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Market Conduct Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [MCDproxyadvice@treasury.gov.au](mailto:MCDproxyadvice@treasury.gov.au)

### **Consultation Paper - Greater Transparency of Proxy Advice – April 2021 (the “Consultation Paper”)**

Institutional Shareholder Services (ISS) thanks the Treasury of the Australian Government for the opportunity to provide our comments on the Consultation Paper and the ability to provide detail about the policies and procedures undertaken by ISS in providing proxy voting recommendations to our institutional investor clients.

#### **Introduction of ISS**

ISS is a leading provider of corporate governance, and responsible investment solutions, market intelligence, fund services, and events and editorial content for institutional investors and corporations, globally. This includes objective and impartial corporate governance and voting-related research, analysis, and voting recommendations for institutional investors. Covering more than 45,000 company meetings annually, we have over 2,000 institutional investor clients globally who rely on the expertise of ISS to help them make informed investment and voting decisions, and to execute their votes.

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#### **INSTITUTIONAL SHAREHOLDER SERVICES (AUSTRALIA) PRIVATE LIMITED**

Suite 102, Level 1  
56 Pitt Street  
Sydney NSW 2000

[ISSGOVERNANCE.COM](http://ISSGOVERNANCE.COM)

ISS has over 35 years of experience in corporate governance and proxy voting, and our team of more than 1,000 research, data, voting operations, technology, and client service professionals are located in financial centres worldwide, including in Sydney, Singapore, Tokyo, Manila, Mumbai, London, Paris, Brussels, Berlin, Stockholm, New York, Boston, San Francisco, Washington DC and Toronto.

ISS has been a long-standing participant in the corporate governance community in Australia and we have had a physical presence in the market, with local market expertise and staffing, since 2005. ISS has over the years worked closely with various stakeholders, including regulators and institutional investors in Australia and around the globe.

Our comments to this Consultation Paper represent the views of ISS in our capacity as a proxy adviser and thought leader in the area of corporate governance and shareholder voting. They are not necessarily the views of our clients or other participants offering corporate governance or proxy advice and are not presented as such.

## **General Comments**

Over the past several years and across various jurisdictions, proxy advisers have become surrogates in the debate over how much say shareholders should have in the companies they own. On one side of this debate are shareholders and their representatives, who see proxy voting as an integral part of their fiduciary responsibilities and a duty of good corporate citizenship and who believe proxy advisers play a critical role in aggregating and synthesizing the vast array of data found in proxy statements and providing independent research, analysis and advice that help shareholders make well-informed voting decisions. On the other side are certain corporate representatives who appear to object to shareholders' ability to disagree with management through their voting decisions and who have launched a volley of attacks against proxy advisers based mostly on anecdote, faulty reasoning, and the occasional fabricated news.

The Consultation Paper states the Treasury's understanding that the main proxy advisers have their own proxy voting guidelines and policies that outline the underlying principles that guide their voting recommendations.

It is important to the Treasury's understanding of the proxy advisory services provided by ISS to point out that our analysts prepare proxy research reports for different clients based on any of the following different policy guidelines which are selected at the sole discretion of our clients:

- ISS benchmark policy guidelines, which are publicly available on the ISS website for each market, including Australia, that are based on widely accepted good governance practices and principles and designed to assist institutional investors in meeting their fiduciary requirements with respect to voting, by promoting long-term shareholder value creation and risk mitigation at their portfolio firms, through support of responsible global corporate governance practices. These are reviewed and updated annually pursuant to consultation undertaken by ISS and with input from a wide range of institutional investors, companies and other stakeholders;

- Client custom policies, where individual clients provide their individual "custom" policy requirements for determining voting recommendations which may differ substantially, or in places not at all, from the benchmark policy guidelines; and/or
- ISS "specialty" policies, where proxy voting recommendations are based on certain thematic requirements as selected by clients, such as a "sustainability policy".

Any belief that there is only one ISS approach, which acts as the sole basis for proxy voting recommendations provided to ISS' asset owner and institutional investor clients, and which they blindly accept and vote accordingly without further discretion and consideration, is fundamentally erroneous.

The Consultation Paper states that:

*"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."*

Our experience confirms that investors' selections of proxy voting policies and approaches which form the basis of the research and recommendations which ISS provides to each client, and their own ultimate voting decisions are determined by individual clients' requirements. It should also be noted that some clients procure research and recommendations from multiple providers. It can be inferred (and quite logical) that institutional investors may vote in accordance with the proxy voting recommendations more often than not since they themselves have actively (and voluntarily) chosen their preferred proxy voting policy approaches and service provider(s). Ultimately, we also observe that institutional investors often vote contrary to proxy voting recommendations on a case by case basis, depending on other information which they may have and based on their own views on a company and their own investment objectives. These facts disagree with the contention in the Consultation Paper of:

*"the influential role of proxy advisers in corporate governance in Australia ... [necessitating this consultation] ... 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".*

The Consultation Paper observes that the proxy advisers have individual engagement policies that outline how they interact with companies subject to their research and recommendations. The Australian Securities and Investments Commission (ASIC) undertook an extensive review of proxy adviser engagement practices and reported<sup>1</sup> in 2018 that it found each of the proxy advisers reviewed had:

- A willingness to engage with companies throughout the year (outside of any 'blackout' periods used by one proxy adviser), and there was a high number of actual engagements;
- A willingness to obtain companies' feedback on any factual matters in their reports and to correct factual errors;
- An acknowledgment of the time pressures during the meeting season; and

<sup>1</sup> "ASIC Review of Proxy Adviser Engagement Practices", Report 578, June 2018

- That they had seen a noticeable increase in requests to engage from companies in recent years.

ASIC made certain recommendations to proxy advisers, including:

- Clearly explaining and making available engagement policies, which should be easily accessible or published on the proxy adviser's website;
- Voting guidelines should be easily accessible to assist companies to understand proxy advisers' views on particular issues;
- Following publication of the final report, notifying companies of any 'against' recommendations;
- Proxy advisers should be transparent in their reports about their engagement with companies which are the subject of their reports and any changes made to their reports as a result; and
- Proxy advisers should promptly consider factual errors in their reports and rectify any substantive errors.

ISS can objectively demonstrate its transparency with companies in satisfying those ASIC recommendations in the following ways:

- ISS Engagement FAQs are publicly available on the ISS website, detailing the steps to be taken by companies in requesting an engagement, including processes and information for lodging an engagement request through the "HelpCenter" portal, which was established by ISS for managing and tracking formal correspondence with companies;
- ISS voting guidelines are publicly available on the ISS website for all markets and regions, and noting that ISS analysts rely on publicly available information (predominantly in the Annual Report and Notice of Meeting) in preparing proxy voting research;
- ISS provides its final reports free of charge to subject companies upon publication, through a process where company representatives sign up to be automatically emailed a link to access their report upon publication to our clients. Companies are also given access to ISS systems throughout the year to enable verification of key data. In these ways, companies which wish to be, are fully informed of all recommendations and the rationales;
- ISS engages with a large number of ASX300 company boards throughout the year, and the nature of discussion topics are disclosed in our reports to clients; and
- Given the availability of the final reports (without charge to the subject company), availability of the HelpCenter portal, published Engagement FAQs, email contact details for the Australian research team stated on each report and other contacts already established between ISS analysts and company representatives and directors, sufficient procedures are in place for companies to notify ISS analysts of significant company changes/updates or material factual errors, if any, which require resolution. As noted below, ISS also has a formal "Alert" process to update a previously issued report, where appropriate.

We agree with ASIC's recommendations in the 2018 report in placing an onus on companies to:

- Actively seek out information about the engagement practices to reduce instances of unsuccessful meeting requests;
- Engage proactively with proxy advisers outside of peak periods, including to understand the proxy adviser's policies and views on particular governance issues;

- Release their notice of meeting to the market as early as possible, given the acknowledgement that proxy advisers and investors are subject to timing constraints, including shareholder voting deadlines and the need to ensure clients have adequate time to consider their advice and final voting decisions;
- Ensure the company's disclosure to the market is fulsome, clear, and not overly complex, given that proxy advisers use publicly available information for their reporting;
- Continue engaging directly with investors regarding any voting decision, given the recognition that shareholders are ultimately responsible for making their voting decisions; and
- In relation to 'against' recommendations, seek to understand the concerns underlying the recommendation through engaging with the proxy adviser and their voting policies to assist the company in responding to those concerns.

There is no evidence of any material failure with regard to ISS' engagement policies and practices. However, we remain concerned that some companies are not aware, or chose not to take notice, of our Engagement FAQs or ISS voting guidelines. ISS continues to receive engagement requests from companies on short notice and in the middle of the AGM season (from September to December), which due to the time constraints we are often unable to accept, particularly when companies have no clear agenda or any relevant information or changes to communicate. Importantly, given the procedures that ISS has put in place to be notified of, and to address, any material factual errors, our experience is that we receive no more than a handful of representations from companies each year which assert a material factual error. And even in such instances, and upon immediate investigation, our experience is that a company's assertion of a material factual error is usually a disagreement with or difference of opinion on an ISS policy matter, such as a director's independence classification or defining overboarding, or regarding an assessment of misalignment of executive pay with performance and shareholder returns when recommending 'against' shareholders' ratification of a remuneration report. Any true material factual errors that are found are immediately corrected and notification sent to our clients who received the original report via an "Alert". However, we would note that most "Alerts" with recommendation changes are driven by new information announced by companies themselves, not resulting from ISS errors. To provide context, we issued the following Alerts for ASX300 companies:

- 2019 – 6 informational Alerts with no recommendation changes; 1 Alert with a recommendation change (not due to an ISS error)
- 2020 – 7 Alerts with no recommendation changes; 4 Alerts with recommendation changes (none due to ISS errors, and all due to announcements of company changes)
- 2021 to date – 0 Alerts with no recommendation changes; 2 Alerts with recommendation changes (neither due to ISS errors, and both due to subsequent announcements of company changes).

ISS believes that all investors should have an unfettered right to receive independent views and advice on their portfolio companies, a practice that would be harmed should the Treasury seek to introduce any misguided regulation. We re-iterate that a difference of opinion with directors on matters of corporate governance does not constitute a factual error and is not a matter which requires costly and burdensome regulatory intervention.

The Consultation Paper appears to be premised on the misguided notion that proxy advisers do not already operate transparently or engage with companies. As explained above, such a notion is simply incorrect. We believe the potential regulatory options outlined in the Consultation Paper are a solution in search of a problem. ISS is an independent and transparent service organisation, chosen by sophisticated, institutional investors to provide the advice and services they select. ISS goes to great lengths to ensure the independence, quality and accuracy of our proxy research reporting and advice, and we already have meaningful engagement, where relevant, with the companies that are the subject of those reports. ISS firmly believes that all institutional investors have a fundamental right to choose proxy advisers, use independent research, and implement voting policies appropriate to their individual stewardship needs without any limitations placed on them by the companies they own and the directors who they elect.

The Consultation Paper proposes that proxy advisers may be compelled to provide companies with a five-day review and comment period prior to a proxy adviser's report being made available to fee-paying clients. This would be an unwarranted and inappropriate intrusion into the independent research process. Additionally, and on a practical note, such a requirement involving a delay in the provision of information to investors would be an inoperable impediment to timely and effective investor stewardship and informed voting decision-making, particularly given the extremely tight timetable from release of a company's notice of meeting to the time when shareholders are required to cast their votes.

#### **Ensuring independence between superannuation funds and proxy advice – Questions 1 to 6**

ISS believes there is a flawed assumption in the Consultation Paper underlying the stated concerns about governance and transparency of proxy advisory services, and stated concerns about non-independence of ISS from its own clients, which are Australian and global institutional investors. The Consultation Papers states that one of its aims is to improve:

*"independence of proxy advisers for the purposes of ensuring superannuation funds are held to the highest standards of governance and transparency."*

At no stage can any assertion be sustained that ISS is not independent of its clients or is inappropriately influenced by them. ISS is presently majority owned by Deutsche Bourse, with remaining ownership interests owned by a private equity firm, Genstar Capital LLC, and ISS management. ISS' services are provided to clients on an arm's length basis.

The Consultation Paper proposes a requirement for superannuation funds to disclose more detailed information in relation to their voting policies and actions. This aspect of the consultation is more relevant for response by asset owners and institutional investors; however, our understanding is that most investors, including superannuation funds, already disclose significant and adequate information detailing their voting policies, how they exercise their votes, the extent to which any advice is received, and details of their voting. In fact, ISS has developed systems and reporting which assist institutional investors in the reporting on their voting decisions.

Institutional investors hold the ultimate decision-making power when casting their votes on shareholder meeting resolutions, whether they use the services of proxy advisers or not. As noted above, ISS also publicly discloses its voting policies on its website for transparency. We question the relevance or value

of any increased regulation which would require institutional investors to disclose whether their voting decisions are always consistent with proxy advice, given that this is only one source of information considered by investors. As we have also stated above, investors receive various forms of information which may include proxy voting research based on proxy advisers' own policies, an investor's own customised policy or a chosen thematic specialty policy, and investors have many other sources of information and analysis, and often conduct their own engagements with companies and directors. There is no added benefit, and potentially significant added cost and detriment, if investors are required to individually detail their voting on each company's agenda items and conformity or otherwise with any advice received in respect of each resolution on each of their hundreds and potentially thousands of shareholdings.

### **Facilitating engagement between companies and proxy advisers – Questions 7 to 11**

The ASIC report in 2018 confirmed that ISS engages with many ASX300 company boards and, as noted earlier, ISS makes publicly available on its website the Engagement FAQs and proxy voting guidelines which form the basis of ISS benchmark policy recommendations. ISS has also established a HelpCenter portal on its website to assist companies in arranging engagements and to track communications with ISS. ISS engages significantly with those company boards which request a meeting on their specific agenda items. It is ISS' publicly-stated policy that proxy voting recommendations are based on the company's publicly available information which is assessed by our analysts with reference to ISS policies which are publicly available and can be accessed by companies and directors. It is also ISS policy (and best practice for independent research) that companies are not permitted to "lobby" for vote recommendations with ISS. Within this context, it is recognised that companies and directors may sometimes disagree with ISS policies and/or recommendations, but that such disagreement does not constitute an error by ISS.

Any regulatory requirement for a company to have access to a draft proxy voting report for a period of 5 days prior to release to paying investor clients is fundamentally inoperable and would have the effect of materially damaging the institutional investors' interests in receiving timely, independent and cost-effective information to assist them in engaging with companies and making their voting decisions.

The assertion in the Consultation Paper that giving companies five days before publishing the final report to fee-paying institutional investors is based on a fundamentally flawed proposition that this would give time:

*"for the proxy adviser to amend the report in response if warranted".*

We reject the assertion that there is any systemic failure in the proxy research process which results in material factual errors requiring correction. ISS also rejects the need or philosophical basis for regulation that would give directors and companies the ability to scrutinize and impede the provision of independent research which is commissioned by institutional investors in assisting them to implement voting policies appropriate to their individual stewardship needs.

The Consultation Paper goes on to suggest that:



*"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."*

Companies already have multiple ways of communicating with their shareholders and investors, and to the market, both before and after proxy advisers issue their reports. ISS does not believe it appropriate to mandate that proxy adviser reports be a vehicle to notify clients on where or how to access a company's response to a proxy voting report. The ASX Corporate Governance Council Principles and Recommendations provide for companies to develop and maintain appropriate procedures to communicate with shareholders, including through an investor relations function. Neither a proxy adviser nor any other third-party provider contracted by an investor should have any role in acting on behalf of any ASX-listed company in facilitating communications with their shareholders.

In conclusion and response to Questions 7 to 11 in the Consultation Paper,

- ISS already provides appropriate avenues for engagement with companies and undertakes significant engagement activities with those companies that request it and where it is relevant. Otherwise, it is ISS policy to rely on publicly available disclosures when assessing companies, and any proposed regulation would not alter ISS' commitment to engage with companies and provide a final proxy voting report free of charge;
- ISS should have no responsibility for making any communication which companies may seek to undertake with their shareholders. It is the responsibility of each company, through their public filings, statements, investor relations function or other means, to make their positions known to all their shareholders, including institutional investors, on any matter relevant to their business. Companies are already able to make any ASX announcement they deem appropriate in response to any relevant matters, including for example, media speculation; and
- ISS rejects any basis for requiring a company to have access to a proxy voting report in advance of fee-paying clients. There is no material evidence of inaccuracies or any market failure with proxy advisers' work, product or advice. The tight AGM timetable would also make such delay inoperable from a practical perspective, and damage institutional investors' interests. ISS already has in place robust and timely procedures which allow companies to raise what they believe to be material factual errors, and a well-established process to assess and correct, if needed, any material factual errors identified which have an impact on our proxy voting recommendations, and to promptly apprise institutional investor clients through the "Alert" process.

### **Require suitable licensing for the provision of proxy advice – Questions 12 to 13**

The Consultation Paper states that:

*"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."*

Given this statement, the Treasury canvasses whether proxy advisers should be required to hold an Australian Financial Services License (AFSL) for the provision of proxy advice 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.

ISS is already a holder of an AFSL. We are not aware of any aspect of ISS proxy research processes as referenced by the Treasury that are deficient and requiring of increased regulation. We have identified in this response the breadth of ISS' capabilities, including its more than 35 years' experience in corporate governance and advice to institutional investors, globally. ISS has developed significant data procurement and verification capabilities in connection with its reporting on over 45,000 shareholder meetings across the globe using policy frameworks of our clients' choosing. ISS has unparalleled local and global expertise to provide independent research to institutional investors in assisting them to assess:

- Boardroom efficacy for voting on director elections;
- Shareholder rights included in a company's constitution; and
- The significant data, including pay-for-performance analysis, when considering executive remuneration for the purposes of Section 300A of the Corporations Act.

ISS does not see any benefit to institutional investors from expanding Australian Financial Services licensing to incorporate proxy advice. We are also concerned that this Consultation Paper seems premised on unsupported assertions regarding the quality of proxy research and services and the Treasury's statement that the AFSL regime may:

*"result in an improvement in the standard of proxy advice".*

ISS has established substantial procedures to ensure the quality of our services, including

- Transparency of voting guidelines and engagements with companies;
- Procedures to address material factual errors, if any, in our reporting;
- Extensive data and analytics capabilities; and
- A robust proxy research process which includes all research reports and the data which they include being subject to checks and reviews prior to publication.

## **ISS Conclusion**

In conclusion, ISS respectfully encourages the Treasury to consider the negative impacts for investors of any increased level of regulation imposed on proxy advisory services, particularly when considered against the substantial evidence outlined above that the concerns articulated in the Consultation Paper are without merit and/or are already addressed by firms such as ISS through existing policies and procedures, as well as the expectations imposed on proxy advisory firms by sophisticated institutional clients. There is no benefit to the investor community or to their underlying beneficiaries in delaying shareholders' access to independent research, recommendations, and other information provided by

ISS, nor to making it more expensive and implementing provisions that could undermine the independence and integrity of the research process.

We thank you again for the opportunity to provide our comments on this Consultation Paper. Please contact the undersigned in relation to any questions or if the Treasury seeks any further information regarding these comments.

Yours sincerely



**Vas Kolesnikoff**  
Executive Director, Head of Australian & New Zealand Research  
[vas.kolesnikoff@issgovernance.com](mailto:vas.kolesnikoff@issgovernance.com)