial records and preparing and lodging financial statements.

Options

Interested parties' views are sought on the following option:

Option 5: Ensuring advice is underpinned by professional licensing. Under this option proxy advisers would be required to obtain an AFSL for the provision of proxy advice.

The purpose of the license would be to ensure that proxy advisers are making assessments on issues that have a material impact on the conduct of business in Australia with appropriate regulatory oversight.

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11. Is the AFSL regime an appropriate licensing regime through which to regulate the provision of proxy advice?
12. Would coverage under the AFSL regime result in an improvement in the standard of proxy advice?



Australian Government
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Greater transparency of proxy advice

Consultation Paper

May 2021



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Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect confidentiality of your submission.

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Closing date for submissions: 14 June 2021

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Greater transparency of proxy advice

Introduction

Part of the regulatory framework supporting good corporate governance is the requirement for companies to hold Annual General Meetings (AGMs), at which senior company officers engage with shareholders and put certain matters to shareholders as resolutions for their approval by vote. Some resolutions are required under the *Corporations Act 2001* (Corporations Act), and some may be required by the company's own constitution. There is a broad range of resolution types, including those related to strategic or commercial decisions, the composition of the Board and changes to a company's name, type or constitution.

Many institutional shareholders use the services of proxy advisers to assist in arriving at a voting decisions, particularly those with diversified holdings in many companies and that use adviser services to assist in their portfolio management.

Proxy advisers typically undertake research and provide voting recommendations on resolutions put at a company's meeting. They provide this information in a proxy report to a range of institutional investors, such as superannuation funds, asset owners, pension funds and other major investors. Investors can use the proxy advice report and other sources of information to arrive at a vote decision.

There are only four main proxy advisers operating in Australia that provide their reports to a broad range of investors. This gives these advisers a high degree of influence in the outcomes of company resolutions and therefore the conduct of business in Australia.

Proxy advice market in Australia

In Australia, the four main proxy advisers are Institutional Shareholder Services Australia, CGI Glass Lewis, Ownership Matters and the Australian Council of Superannuation Investors. There are other entities operating as proxy advisers to non-institutional investors¹. Entities that are offering proxy advice or proxy services to non-institutional investors are not the focus of this consultation.

Each of the four main proxy advisers have their own proxy voting guidelines and policies that outline the underlying principles that guide the voting recommendations. Proxy advisers also abide by bespoke engagement policies that outline how they engage with companies. For example, one proxy adviser has a particular period where they do not engage with companies; another, provides their proxy advice report to the company for comment, prior to publication². These policies are not legally binding on the proxy advisers.

Apart from the proxy advice report, proxy advisers also provide other services such as data, analytics, insights and governance advice.

Regulation of proxy advisers

Proxy advisers are required to hold an Australian Financial Services License (AFSL) for advice they provide to wholesale investors in respect of votes that relate to dealings in financial products.

¹ For example, the Australian Shareholders Association monitors companies and offers advice to its membership base of individual investors.

² Proxy adviser policies are publicly available from proxy adviser websites

However, proxy advisers also provide advice on other resolutions, such as remuneration reports, board appointments and governance arrangements, which are not covered by the AFSL as they do not fall within the meaning of a financial service.

Proxy advisers are also subject to misleading and deceptive conduct provisions³, which means that they must not engage in conduct in relation to a financial product or a financial service that is misleading or deceptive, or likely to mislead or deceive. This is regardless of whether the proxy adviser is engaging in a service covered by their AFSL or not.⁴

Proxy advice in the superannuation sector

Background

Superannuation funds typically own shares in Australian listed companies as part of an overall investment strategy. As at 31 December 2020, superannuation funds with more than four members owned 20 per cent or \$443.7 billion of the Australian Stock Exchange (ASX) on behalf of their members.

These shares have voting rights attached, and where superannuation fund trustees exercise voting rights they are obliged to do so in the best interests of their members (with legislation currently before Parliament clarifying that this obligation means members' best *financial* interests).

Australians have at least 9.5 per cent of their salary contributed towards their retirement (increasing to 12 per cent by 1 July 2025) and they should have confidence that trustees are acting to maximise their retirement savings, including when trustees exercise voting rights and in interactions with listed companies.

Given the volume of company resolutions a trustee may be entitled to vote on in a given year, for many superannuation funds it may be prudent business practice to engage proxy advisers to provide additional information and recommendations on how to exercise their voting rights. According to superannuation funds, such engagement assists many trustees to achieve an efficient use of the superannuation fund's resources.

Existing regulations

Superannuation funds are required to publicly disclose and keep up to date at all times their proxy voting policies and a summary of when and how the fund exercised its voting rights at AGMs of listed companies for the previous financial year.

Section 29QB of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and s 2.38(2) of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) set out requirements as to which documents and information need to be publicly disclosed.

International developments

The regulation of proxy advisers has been the subject of recent reforms in the United Kingdom and the United States. Overall, the reforms are primarily focused on transparency, accountability and independence.

The Securities Exchange Commission (SEC) in the United States consulted on proposed amendments to regulate proxy advisers between 2019 and 2020. The SEC adopted the final amendments which will come into effect December 2021. The amendments specify that proxy voting advice generally constitutes a solicitation. They also provide exemptions from the information and filing requirements

³ *Corporations Act 2001*, s1041H

⁴ ASIC report 578, page 4.

of the proxy rules, where the proxy adviser provides conflict of interest disclosure in their advice and has policies and procedures that⁵:

- ensure advice is made available to companies subject of their reports before or at the time it is provided to their clients; and
- they provide a mechanism for their clients to view any written statements by the companies in relation to their advice before the relevant meeting.

Similarly, the United Kingdom amended regulations in 2019 to require proxy advisers to disclose actual or potential conflicts of interests, disclose information about their research capabilities and how the research supports the advice and recommendations and disclose instances where there is deviations from the proxy adviser firm's code of conduct or why the firm has not adopted a code of conduct.⁶⁷

Consultation Objectives

Given the role of proxy advisers in corporate governance in Australia, it is timely to consider whether the current light-touch regulation of proxy advisers is affecting the interests of companies and their shareholders, and interactions with the superannuation funds who make decisions on behalf of the millions of Australians who have their superannuation savings invested in shares.

Given the size and compulsory nature of superannuation, it is critical that the voting rights attached to the members' superannuation assets are managed to maximise the retirement savings of Australians and for the sole purpose of retirement benefits.

This consultation is designed to help assess the adequacy of the current regulatory regime and help develop reform options that would strengthen the transparency and accountability of proxy advice.

Potential Reforms

Ensuring independence between superannuation funds and proxy advice

Trustees of registrable superannuation entities should be held to the highest standards of governance, transparency and efficiency to ensure assets are managed to maximise members' retirement savings.

Recent policy initiatives, including the Government's *Your Future, Your Super* (YFYS) legislative package, currently before Parliament, will continue to strengthen the superannuation system in these critical areas. For example, under the YFYS reforms, from 1 July 2021 trustees will have a duty to always act in the best financial interests of members. Transparency will also be enhanced through improved portfolio holdings disclosure requirements and more information being provided to members ahead of the Annual Members' Meeting (AMM).

There is potential to further improve transparency and member engagement by ensuring trustees provide simpler and clearer information about how funds manage members' money, including in the exercise of voting rights. While many funds publish detailed information, this is not consistent across the industry – attributable in part to a legislative requirement on trustees to publish only a summary of their proxy voting policies.

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There is scope to also ensure that the role of proxy advisers in advising and interacting with trustees is appropriate and transparent. Trustees have specific fiduciary and statutory obligations to their members, including to act in the best interests of members and to maintain high standards of governance. Proxy advisers are not subject to the same framework, and therefore may consider broader objectives than those that a trustee may consider. In this context, it is appropriate to consider whether there is need for meaningful independence between superannuation trustees and proxy advisers.

Options

Stakeholder views are sought on the following options aimed at improving independence of proxy advisers for the purposes of ensuring superannuation funds are held to the highest standards of governance and transparency. Views on additional and alternative options to achieve these objectives are welcome.

Option 1: Improved disclosure of trustee voting. Under this option, superannuation funds would be required to disclose more detailed information in relation to their voting policies and actions for each financial year. The details to be disclosed could include how votes were exercised, whether any advice was received from a proxy adviser and who provided the advice.

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1. How would the proposed options affect superannuation fund members?
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Proxy advice reports are generally provided to investors 14 to 21 days prior to a company's meeting.⁸ Currently, proxy advisers are not required to engage with companies on their research, report and recommendations, either before or after providing their reports to investors.

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remuneration package, the performance of a director and whether they should be re-elected, and the outcome of a change in the company's constitution all require a nuanced understanding of business. The investors that proxy advisers sell their service to are for the most part seeking financial returns for their members and clients, especially superannuation funds that are required to act in the best financial interest of their members.

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An AFSL holder must comply with the general obligations under the Corporations Act, including the following:

- (a) do all things necessary to ensure that the financial services covered by the AFS licence are provided efficiently, honestly and fairly;
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Interested parties' views are sought on the following option:

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Greater transparency of proxy advice

Consultation Paper

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Closing date for submissions: ~~14 June 2021~~ **10 June 2021**

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[While Australia has the fourth largest pool of managed funds in the world, there are more than 2,000 companies listed on the ASX,¹ investors are predominately supported here are only by](#) four main proxy advisers operating in Australia that provide their reports ~~to a broad range of investors~~. This gives these advisers a high degree of influence in the outcomes of company resolutions and therefore the conduct of business in Australia.

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Superannuation funds typically own shares in Australian listed companies as part of an overall investment strategy. As at 31 December 2020, superannuation funds with more than four members owned 20 per cent or \$443.7 billion of the Australian Stock Exchange (ASX) on behalf of their members.

These shares have voting rights attached, and where superannuation fund trustees exercise voting rights they are obliged to do so in the best interests of their members (with legislation currently before Parliament clarifying that this obligation means members' best *financial* interests).

Australians [currently](#) have at least 9.5 per cent of their salary contributed towards their retirement (~~increasing to 12 per cent by 1 July 2025~~) and they should have confidence that trustees are acting to maximise their retirement savings, including when trustees exercise voting rights and in interactions with listed companies.

Given the volume of company resolutions a trustee may be entitled to vote on in a given year, ~~for some superannuation funds may decide many superannuation funds it may be prudent business practice~~ to engage proxy advisers to provide additional information and recommendations on how to exercise their voting rights. ~~According to superannuation funds, such engagement assists many trustees to achieve an efficient use of the superannuation fund's resources. In such circumstances it is still a matter for the superannuation fund to ultimately determine how to exercise their voting rights. There is insufficient public information today to determine whether superannuation funds, in this area, are acting in a manner consistent with their legal obligations.~~

Existing regulations

~~There are existing regulations which Superannuation funds are~~ require [superannuation funds to](#) publicly disclose ~~and keep up to date at all times~~ their proxy voting policies and a summary of when and how the fund exercised its voting rights at AGMs of listed companies for the previous financial year.

Section 29QB of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and s 2.38(2) of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) set out requirements as to which documents and information need to be publicly disclosed.

International developments

The regulation of proxy advisers has been the subject of recent reforms in the United Kingdom and the United States. Overall, the reforms are primarily focused on transparency, accountability and independence.

The Securities Exchange Commission (SEC) in the United States consulted on proposed amendments to regulate proxy advisers between 2019 and 2020. The SEC adopted the final amendments which

³ *Corporations Act 2001*, s1041H

⁴ ASIC report 578, page 4.

will come into effect December 2021. The amendments specify that proxy voting advice generally constitutes a solicitation. They also provide exemptions from the information and filing requirements of the proxy rules, where the proxy adviser provides conflict of interest disclosure in their advice and has policies and procedures that⁵:

- ensure advice is made available to companies subject of their reports before or at the time it is provided to their clients; and
- they provide a mechanism for their clients to view any written statements by the companies in relation to their advice before the relevant meeting.

Similarly, the United Kingdom amended regulations in 2019 to require proxy advisers to disclose actual or potential conflicts of interests, disclose information about their research capabilities and how the research supports the advice and recommendations and disclose instances where there is deviations from the proxy adviser firm's code of conduct or why the firm has not adopted a code of conduct.⁶⁷

Consultation Objectives

Given the [influential](#) role of proxy advisers in corporate governance in Australia [and the high degree of institutional share ownership](#), ~~This consultation is designed to help assess the adequacy of the current regulatory regime and help develop reform options that would strengthen the transparency and accountability of proxy advice. Additionally, given the millions of Australians who have their superannuation savings invested in shares~~ it is timely to consider whether the current light touch regulation of proxy advisers is affecting the interests of companies and their shareholders, and interactions with the superannuation funds who make decisions on behalf of the millions of Australians who have their superannuation savings invested in shares.

~~Given the size and compulsory nature of superannuation, it~~ is critical that the voting rights attached to the members' superannuation assets are managed to maximise the retirement savings of Australians and for the sole purpose of retirement benefits.

~~This consultation is designed to help assess the adequacy of the current regulatory regime and help develop reform options that would strengthen the transparency and accountability of proxy advice~~

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Potential Reforms

Ensuring independence between superannuation funds and proxy advice

Trustees of registrable superannuation entities should be held to the highest standards of governance, transparency and efficiency to ensure assets are managed to maximise members' retirement savings.

Recent policy initiatives, including the Government's *Your Future, Your Super* (YFYS) legislative package, currently before Parliament, will continue to strengthen the superannuation system in these critical areas. For example, under the YFYS reforms, from 1 July 2021 trustees will have a duty to always act in the best financial interests of members. Transparency will also be enhanced through improved portfolio holdings disclosure requirements and more information being provided to members ahead of the Annual Members' Meeting (AMM).

⁵ <https://www.sec.gov/news/press-release/2020-161>

⁶ <https://www.fca.org.uk/markets/primary-markets/proxy-advisors>

⁷ https://www.legislation.gov.uk/uksi/2019/926/pdfs/uksiem_20190926_en.pdf

There is [potential scope](#) to further improve transparency and member engagement by ensuring trustees provide simpler and clearer information about how funds manage members' money, including in the exercise of voting rights. While [many some](#) funds publish detailed information [on their voting](#) this is not consistent across the industry [and it scarcely includes information on the proxy recommendation received](#) – attributable in part to a legislative requirement on trustees to publish only a summary of their proxy voting policies [and a summary of their voting for listed companies](#).

There is [also](#) scope to also ensure that the role of proxy advisers in advising and interacting with trustees is appropriate and transparent. Trustees have specific fiduciary and statutory obligations to their members, including to act in the best interests of members and to maintain high standards of governance. Proxy advisers are not subject to the same framework, and therefore may consider broader objectives than those that a trustee may consider. [Superannuation fund compete for members and investment returns. There are questions therefore as to whether superannuation funds should be jointly involved in determining their voting positions, including through shared ownership of a proxy adviser.](#) In this context, it is appropriate to consider whether there is [a](#) need for meaningful independence between superannuation trustees and proxy advisers.

Options

Stakeholder views are sought on the following options aimed at improving independence of proxy advisers for the purposes of ensuring superannuation funds are held to the highest standards of governance and transparency. [Views on additional and alternative options to achieve these objectives are welcome.](#)

Option 1: Improved disclosure of trustee voting. Under this option, superannuation funds would be required to disclose more detailed information in relation to their voting policies and actions for each financial year. The details to be disclosed could include how votes were exercised, whether any advice was received from a proxy adviser and who provided the advice.

If proxy advice is received, disclosure could include whether the voting actions taken were consistent with the proxy advice.

Option 2: Demonstrating independence and appropriate governance. Under this option, proxy advisers would be required to be meaningfully independent from a superannuation fund they are advising to ensure that proxy advice is provided to and used by superannuation funds on an 'arm's length' basis.

Trustees could also be required to outline publicly how they implement their existing trustee obligations and duties around independent judgement in the determination of voting positions.

Consultation questions

1. How would the proposed options affect superannuation fund members?
2. What impact would the proposed options have on superannuation funds in complying with these regulatory requirements? [Are there unintended consequences arising from interactions with existing obligations or practices?](#)
3. What should be the regularity and timing of reporting? For example, should trustees be required to provide their proxy voting policy to members ahead of an AMM?
4. What other information on how voting is informed by proxy advice should be disclosed by superannuation funds and why?
5. What level of independence between a superannuation fund and a proxy adviser should be required?

6. Which entity should the [independence obligation requirement](#) apply to (superannuation fund or proxy adviser), ~~and to which entities should the independence requirement apply?~~

Facilitating engagement between companies and proxy advisers

Proxy advice reports are generally provided to investors 14 to 21 days prior to a company's meeting.⁸ Currently, proxy advisers are not required to engage with companies on their research, report and recommendations, either before or after providing their reports to investors.

Business representative groups have raised the importance of companies being able to engage with proxy advisers and being able to present their views to the investors who receive the reports, including in situations where a company may disagree with some of the research or recommendations in the reports. The opportunity to engage allows companies to point out any ~~alleged potential~~ factual inaccuracies and convey additional context or information to the proxy adviser that may impact the final voting recommendation. This is important given that there are only a few proxy advisers that are providing advice to what is a large proportion of their shareholder base for some companies.

Given that AGMs are not distributed evenly throughout the year, with a high proportion of Australia's AGMs happening in the last quarter of the year, large institutional investors may have limited capacity to engage with multiple sources of information in relation to each AGM. Having proxy advice accompanied by the company's response to that advice, or a simple direction on how to find it, would simplify accessing and contrasting information and perspectives.

Options

~~Views by stakeholders~~ [Stakeholder views are sought](#) into the following options that are aimed to facilitate engagement and transparency are welcomed.

Option 3: Facilitate engagement and ensure transparency. Under this option, proxy advisers would be required to provide their report containing the research and voting recommendations for resolutions at a company's meeting, to the relevant company before distributing the final report to subscribing investors. For example, a period of five days [prior to the recommendation being made publicly available](#) would give enough time for both the company and proxy adviser to comment and for the proxy adviser to amend the report in response if warranted.

Option 4: Make materials accessible. Under this option, proxy advisers would be required to notify their clients on how to access the company's response to the report. This could be through providing a website link or instructions on how to access the response elsewhere.

~~Alternatively, the report could be provided to the company and client simultaneously, which would allow proxy advisers to operate on their existing process timelines, but would not facilitate the company's response being available at the same time to a proxy adviser's clients as the company response.~~

Consultation questions

7. How would the proposed options affect the level of engagement by proxy advisers with companies?
8. Would the proposed options mean that investors are more likely to be aware of a company's position on the proxy advice they are receiving?

⁸ Australian Institute of Company Directors, *Institutional Share Voting and Engagement: exploring the links between directors, institutional shareholders and proxy advisers*, 2011

9. What is the most appropriate method for proxy advisers to notify their clients as to where the company's response to its report is?
10. If proxy advisers were required to provide their reports to companies in advance of their clients, what would an appropriate length of time be that allows companies to respond to the report and for the report to be amended if there are any errors? Are there any requirements that should be placed on companies during this period, such as confidentiality? [Are there any requirements that should be placed on proxy advisers during this period such as not making their recommendation otherwise publicly known?](#)

Require suitable licensing for the provision of proxy advice

As noted above, proxy advisers provide advice on a range of company-related matters, much of which does not require specific licensing, in spite of the influence on the conduct of business in Australia. Making assessments on issues such as the appropriateness of a proposed executive remuneration package, the performance of a director and whether they should be re-elected, and the outcome of a change in the company's constitution all require [a nuanced understanding of business a high degree of expertise to assess](#). The investors that proxy advisers sell their service to are for the most part seeking financial returns for their members and clients, especially superannuation funds that are required to act in the best [financial interests](#) of their members.

Australia's existing regime for financial services is the AFS Licensing regime, to which only a subset of proxy adviser activities is currently subject. If an entity is required to hold an AFSL to provide financial services, they are required to comply with obligations under the Corporations Act and their licence conditions, unless relief is granted by ASIC or an exemption in the law applies. The AFSL is issued by ASIC under Chapter 7 of the Corporations Act in line with its regulatory responsibility for the financial services industry.

An AFSL holder must comply with the general obligations under the Corporations Act, including the following:

- (a) do all things necessary to ensure that the financial services covered by the AFS licence are provided efficiently, honestly and fairly;
- (b) have adequate arrangements in place to manage its conflicts of interest;
- (c) comply with AFS licence conditions;
- (d) comply with financial services laws; and
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws.

An AFSL holder is also required to comply with various conduct obligations, particularly in Part 7.6 of the Corporations Act, including:

- (a) notifying ASIC of significant breaches or likely breaches of certain AFS licensee obligations;
- (b) assisting ASIC in our regulatory oversight of the licensee;
- (c) complying with certain procedures when dealing with clients' money and other property; and
- (d) keeping financial records and preparing and lodging financial statements.

Options

[Interested parties'](#) [Stakeholder](#) views are sought on the following option:

Option 5: Ensuring advice is underpinned by professional licensing. Under this option proxy advisers would be required to obtain an AFSL for the provision of proxy advice.

Greater transparency of proxy advice

The purpose of the license would be to ensure that proxy advisers are making assessments on issues that have a material impact on the conduct of business in Australia with appropriate regulatory oversight [and the necessary care and skill required](#).

Consultation questions

11. Is the AFSL regime an appropriate licensing regime through which to regulate the provision of proxy advice?
12. Would coverage under the AFSL regime result in an improvement in the standard of proxy advice?



Australian Government
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TSY/AU

Greater transparency of proxy advice

Consultation Paper

April 2021



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Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this consultation paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect confidentiality of your submission.

View Treasury's [Submission Guidelines](#) for further information.

Closing date for submissions: 01 June 2021

Email MCDproxyadvice@treasury.gov.au

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Enquiries Enquiries can be directed to MCDproxyadvice@treasury.gov.au

Greater transparency of proxy advice

Introduction

Part of the regulatory framework supporting good corporate governance is the requirement for companies to hold Annual General Meetings (AGMs), at which senior company officers engage with shareholders and put certain matters to shareholders as resolutions for their approval by vote. Some resolutions are required under the *Corporations Act 2001* (Corporations Act), and some may be required by the company's own constitution. There is a broad range of resolution types, including those related to strategic or commercial decisions, the composition of the Board and changes to a company's name, type or constitution.

Many institutional shareholders, such as superannuation funds, use the services of proxy advisers to assist in arriving at voting decisions, particularly those with diversified holdings in a large number of companies.

Proxy advisers typically undertake research and provide voting recommendations on resolutions put at a company's meeting. They provide this information in a proxy report to a range of institutional investors, such as superannuation funds, asset owners, pension funds and other major investors. Investors can use the proxy advice report and other sources of information to arrive at a vote decision.

Australia has the fifth largest pool of pension funds¹ and there are more than 2,000 companies listed on the ASX. At the same time, there are only four main proxy advisers operating in Australia. This gives these advisers a high degree of influence in the outcomes of company resolutions and therefore the conduct of business in Australia.

Proxy advice market in Australia

In Australia, the four main proxy advisers are Institutional Shareholder Services Australia, CGI Glass Lewis, Ownership Matters and the Australian Council of Superannuation Investors. There are other entities operating as proxy advisers to non-institutional investors². Entities that are offering proxy advice or proxy services to non-institutional investors are not the focus of this consultation.

Each of the four main proxy advisers have their own proxy voting guidelines and policies that outline the underlying principles that guide the voting recommendations. Proxy advisers also abide by bespoke engagement policies that outline how they engage with companies. For example, one proxy adviser has a particular period where they do not engage with companies; another, provides their proxy advice report to the company for comment, prior to publication³. These policies are not legally binding on the proxy advisers.

Apart from the proxy advice report, proxy advisers also provide other services such as data, analytics, insights and governance advice.

Regulation of proxy advisers

Proxy advisers are required to hold an Australian Financial Services License (AFSL) for advice they provide to wholesale investors in respect of votes that relate to dealings in financial products.

¹ Investment Company Institute data, sourced via Australian Trade and Investment Commission release *Australia's pension funds shine in 2021 global rankings*

² For example, the Australian Shareholders Association monitors companies and offers advice to its membership base of individual investors.

³ Proxy adviser policies are publicly available from proxy adviser websites.

However, proxy advisers also provide advice on other resolutions, such as remuneration reports, board appointments and governance arrangements, which are not covered by the AFSL regime as they do not fall within the meaning of a financial service.

Proxy advisers are also subject to misleading and deceptive conduct provisions⁴, which means that they must not engage in conduct in relation to a financial product or a financial service that is misleading or deceptive, or likely to mislead or deceive. This is regardless of whether the proxy adviser is engaging in a service covered by their AFSL or not.⁵

Proxy advice in the superannuation sector

Background

Superannuation funds typically own shares in Australian listed companies as part of an overall investment strategy. As at 31 December 2020, superannuation funds with more than four members owned 20 per cent or \$443.7 billion of the Australian Stock Exchange (ASX) on behalf of their members.

These shares have voting rights attached, and where superannuation fund trustees exercise voting rights they are obliged to do so in the best interests of their members (with legislation currently before Parliament clarifying that this obligation means members' best *financial* interests).

Australians currently have at least 9.5 per cent of their salary contributed towards their retirement and they should have confidence that trustees are acting to maximise their retirement savings, including when trustees exercise voting rights and in interactions with listed companies.

Given the volume of company resolutions a trustee may be entitled to vote on in a given year, some superannuation funds may decide to engage proxy advisers to provide additional information and recommendations on how to exercise their voting rights. In such circumstances, it is still a matter for the superannuation fund to ultimately determine how to exercise their voting rights. There is insufficient public information today to determine whether superannuation funds, in this area, are acting in a manner consistent with their legal obligations.

There are existing regulations which require superannuation funds to publicly disclose their proxy voting policies and summary of when and how the fund exercised its voting rights at AGMs of listed companies for the previous financial year.

Section 29QB of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and s 2.38(2) of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) set out requirements as to which documents and information need to be publicly disclosed.

International developments

The regulation of proxy advisers has been the subject of recent reforms in the United Kingdom and the United States. Overall, the reforms are primarily focused on transparency, accountability and independence.

⁴ *Corporations Act 2001*, s1041H

⁵ ASIC review of proxy adviser engagement practices 2018 (Report 578), page 4.

The Securities Exchange Commission (SEC) in the United States consulted on proposed amendments to regulate proxy advisers between 2019 and 2020. The SEC adopted the final amendments which will come into effect December 2021. The amendments specify that proxy voting advice generally constitutes a solicitation. They also provide exemptions from the information and filing requirements of the proxy rules, where the proxy adviser provides conflict of interest disclosure in their advice and has policies and procedures that⁶:

- ensure advice is made available to companies subject of their reports before or at the time it is provided to their clients; and
- they provide a mechanism for their clients to view any written statements by the companies in relation to their advice before the relevant meeting.

Similarly, the United Kingdom amended regulations in 2019 to require proxy advisers to disclose actual or potential conflicts of interests, disclose information about their research capabilities and how the research supports the advice and recommendations and disclose instances where there is deviations from the proxy adviser firm's code of conduct or why the firm has not adopted a code of conduct.⁷⁸

Consultation Objectives

Given the influential role of proxy advisers in corporate governance in Australia and the high degree of institutional share ownership, this consultation is designed to help assess the adequacy of the current regulatory regime and help develop reform options that would strengthen the transparency and accountability of proxy advice. Additionally, given the millions of Australians who have their superannuation savings invested in shares, it is critical that the voting rights attached to the members' superannuation assets are managed to maximise the retirement savings of Australians and for the sole purpose of retirement benefits.

Potential Reforms

Ensuring independence between superannuation funds and proxy advice

Trustees of registrable superannuation entities should be held to the highest standards of governance, transparency and efficiency to ensure assets are managed to maximise members' retirement savings.

Recent policy initiatives, including the Government's *Your Future, Your Super* (YFYS) legislative package, currently before Parliament, will continue to strengthen the superannuation system in these critical areas. For example, under the YFYS reforms, from 1 July 2021 trustees will have a duty to always act in the best financial interests of members. Transparency will also be enhanced through improved portfolio holdings disclosure requirements and more information being provided to members ahead of the Annual Members' Meeting (AMM).

⁶ SEC Press Release 2020-161 – *SEC adopts rule amendments to provide investors using proxy voting advice more transparent, accurate and complete information*

⁷ Financial Conduct Authority proxy advisers information page, last updated 11/11/2020

⁸ Explanatory Memorandum to *The Proxy Advisors (Shareholders' Rights) Regulations 2019 – 2019 No. 926 (UK)*

There is scope to further improve transparency and member engagement by ensuring trustees provide simpler and clearer information about how funds manage members' money, including in the exercise of voting rights. While some funds publish detailed information on their voting, this is not consistent across the industry, and rarely includes information on the proxy recommendation received – attributable in part to a legislative requirement on trustees to publish only their proxy voting policies and a summary of their votes for listed companies.

There is also scope to also ensure that the role of proxy advisers in advising and interacting with trustees is appropriate and transparent. Trustees have specific fiduciary and statutory obligations to their members, including to act in the best interests of members and to maintain high standards of governance. Proxy advisers are not subject to the same framework, and therefore may have broader objectives than those that a trustee is required to consider. Superannuation funds compete for members and investment returns. There are also questions therefore as to whether superannuation funds should be jointly involved in determining their voting positions, including through shared ownership of a proxy adviser. In this context, it is appropriate to consider whether there is a need for meaningful independence between superannuation trustees and proxy advisers.

Options

Stakeholder views are sought on the following options aimed at improving independence of proxy advisers for the purposes of ensuring superannuation funds are held to the highest standards of governance and transparency.

Option 1: Improved disclosure of trustee voting. Under this option, superannuation funds would be required to disclose more detailed information in relation to their voting policies and actions for each financial year. The details to be disclosed could include how votes were exercised, whether any advice was received from a proxy adviser and who provided the advice.

If proxy advice is received, disclosure could include whether the voting actions taken were consistent with the proxy advice.

Option 2: Demonstrating independence and appropriate governance. Under this option, proxy advisers would be required to be meaningfully independent from a superannuation fund they are advising to ensure that proxy advice is provided to and used by superannuation funds on an 'arm's length' basis.

Trustees could also be required to outline publicly how they implement their existing trustee obligations and duties around independent judgement in the determination of voting positions.

Consultation questions

1. How would the proposed options affect superannuation fund members?
2. What impact would the proposed options have on superannuation funds in complying with these regulatory requirements?
3. What should be the regularity and timing of reporting? For example, should trustees be required to provide their proxy voting policy to members ahead of an AMM?
4. What other information on how voting is informed by proxy advice should be disclosed by superannuation funds and why?
5. What level of independence between a superannuation fund and a proxy adviser should be required?
6. Which entity should the independence requirement apply to (superannuation fund or proxy adviser)?

Facilitating engagement between companies and proxy advisers

Proxy advice reports are generally provided to investors 14 to 21 days prior to a company's meeting.⁹ Currently, proxy advisers are not required to engage with companies on their research, report and recommendations, either before or after providing their reports to investors.

Business representative groups have raised the importance of companies being able to engage with proxy advisers and being able to present their views to the investors who receive the reports, including in situations where a company may disagree with some of the research or recommendations in the reports. The opportunity to engage allows companies to point out any potential factual inaccuracies and convey additional context or information to the proxy adviser that may impact the final voting recommendation. This is important given that there are only a few proxy advisers that are providing advice to what is a large proportion of their shareholder base for some companies.

Given that AGMs are not distributed evenly throughout the year, with a high proportion of Australia's AGMs happening in the last quarter of the year, large institutional investors may have limited capacity to engage with multiple sources of information in relation to each AGM. Having proxy advice accompanied by the company's response to that advice, or a simple direction on how to find it, would simplify accessing and contrasting information and perspectives.

Options

Stakeholder views are sought on the following options that are aimed to facilitate engagement and transparency.

Option 3: Facilitate engagement and ensure transparency. Under this option, proxy advisers would be required to provide their report containing the research and voting recommendations for resolutions at a company's meeting, to the relevant company before distributing the final report to subscribing investors. For example, a period of five days prior to the recommendation being made publicly available would give enough time for both the company and proxy adviser to comment and for the proxy adviser to amend the report in response if warranted.

Option 4: Make materials accessible. Under this option, proxy advisers would be required to notify their clients on how to access the company's response to the report. This could be through providing a website link or instructions on how to access the response elsewhere.

Consultation questions

7. How would the proposed options affect the level of engagement by proxy advisers with companies?
8. Would the proposed options mean that investors are more likely to be aware of a company's position on the proxy advice they are receiving?
9. What is the most appropriate method for proxy advisers to notify their clients as to where the company's response to its report is?
10. If proxy advisers were required to provide their reports to companies in advance of their clients, what would an appropriate length of time be that allows companies to respond to the report and for the report to be amended if there are any errors?
11. Are there any requirements that should be placed on companies during this period, such as confidentiality? Are there any requirements that should be placed on proxy advisers during this period, such as not making their recommendation otherwise publicly known?

⁹ Australian Institute of Company Directors, *Institutional Share Voting and Engagement: exploring the links between directors, institutional shareholders and proxy advisers*, 2011

Require suitable licensing for the provision of proxy advice

As noted above, proxy advisers provide advice on a range of company-related matters, much of which does not require specific licensing, in spite of the influence on the conduct of business in Australia. Making assessments on issues such as the appropriateness of a proposed executive remuneration package, the performance of a director and whether they should be re-elected, and the outcome of a change in the company's constitution all require a high degree of expertise to assess. The investors that proxy advisers sell their service to are for the most part seeking financial returns for their members and clients, especially superannuation funds that are required to act in the best interests of their members.

Australia's existing regime for financial services is the AFS Licensing regime, to which only a subset of proxy adviser activities is currently subject. If an entity is required to hold an AFSL to provide financial services, they are required to comply with obligations under the Corporations Act and their licence conditions, unless relief is granted by ASIC or an exemption in the law applies. The AFSL is issued by ASIC under Chapter 7 of the Corporations Act in line with its regulatory responsibility for the financial services industry.

An AFSL holder must comply with the general obligations under the Corporations Act, including the following:

- (a) do all things necessary to ensure that the financial services covered by the AFS licence are provided efficiently, honestly and fairly;
- (b) have adequate arrangements in place to manage its conflicts of interest;
- (c) comply with AFS licence conditions;
- (d) comply with financial services laws; and
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws.

An AFSL holder is also required to comply with various conduct obligations, particularly in Part 7.6 of the Corporations Act, including:

- (a) notifying ASIC of significant breaches or likely breaches of certain AFS licensee obligations;
- (b) assisting ASIC in their regulatory oversight of the licensee;
- (c) complying with certain procedures when dealing with clients' money and other property; and
- (d) keeping financial records and preparing and lodging financial statements.

Options

Stakeholder views are sought on the following option:

Option 5: Ensuring advice is underpinned by professional licensing. Under this option proxy advisers would be required to obtain an AFSL for the provision of proxy advice.

The purpose of the license would be to ensure that proxy advisers are making assessments on issues that have a material impact on the conduct of business in Australia with appropriate regulatory oversight and the necessary care and skill required.

Consultation questions

12. Is the AFSL regime an appropriate licensing regime through which to regulate the provision of proxy advice?
13. Would coverage under the AFSL regime result in an improvement in the standard of proxy advice?



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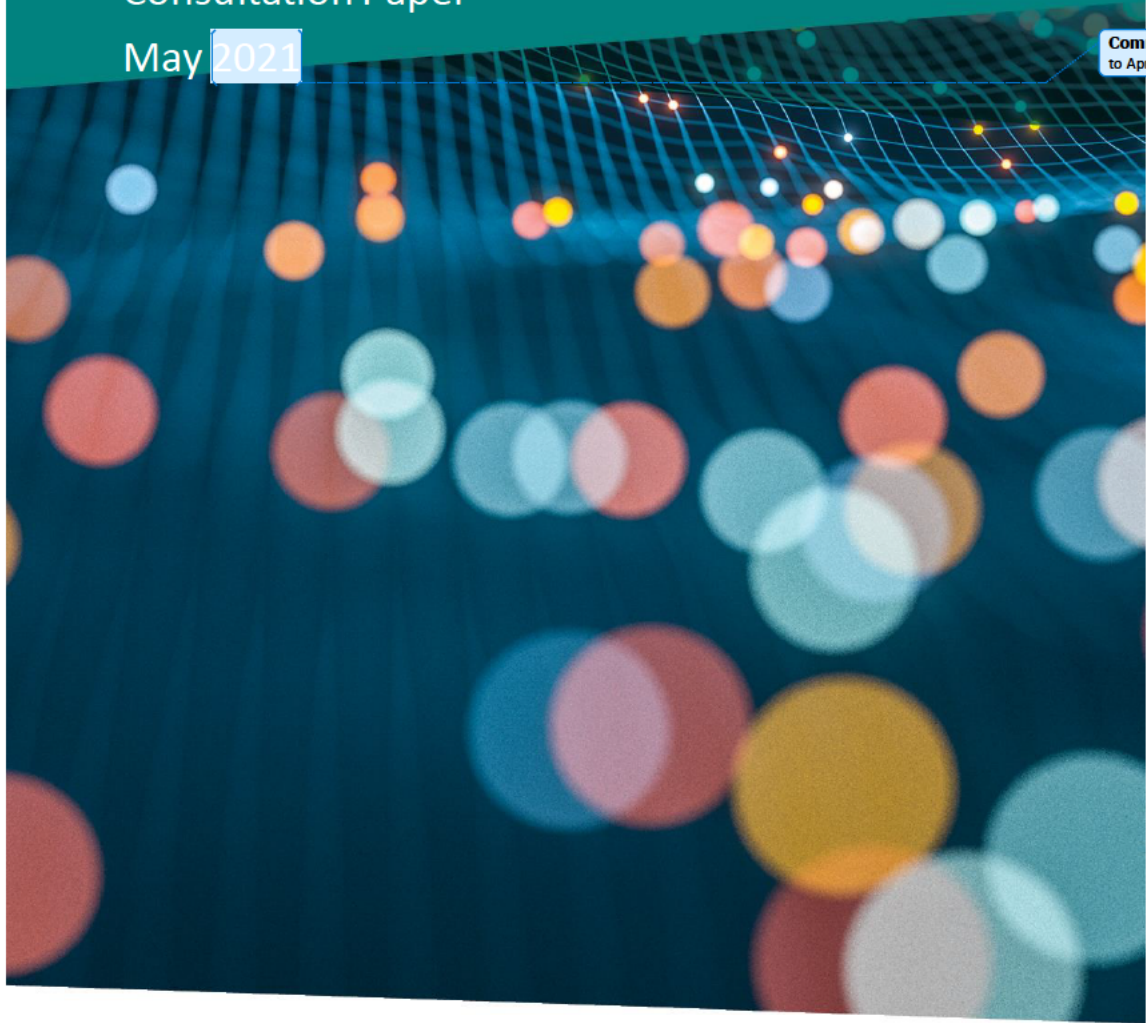
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Greater transparency of proxy advice

Consultation Paper

May 2021

Commented s47F : If this is going out today, will have to change to April



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Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this consultation paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect confidentiality of your submission.

View Treasury's [Submission Guidelines](#) for further information.

Closing date for submissions: 01 June 2021

Email	MCDproxyadvice@treasury.gov.au
Mail	Market Conduct Division The Treasury Langton Crescent PARKES ACT 2600
Enquiries	Enquiries can be directed to MCDproxyadvice@treasury.gov.au

Greater transparency of proxy advice

Introduction

Part of the regulatory framework supporting good corporate governance is the requirement for companies to hold Annual General Meetings (AGMs), at which senior company officers engage with shareholders and put certain matters to shareholders as resolutions for their approval by vote. Some resolutions are required under the *Corporations Act 2001* (Corporations Act), and some may be required by the company's own constitution. There is a broad range of resolution types, including those related to strategic or commercial decisions, the composition of the Board and changes to a company's name, type or constitution.

Many institutional shareholders, such as superannuation funds, use the services of proxy advisers to assist in arriving at voting decisions, particularly those with diversified holdings in a large number of companies.

Proxy advisers typically undertake research and provide voting recommendations on resolutions put at a company's meeting. They provide this information in a proxy report to a range of institutional investors, such as superannuation funds, asset owners, pension funds and other major investors. Investors can use the proxy advice report and other sources of information to arrive at a vote decision.

While Australia has the [fourth-fifth](#) largest pool of [pension funds and eight largest pool of](#) managed funds in the world¹, and there are more than 2,000 companies listed on the ASX, investors are predominately supported by four main proxy advisers operating in Australia that provide their reports. This gives these advisers a high degree of influence in the outcomes of company resolutions and therefore the conduct of business in Australia.

Proxy advice market in Australia

In Australia, the four main proxy advisers are Institutional Shareholder Services Australia, CGI Glass Lewis, Ownership Matters and the Australian Council of Superannuation Investors. There are other entities operating as proxy advisers to non-institutional investors². Entities that are offering proxy advice or proxy services to non-institutional investors are not the focus of this consultation.

Each of the four main proxy advisers have their own proxy voting guidelines and policies that outline the underlying principles that guide the voting recommendations. Proxy advisers also abide by bespoke engagement policies that outline how they engage with companies. For example, one proxy adviser has a particular period where they do not engage with companies; another, provides their proxy advice report to the company for comment, prior to publication³. These policies are not legally binding on the proxy advisers.

Apart from the proxy advice report, proxy advisers also provide other services such as data, analytics, insights and governance advice.

¹ [Investment Company Institute data sourced via Australian Trade and Investment Commission release Australia's pension funds shine in 2021 global rankings](#)

² For example, the Australian Shareholders Association monitors companies and offers advice to its membership base of individual investors.

³ Proxy adviser policies are publicly available from proxy adviser websites.

Regulation of proxy advisers

Proxy advisers are required to hold an Australian Financial Services License (AFSL) for advice they provide to wholesale investors in respect of votes that relate to dealings in financial products.

However, proxy advisers also provide advice on other resolutions, such as remuneration reports, board appointments and governance arrangements, which are not covered by the AFSL regime as they do not fall within the meaning of a financial service.

Proxy advisers are also subject to misleading and deceptive conduct provisions⁴, which means that they must not engage in conduct in relation to a financial product or a financial service that is misleading or deceptive, or likely to mislead or deceive. This is regardless of whether the proxy adviser is engaging in a service covered by their AFSL or not.⁵

Proxy advice in the superannuation sector

Background

Superannuation funds typically own shares in Australian listed companies as part of an overall investment strategy. As at 31 December 2020, superannuation funds with more than four members owned 20 per cent or \$443.7 billion of the Australian Stock Exchange (ASX) on behalf of their members.

These shares have voting rights attached, and where superannuation fund trustees exercise voting rights they are obliged to do so in the best interests of their members (with legislation currently before Parliament clarifying that this obligation means members' best *financial* interests).

Australians currently have at least 9.5 per cent of their salary contributed towards their retirement and they should have confidence that trustees are acting to maximise their retirement savings, including when trustees exercise voting rights and in interactions with listed companies.

Given the volume of company resolutions a trustee may be entitled to vote on in a given year, some superannuation funds may decide to engage proxy advisers to provide additional information and recommendations on how to exercise their voting rights. In such circumstances, it is still a matter for the superannuation fund to ultimately determine how to exercise their voting rights. There is insufficient public information today to determine whether superannuation funds, in this area, are acting in a manner consistent with their legal obligations.

There are existing regulations which require superannuation funds to publicly disclose their proxy voting policies and summary of when and how the fund exercised its voting rights at AGMs of listed companies for the previous financial year.

Section 29QB of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and s 2.38(2) of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) set out requirements as to which documents and information need to be publicly disclosed.

International developments

The regulation of proxy advisers has been the subject of recent reforms in the United Kingdom and the United States. Overall, the reforms are primarily focused on transparency, accountability and independence.

The Securities Exchange Commission (SEC) in the United States consulted on proposed amendments to regulate proxy advisers between 2019 and 2020. The SEC adopted the final amendments which will come into effect December 2021. The amendments specify that proxy voting advice generally

⁴ Corporations Act 2001, s1041H

⁵ ASIC review of proxy adviser engagement practices 2018 (Report 578), page 4.

Commented 547: Reference to insufficient information implies that superannuation funds are required to publicly disclose/prove that they are complying with all their various legal obligations, which is not the case for the vast majority of their legal obligations.

constitutes a solicitation. They also provide exemptions from the information and filing requirements of the proxy rules, where the proxy adviser provides conflict of interest disclosure in their advice and has policies and procedures that⁶:

- ensure advice is made available to companies subject of their reports before or at the time it is provided to their clients; and
- they provide a mechanism for their clients to view any written statements by the companies in relation to their advice before the relevant meeting.

Similarly, the United Kingdom amended regulations in 2019 to require proxy advisers to disclose actual or potential conflicts of interests, disclose information about their research capabilities and how the research supports the advice and recommendations and disclose instances where there is deviations from the proxy adviser firm's code of conduct or why the firm has not adopted a code of conduct.⁷⁸

Consultation Objectives

Given the influential role of proxy advisers in corporate governance in Australia and the high degree of institutional share ownership, this consultation is designed to help assess the adequacy of the current regulatory regime and help develop reform options that would strengthen the transparency and accountability of proxy advice. Additionally, given the millions of Australians who have their superannuation savings invested in shares, it is critical that the voting rights attached to the members' superannuation assets are managed to maximise the retirement savings of Australians and for the sole purpose of retirement benefits.

Potential Reforms

Ensuring independence between superannuation funds and proxy advice

Trustees of registrable superannuation entities should be held to the highest standards of governance, transparency and efficiency to ensure assets are managed to maximise members' retirement savings.

Recent policy initiatives, including the Government's *Your Future, Your Super* (YFYS) legislative package, currently before Parliament, will continue to strengthen the superannuation system in these critical areas. For example, under the YFYS reforms, from 1 July 2021 trustees will have a duty to always act in the best financial interests of members. Transparency will also be enhanced through improved portfolio holdings disclosure requirements and more information being provided to members ahead of the Annual Members' Meeting (AMM).

There is scope to further improve transparency and member engagement by ensuring trustees provide simpler and clearer information about how funds manage members' money, including in the exercise of voting rights. While some funds publish detailed information on their voting, this is not consistent across the industry, and ~~it scarcely, which rarely~~ includes information on the proxy recommendation received – attributable in part to a legislative requirement on trustees to publish only ~~a summary of~~ their proxy voting policies and a summary of their ~~voting votes~~ for listed ~~companies~~.

Commented 547: Softens language given funds don't have a legal obligation to disclose this information

Commented 547: Clarifies that the summary is about the voting information. The obligation is to publish the proxy voting policy.

⁶ SEC Press Release 2020-161 – *SEC adopts rule amendments to provide investors using proxy voting advice more transparent, accurate and complete information*

⁷ Financial Conduct Authority proxy advisors information page, last updated 11/11/2020

⁸ Explanatory Memorandum to *The Proxy Advisors (Shareholders' Rights) Regulations 2019 – 2019 No. 926 (UK)*

There is also scope to also ensure that the role of proxy advisers in advising and interacting with trustees is appropriate and transparent. Trustees have specific fiduciary and statutory obligations to their members, including to act in the best interests of members and to maintain high standards of governance. Proxy advisers are not subject to the same framework, and therefore may consider broader objectives than those that a trustee may consider. ~~Superannuation funds compete for members and investment returns.~~ There are questions therefore as to whether superannuation funds should be jointly involved in determining their voting positions, including through shared ownership of a proxy adviser. In this context, it is appropriate to consider whether there is a need for meaningful independence between superannuation trustees and proxy advisers.

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Options

Stakeholder views are sought on the following options aimed at improving independence of proxy advisers for the purposes of ensuring superannuation funds are held to the highest standards of governance and transparency.

Option 1: Improved disclosure of trustee voting. Under this option, superannuation funds would be required to disclose more detailed information in relation to their voting policies and actions for each financial year. The details to be disclosed could include how votes were exercised, whether any advice was received from a proxy adviser and who provided the advice.

If proxy advice is received, disclosure could include whether the voting actions taken were consistent with the proxy advice.

Option 2: Demonstrating independence and appropriate governance. Under this option, proxy advisers would be required to be meaningfully independent from a superannuation fund they are advising to ensure that proxy advice is provided to and used by superannuation funds on an 'arm's length' basis.

Trustees could also be required to outline publicly how they implement their existing trustee obligations and duties around independent judgement in the determination of voting positions.

Consultation questions

1. How would the proposed options affect superannuation fund members?
2. What impact would the proposed options have on superannuation funds in complying with these regulatory requirements?
3. What should be the regularity and timing of reporting? For example, should trustees be required to provide their proxy voting policy to members ahead of an AMM?
4. What other information on how voting is informed by proxy advice should be disclosed by superannuation funds and why?
5. What level of independence between a superannuation fund and a proxy adviser should be required?
6. Which entity should the independence requirement apply to (superannuation fund or proxy adviser)?

Facilitating engagement between companies and proxy advisers

Proxy advice reports are generally provided to investors 14 to 21 days prior to a company's meeting.⁹ Currently, proxy advisers are not required to engage with companies on their research, report and recommendations, either before or after providing their reports to investors.

⁹ Australian Institute of Company Directors, *Institutional Share Voting and Engagement: exploring the links between directors, institutional shareholders and proxy advisers*, 2011

Business representative groups have raised the importance of companies being able to engage with proxy advisers and being able to present their views to the investors who receive the reports, including in situations where a company may disagree with some of the research or recommendations in the reports. The opportunity to engage allows companies to point out any potential factual inaccuracies and convey additional context or information to the proxy adviser that may impact the final voting recommendation. This is important given that there are only a few proxy advisers that are providing advice to what is a large proportion of their shareholder base for some companies.

Given that AGMs are not distributed evenly throughout the year, with a high proportion of Australia's AGMs happening in the last quarter of the year, large institutional investors may have limited capacity to engage with multiple sources of information in relation to each AGM. Having proxy advice accompanied by the company's response to that advice, or a simple direction on how to find it, would simplify accessing and contrasting information and perspectives.

Options

Stakeholder views are sought on the following options that are aimed to facilitate engagement and transparency.

Option 3: Facilitate engagement and ensure transparency. Under this option, proxy advisers would be required to provide their report containing the research and voting recommendations for resolutions at a company's meeting, to the relevant company before distributing the final report to subscribing investors. For example, a period of five days prior to the recommendation being made publicly available would give enough time for both the company and proxy adviser to comment and for the proxy adviser to amend the report in response if warranted.

Option 4: Make materials accessible. Under this option, proxy advisers would be required to notify their clients on how to access the company's response to the report. This could be through providing a website link or instructions on how to access the response elsewhere.

Consultation questions

7. How would the proposed options affect the level of engagement by proxy advisers with companies?
8. Would the proposed options mean that investors are more likely to be aware of a company's position on the proxy advice they are receiving?
9. What is the most appropriate method for proxy advisers to notify their clients as to where the company's response to its report is?
10. If proxy advisers were required to provide their reports to companies in advance of their clients, what would an appropriate length of time be that allows companies to respond to the report and for the report to be amended if there are any errors?
11. Are there any requirements that should be placed on companies during this period, such as confidentiality? Are there any requirements that should be placed on proxy advisers during this period, such as not making their recommendation otherwise publicly known?

Require suitable licensing for the provision of proxy advice

As noted above, proxy advisers provide advice on a range of company-related matters, much of which does not require specific licensing, in spite of the influence on the conduct of business in Australia. Making assessments on issues such as the appropriateness of a proposed executive remuneration package, the performance of a director and whether they should be re-elected, and the outcome of a change in the company's constitution all require a high degree of expertise to assess. The investors that proxy advisers sell their service to are for the most part seeking financial

returns for their members and clients, especially superannuation funds that are required to act in the best interests of their members.

Australia's existing regime for financial services is the AFS Licensing regime, to which only a subset of proxy adviser activities is currently subject. If an entity is required to hold an AFSL to provide financial services, they are required to comply with obligations under the Corporations Act and their licence conditions, unless relief is granted by ASIC or an exemption in the law applies. The AFSL is issued by ASIC under Chapter 7 of the Corporations Act in line with its regulatory responsibility for the financial services industry.

An AFSL holder must comply with the general obligations under the Corporations Act, including the following:

- (a) do all things necessary to ensure that the financial services covered by the AFS licence are provided efficiently, honestly and fairly;
- (b) have adequate arrangements in place to manage its conflicts of interest;
- (c) comply with AFS licence conditions;
- (d) comply with financial services laws; and
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws.

An AFSL holder is also required to comply with various conduct obligations, particularly in Part 7.6 of the Corporations Act, including:

- (a) notifying ASIC of significant breaches or likely breaches of certain AFS licensee obligations;
- (b) assisting ASIC in their regulatory oversight of the licensee;
- (c) complying with certain procedures when dealing with clients' money and other property; and
- (d) keeping financial records and preparing and lodging financial statements.

Options

Stakeholder views are sought on the following option:

Option 5: Ensuring advice is underpinned by professional licensing. Under this option proxy advisers would be required to obtain an AFSL for the provision of proxy advice.

The purpose of the license would be to ensure that proxy advisers are making assessments on issues that have a material impact on the conduct of business in Australia with appropriate regulatory oversight and the necessary care and skill required.

Consultation questions

- 12. Is the AFSL regime an appropriate licensing regime through which to regulate the provision of proxy advice?
- 13. Would coverage under the AFSL regime result in an improvement in the standard of proxy advice?