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Market Conduct Division

The Treasury

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Submission from Orient Capital, (Part of Link Group) in response to 'Greater transparency of proxy advice'

Orient Capital is a global leader in shareholder analysis and identification, equity market intelligence, proxy solicitation, webcasting, investor communication and shareholder management technology. We are a wholly-owned, but independent subsidiary of the Link Group, a global share registry and technology services provider which listed on the Australian Stock Exchange in October 2015.

Orient Capital has been providing comprehensive investor relations support around analysis, CRM and investor targeting to listed companies and their advisors for over 25 years. Globally we work with over 1,600 issuers, delivering approximately 1,000 shareholder analyses every month.

We have a dedicated client relations team in Sydney, Hong Kong and London who look after the needs of our clients on a daily basis.

Orient Capital proxy campaigns supports our listed clients with a combination of data driven insights and an understanding of voting behaviours to assist with shareholder engagement across AGMs, EGMs and M&A. By leveraging our register analysis expertise and trusted relationships with key custodians and investors we provide proxy disclosure intelligence gathering in the Australian market.

Having consulted on hundreds of campaigns globally and have an in-depth of understanding across all aspects of investor campaigns and the proxy voting process.

Please see below Orient Capital's Reponses to the Questions posed

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.

7. How would the proposed options affect the level of engagement by proxy advisers with companies?

AGM resolution topics are examined by most listed companies many months before their meeting. Part of the preparation includes corporate governance roadshows ("CGRS") held by the chairman, SID and representatives from Company Secretariat or Investor Relations with leading investors and proxy advisers to provide these stakeholders with a better understanding of how the boards make decisions, how they function and what the key themes for the AGM will be. In addition, these CGRS provide an excellent opportunity for issuers to receive direct and frank feedback on what stakeholders expect from them at the next AGM.

It is common practice in the industry for the proxy advisor service providers to publish their reports to shareholders typically 2-3 weeks ahead of a meeting date. This 2 week lead time allows their investor clients adequate time to consider ballot items, and cast their votes via the custodian chains before the proxy deadline. This 2-3 week period also affords listed companies the time to reply/re-engage the proxy advisers to amend the reports if needed.

While a grace period afforded by option 1 would be congenial to ensure these research reports are factually accurate, the concern is that it would allow listed companies with controversial ballot items to effectively prevent shareholders from accessing impartial independent proxy voting research or limit the time they have to make decisions based on side research.

As for option 4, the big four proxy service providers already publish updates, corrections & amendments for errors, changes to the report due to company responses/re-engagement with listed companies. For example, in many markets, ISS provides, under certain conditions, for issuers to see their draft report and provide "Company Quotes" as a response to their recommendations. Also, post publication, in many markets, Glass Lewis, allows issuers to provide further information for a fee. Therefore the overall impact of implementation would be negligible.

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?

Yes, but option 3 may impair the ability for proxy advisers to provide independent proxy governance research in a reasonable timeframe to their clients to consider ballot items (see response to question 7).

In Orient Capital's experience if a listed issuer feels that a proxy adviser's research is inaccurate or misinformed, the proxy adviser will provide them an opportunity to discuss their position and has on occasion re-released an updated report where factual inaccuracies have appeared.

It is common practice for most listed companies to enter into direct engagement months in advance of their AGM with their leading investors as well as the leading proxy advisory firms through corporate governance roadshows.

In addition, as mentioned above, often there is already a process for the corporate to communicate their position in response to the research submission to their investor community, and this is through the ASX announcement process.

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?

In our opinion and experience from supporting many hundreds of listed company proxy campaigns, an addendum to the updates, corrections or amendments in proxy advisory reports, which includes the company's responses would serve as an effective way to notify underlying clients.

As previously stated, in other markets in which we operate and support clients, it is common practice for ISS to make it possible for companies to provide "Company Quotes" in the area where the meeting item is being analysed by ISS when the companies are examining the draft report for factual errors.

Glass Lewis also allows companies to pay to publish their response to their recommendations at the end of the report post the initial publication of the voting report.

Orient Capital is supportive of any initiative that allows investors to understand fully the rationale behind the resolutions presented to them by company boards. These efforts should remain cost efficient for both issuers and the proxy advisers, and ultimately support the transparency with which a company is able to engage with the market.

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?

It is Orient Capital's opinion that an opportunity for companies to examine the report 24 to 48 hours in advance of publication would allow them to correct potential errors and provide rebuttals and/or further information that may allow investors to make as educated a voting decision as possible.

This approach works in other international markets that Orient Capital operates in and could be applied locally too.

Voting reports are a tool to assist in making voting decisions but ultimately, the investors need to make their own decisions and issuer feedback to these recommendations have often proven very valuable to them. In other markets, where disclosure is less efficient, this intermediary step has not proven to impact voting results.

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?

If option 3 is implemented, then confidentiality should be enforced for both proxy advisers and companies being reported on to prevent disclosures that unduly influence shareholders ahead of a final report.

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.

12. Is the AFSL regime an appropriate licensing regime through which to regulate the provision of proxy advice?

Whilst the provision of proxy advice will relate to matters of routine financial business, such as remuneration, approvals of grants or capital issuance, proxy advisers will also provide advice on issues related to Environmental, Social and Governance (ESG) through other divisions of their businesses that have limited, direct impact on the vote of a particular resolution.

While it is likely that globally in the next three years, non-binding "Say on Climate" resolutions will become popular, ESG topics are currently touched on primarily through the analysis of the non-financial quantifiable performance criteria related to companies' variable remuneration.

Topics such as modern slavery in the supply chain, climate change related disclosures, gender/racial diversity at the board level do not fall neatly under the auspice of AFSL.

13. Would coverage under the AFSL regime result in an improvement in the standard of proxy advice?

No, unless the purview of the AFSL is expanded to include additional focus responsible investment (see response to question 12).

We would welcome the opportunity to participate in any further discussions and invite Treasury to contact us to discuss our response in more detail.

Yours Sincerely,

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