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Market conduct Division
The Treasury
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Submission – Greater transparency of proxy advice

I would like to thank you for this opportunity to make a submission on this Consultation Paper. However, a challenge in contributing to this debate is the paucity of rigorous empirical research on all aspects of proxy advice. Furthermore, it is unlikely to be addressed in the short term given limited data available about the preparation, content and use of reports prepared by proxy advisers. This likely identifies the most significant issue in relation to this matter, a total lack of transparency

In making these comments I draw on my experiences in reviewing proxy reports (providing at best anecdotal evidence), and an appreciation of the role and requirements for quality financial information in financial markets which is my academic expertise. I have also undertaken research on superannuation funds.

Overall comments

The first broad issue requiring address is how reports are prepared by proxy advisers, and this extends to concerns with independence. A constraint on any recommendations is the structure of the market for proxy advice services. It is notable that there are only four suppliers, and their independence may at times be compromised, or perceived to be compromised. These issues are similar to those arising in relation to the provision of audit services. However, a distinctive feature of proxy advice is the extent to which it is based on publicly available information and the processes employed may be subject to rigorous review. Hence, concerns about the quality of proxy advice, and in particular independence, could be addressed by increased transparency. In the first instance this would be the proxy reports themselves, but it could be extended to include company responses. Public scrutiny would allow identification of issues with research design in the proxy reports (these are identified in some reports seen) and create reputational pressures on proxy advisers to improve the quality of their reports, as well as encouraging positive engagement by subject companies.

A practical issue is how these reports are made publicly available. Clearly the company response might be included in obligations under the Continuous Disclosure Regime and

disclosed through the Australian Securities Exchange. However, this is only half an argument. Requiring proxy reports to be provided to the subject companies would also enable these to be captured by the Continuous Disclosure Regime and lodged by the company.

The second issue requiring address is how reports prepared by proxy advisers are used, and the extent to which these represents financial advice. While reports prepared by proxy advisers might be considered financial advice it is difficult consider how the current regulatory regime might be applied to proxy advisers, or whether this is necessary. First, the nature of the advice is limited in scope. Second, the reports prepared by proxy advisers are primarily used by 'sophisticated' investors. Third there is the presumption that regulation (current or proposed) that focuses on process is necessary and sufficient for improving the quality of proxy advice. Finally, there would likely be significant compliance cost with minimal benefits. It is more likely that the quality of proxy advice would be enhanced by public scrutiny of reports prepared by proxy advisers and their use. This requires transparency. This would extend from the reports, to how they are used. Accordingly, where superannuation funds commission proxy reports the reports should be made publicly available by superannuation funds, along with their voting intention and any explanations necessary. This later requirement is considered important given the trustee role of superannuation fund managers. This along with disclosure of superannuation fund financial reports (not presently required under the Superannuation Industry (Supervision) Act, 1993) would greatly increase transparency in the sector which is becoming increasingly economically significant.

Comments on specific questions

1. Without disclosure of the actual reports prepared by proxy advisers these options would likely lead to vague boiler plate disclosures and be of little relevance / interest to superannuation fund members. Without meaningful information (i.e., the reports) decisions can't be evaluated meaningfully.
2. Compliance costs for proxy advisers may be significant, but whether there would be any benefits is uncertain. Costs for superannuation funds would be minimal with disclosures made on superannuation fund websites.
3. In the interests of transparency and providing superannuation fund members timely information, voting intentions should be able to access voting intention at least 7 days prior to the relevant meeting. This is significantly after year end and the publication of company financial reports. Furthermore, there is already the deadline of the relevant company meeting.
4. If there is a departure from the proxy advice, the reason for this should be disclosed. There is no point in getting advice if it is routinely ignored, and this might identify governance issues.
5. Independence, or perceived independence, will always be an issue, and this might arise not only through ownership but more generally when reports are paid for by the

recipients. Probably the best way of addressing this is through increasing scrutiny of reports prepared by proxy advisers (i.e., publication).

6. See 5.
7. Increasing discourse between proxy advisers, companies and superannuation funds is positive. However, conflicts of interest would doubtless arise. Hence full public disclosure would be more effective.
8. Disclosure by the company through the Australian Securities Exchange would be most effective
9. A proxy report should be made available to the company at least one month prior to the relevant meeting
10. Company response should be required at least 14 days before the relevant meeting and made available to the public at this time. This would allow for error correction.
11. See 10.
12. Regulation in this manner is likely to be costly and ineffective.
13. Transparency and public scrutiny is likely to be most effective than regulation under the AFSL regime.

If you have any further questions please do not hesitate to contact me.

Yours faithfully

