



Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600
MCDproxyadvice@treasury.gov.au

4 June 2021
By Email

Dear Sir or Madam

Response to Consultation Paper - Greater Transparency of Proxy Advice

Thank you for the opportunity to provide submissions on the paper 'Greater transparency of proxy advice' of April 2021 (**Consultation Paper**). Our feedback on the Consultation Paper is set out below for your consideration.

1 Facilitating engagement between companies and proxy advisers

We strongly support Option 3 (facilitate engagement and ensure transparency) and Option 4 (make materials accessible) of the Consultation Paper. We note the following:

- It is not uncommon for proxy adviser reports to contain factual inaccuracies or for proxy advisers to misunderstand information about the company in the course of making voting recommendations. This is problematic because many significant institutional investors will make their voting decisions having regard to the proxy advice they receive (and may even be required to follow the recommendations of a particular proxy adviser) and their votes, in aggregate, significantly impact the voting outcomes for most ASX listed companies.
- Currently, there is no practical avenue via which companies can seek to correct this information in time before votes are cast nor is there any obligation on proxy advisers to proactively test the contents of their report with companies or make the views of the company known when distributing their report. Companies cannot practically address this information asymmetry. The ASX market announcements platform is only effective in communicating information to buy and sell side analysts. It does not inform the governance officers who cast the proxy votes within the institutions (many of whom are foreign pension plans) who, for logistical reasons, look to the proxy advisers as their key information source rather than the announcements platform.
- We strongly support reform that would require proxy advisers to provide their reports and voting recommendations to each company, before distributing such information to investors. This would provide companies an opportunity to urgently review the report, identify factual errors or misunderstandings, and provide proxy advisers with feedback in time for them to correct the contents of their report. Because of the importance of the issue, companies would be able to complete their review and provide any comments within a matter of days, so this step could easily be accommodated in the proxy adviser's timetable.
- To address the information asymmetry issue it is appropriate that investors are provided with any response prepared by the company through the proxy adviser platforms. Proxy advisers should be required to notify investors if they are advised by a company that it intends to file a reply to the proxy adviser report, and then make that reply available to investors on their platform. Company

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replies could be subject to reasonable limits, such as those applying to the length and content of statements given with a shareholder requisitioned resolution under section 249P of the Corporations Act.

2 Ensuring independence between superannuation funds and proxy advice

We do not share the concerns that underlie Option 2 of the Consultation Paper, which proposes that proxy advisers should be required to be meaningfully independent from the superannuation funds they are advising. We do not consider that there is anything inherently problematic with a connection or affiliation between a proxy adviser and its clients. Instead, we think the more important issue to be considered and regulated is the scope for conflicts of interest. Proxy advisers should be under an obligation to:

- take reasonable steps to avoid conflicts of interest;
- manage any conflicts of interest that arise; and
- disclose any conflicts in their reports.

There is an obvious risk of conflicts arising where proxy advisers extend their services to include governance consultancy or other services for listed entities. However, there is also a significant conflict of interest issue where a proxy adviser is advising on resolutions in respect of which one or more of its clients has a material interest, such as a business transaction or a shareholder requisitioned resolution put forward at a general meeting by (or actively supported by) that client or group of clients – particularly where the proxy adviser has been involved in discussions with or in developing the client's position or agenda. The potential risk to the proxy adviser's objectivity should be clearly disclosed for the benefit of the other institutions receiving the proxy adviser's recommendations.

3 Require suitable licensing for the provision of proxy advice

We are relatively indifferent to the proposals in Option 5, which proposes that proxy advisers be required to obtain an Australian Financial Services License (AFSL). It is not clear to us that the AFSL regime is 'fit for purpose' if the objective is to improve the standard and quality of proxy adviser advice. We understand that many proxy advisers already hold AFSLs, and to date, this has not addressed our concerns outlined above.

We are of the view that the engagement and transparency recommendations above would be more effective because it should become clearer to institutions when the quality of the advice falls short if the company is in a position to provide a clear explanation or response that is readily accessible by the proxy adviser's clients.

We would be very happy to discuss these issues with you further.

Yours sincerely

Quentin Digby
Partner
Herbert Smith Freehills

+61 2 9322 4470
+61 419 381 883
quentin.digby@hsf.com

Bianca Marcocci
Senior Associate
Herbert Smith Freehills

+61 2 9225 5821
+61 411 168 682
bianca.marcocci@hsf.com