

SUBMISSION

Submission to Treasury — Greater transparency of proxy advice

1 June 2021

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Market Conduct Division

The Treasury

Langton Crescent

PARKES ACT 2600

Via email: MCDproxyadvice@treasury.gov.au

4 June 2021

Dear Sir / Madam,

Greater transparency of proxy advice

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the consultation paper on greater transparency of proxy advice.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16.5 million Australians with superannuation.

General comments

Superannuation funds are required to act in their members' best interests and are accountable to high standards of investment governance. This is underpinned by the legislative framework and APRA's prudential standards - both subject to ongoing monitoring and enforcement by the regulator.

As responsible asset owners seeking to maximise long-term value for members, funds engage proxy advisers to increase the efficiency and efficacy of proxy voting decisions, that in turn promote company alignment with members' best interests and long-term retirement outcomes.

ASFA is concerned that the proposals seek to address a regulatory gap that does not exist, would require superannuation funds to provide information that is not useful or relevant to most consumers, and will increase regulatory cost and complexity without delivering a commensurate benefit to fund members.

The proposals also provide companies a right of review over proxy advice, compromising the independence and value of the advice and embedding conflict in the decision-making process. This could diminish the capacity of funds to make effective decisions on behalf of members.

Shareholders should not be inhibited from exercising their voting rights to express concerns with company resolutions. This may occur where shareholders are concerned about the capacity of resolutions to diminish shareholder value and long-term financial outcomes. The right of shareholders to have a voice on these issues is critical to good corporate governance and capital formation in the Australian economy.

If you have any queries or comments in relation to the content of our submission, please contact me on (02) 8079 0815 or by email jcabarrus@superannuation.asn.au.

Yours sincerely



Julian Cabarrus

Director – Policy Operations, Member Engagement & External Affairs

Greater transparency of proxy advice – Treasury consultation

The current regulatory framework requires proxy voting in members' interests

The consultation objectives states “it is critical that the voting rights attached to member’ superannuation assets are being managed to maximise the retirement savings of Australians”.

However, it should be acknowledged that trustees are already required to manage proxy voting rights in such a manner by virtue of the general covenants contained in Section 52 of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and the sole purpose test contained in Section 62 of the SIS Act.

The Australian Prudential Regulation Authority’s (APRA) *Prudential Standard SPS 530 – Investment Governance* requires trustees to maintain a comprehensive investment governance framework, with proxy voting policies encapsulated within this:

“An investment governance framework is the totality of systems, structures, policies, processes and people to address the RSE licensee’s responsibilities with regard to investments of each RSE within the RSE licensee’s business operations. This includes generating returns to meet investment objectives while managing and monitoring all identified sources of investment risk.”

APRA monitors compliance with Prudential Standards on an ongoing basis.

The consultation paper does not provide an evidentiary basis for its proposed changes. Research by the Australian Centre for Corporate Responsibility (ACCR) indicates that in relation to shareholder proposals, there is a high degree of synchronicity in voting on material issues:

“For the first time, ACCR has also analysed the voting records of funds based on the outcome of each proposal – the results were striking. While it seems obvious that more funds supporting a proposal would contribute to a higher vote, 20 per cent stands out in the research as a tipping point; that is, many funds were far more likely to support a proposal where overall support was greater than 20 per cent. This suggests that there is a common understanding of materiality of issues raised by shareholder proposals.”¹

Comments on the specific proposals

Ensuring independence between superannuation funds and proxy advice

Option 1 proposes increased disclosure in relation to proxy voting and that 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.

There are existing disclosure requirements contained in 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) that requires superannuation funds to provide:

- their proxy voting policies;
- 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.

ASFA is generally supportive of enhanced disclosure requirements where there is a clear benefit to the consumer that will help them to make more informed decisions and improve their financial outcomes. It is

¹ Fiona Deutsch, Daniel Gocher and ACCR staff, *Two Steps Forward, One Step Back*, 8 June 2020

difficult to see how extending the current disclosures to require details of proxy advice received (and who provided the advice) achieves this in practice.

Proxy advice is just one source of information funds consider when voting. For example, other forms of market/technical analysis and direct engagement with companies' directors and management may factor into trustees' decisions. It is impossible to capture all the inputs into a voting decision and report on them without significant cost and complexity. This level of information would not be useful or relevant to most consumers.

The consultation paper notes that "there is insufficient public information today to determine whether superannuation funds, in this area, are acting in a manner consistent with their legal obligations." However, it is not readily apparent that these disclosures would assist in making such a determination.

It is important not to conflate the role of disclosure in assisting consumers, with the provision of information to regulators that enables them to perform their monitoring and surveillance activities. Doing so could result in information being disclosed to consumers that is difficult to understand and confusing.

In relation to proxy voting, given the inputs and processes utilised by superannuation funds to make decisions, ASFA considers that additional consumer disclosure would not be the best tool to gauge whether funds are meeting their legal obligations. APRA has the power to access records and information and monitor superannuation funds to determine whether they are adhering to these obligations.

Option 2 proposes that 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.

As mentioned, trustees are already required to publicly disclose proxy voting policies and a summary of voting records, and APRA monitors trustee compliance with their existing obligations and duties.

ASFA agrees that advice should be provided on an arm's length basis and on commercial terms – however 'meaningful independence' is not a prerequisite to achieving this. Provided there is no conflict, or any conflict is appropriately managed, a proxy adviser need not be independent from the superannuation fund they are advising. It is not readily apparent that there is an inherent conflict where ownership is characteristic, and no conflicts are identified in the consultation paper.

Indeed, the most apparent source of conflict arises between the proxy adviser and the company to whom the advice pertains. Therefore, it is critical that the advice is provided on an arm's length basis from the companies who are the subject of advice. We discuss this in further detail in relation to option 3.

Facilitating engagement between companies and proxy advisers

Option 3 proposes that 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.

ASFA considers that the proposal to integrate companies in the process of developing advisory reports would create a significant conflict of interest and impede superannuation trustees' pursuit of members best interests.

The value and reliability of the proxy advice is in large part predicated on its independence from the company, as the advice may run contrary to the interests of directors and management (for example, pecuniary interests in the case of a resolution relating to executive remuneration). Having the company assess and potentially influence the report prior to its release would be inappropriate and diminish the capacity of superannuation funds to assess companies and make voting decisions in members best interests.

It would also be likely to reduce competitive intensity within the proxy adviser market and the overall value of the service in providing independent, professional advice to the institutional market. More broadly, the level of engagement between proxy advisers and companies is a commercial matter between those parties.

Option 4: proposes that 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.

ASFA considers that it should not be the obligation of the proxy adviser to communicate companies' views on its recommendations, or to notify subscribers as to companies' responses. It is a matter for individual companies how they communicate with institutional investors on these matters.

If a factual error is identified proxy advisers should advise their clients of this.

Require suitable licensing for the provision of proxy advice

Option 5: proposes that 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.

ASFA considers this to be a reasonable proposal given the nature of activities undertaken by proxy advisers. We are not aware of any issues with the current standard of advice; however, coverage would ensure that proxy advisers are required to meet on an ongoing basis the high standards required of AFSL holders, including in relation to conduct and competency.