ICGN
International Corporate Governance Network

Australian Government
The Treasury
Market Conduct Division
Langton Crescent
PARKES ACT 2600
Australia

Sent by email: mcdproxyadvice@treasury.gov.au

03 June 2021

Re: Consultation Paper – Greater transparency of proxy advice

We are pleased to respond to the Australian Treasury's Consultation Paper – *Greater transparency of proxy advice* published in April 2021.

Led by investors responsible for assets under management in excess of US$59 trillion, the International Corporate Governance Network (ICGN) is a leading authority on global standards of corporate governance and investor stewardship. Our membership is based in more than 50 countries and includes companies, advisors and other stakeholders. ICGN's mission is to promote high standards of professionalism in governance for investors and companies alike in their mutual pursuit of long-term value creation contributing to sustainable economies world-wide. ICGN's membership base includes several prominent Australian asset owners and asset managers, and, and our investor members globally hold significant investment positions in Australian companies.

In an increasingly complicated investment landscape, investors often choose to engage the services of data and analytics providers and other research providers to support their investment-related activities. Proxy advisors provide research and analysis services to support investors in exercising a fundamental shareholder right and stewardship responsibility-- that of casting informed votes at a companies' annual general or special meetings.

One of ICGN's seven Global Stewardship Principles states that investors with voting rights should seek to vote shares held and make informed and independent voting decisions, applying due care, diligence and judgement across their entire portfolio in the interests of beneficiaries or clients.[1] It also emphasizes that use of a proxy voting advisor is not a substitute for the investor's own responsibility to ensure that votes are cast in an informed and responsible manner, and that investors should clearly specify how they wish votes to be cast and should ensure that such votes are cast in a manner consistent with their own voting policies.

[1] ICGN Global Stewardship Principles, 2020:
https://www.icgn.org/sites/default/files/ICGN%20Global%20Stewardship%20Principles%202020_0.pdf

Against this background we have serious reservations about the Treasury initiative as outlined in the consultation paper and find flaws with the general intent of this consultation and each of the options put forward. We emphasise four main points which have relevance to both the individual options and consultation questions:

- **Influence**. We are aware that proxy voting agencies are under scrutiny in markets around the world reflecting their perceived influence, and we acknowledge the possibility that in some cases investors might put undue reliance on proxy agency vote recommendations. But we believe the concerns expressed in the Treasury's consultation relating to proxy advisor are vastly exaggerated, particularly as a foundation for the intrusive options put forward. The basis in evidence for this proposal appears to be very limited. In our experience in Australia and elsewhere investors develop their own voting policies to guide voting decisions, and make their own decisions on voting individually, even if they make use of proxy agencies to assist in the implementation of their votes. Moreover, given shared interests among investors to encourage good corporate governance, we believe it is healthy, and not a conflict of interest, for investors to communicate with one another in terms of engagement with listed companies and principles to guide good practice.

- **Scope of advice**. The consultation document also suggests that governance and sustainability considerations fall outside the scope of appropriate matters to take into account in voting decisions. We believe this reflects a misunderstanding of how governance and sustainability factors can affect a company's resilience and sustainable value creation. It suggests a very narrow, if not myopic, view of a pension members 'financial interests'. Particularly given the long-term investment perspective of pension funds and the asset managers that work for pension funds, governance and sustainability factors do have financial consequences for investors. Here again, proxy advisors can serve as a tool to support investors with research and information services to gain a broad understanding of these issues.

- **'Reforms'.** The so-called 'reforms' that were referred to in the US with regards to the US Securities and Exchange Commission (SEC) were staunchly opposed by institutional investors.[2] Indeed, most investors would regard these more as retrograde rather than as reform Moreover, it is our view that with the Biden Administration in the US the direction of travel regarding regulating proxy agencies will shift. As you may be aware the SEC announced on 1 June 2021 that the SEC's Division of Corporate Finance is

[2] ICGN comment letter to US SEC on Proxy Regulation and Guidance, 21 November 2019: https://www.icgn.org/sites/default/files/19.%20SEC%20Proxy%20Advisor%20Interpretation%20and%20Guidance.pdf

considering “revisiting” this legislation and proposes a hold on enforcement action until this review is resolved.[3]

Particularly if the US SEC does reverse its position in this matter, the Treasury’s initiative would expose Australia as a notable outlier in terms of global best practice regarding proxy agencies. The proposals put forward in the Treasury consultation would be unnecessarily disruptive to proxy agencies and would not be welcomed by investors. Instead of prescriptive hard law regulation, we suggest the Treasury focus instead on voluntary codes of practice to address proxy agency practices, such as the Best Practice Principles for Shareholder Voting Research. [4]

- **Independence.** The consultation document suggests that proxy advisers should be ‘meaningfully independent’ of their clients and suggests this is not possible where clients own an adviser. It is well established that proxy advisers should be independent of the companies upon which they are providing advice. Consumers of proxy advice should retain independence to vote in the manner considered to be in their beneficiaries best interests. There is no reason why ownership structure of the proxy adviser should automatically fetter that independence.

We hope these comments are helpful with regard to your deliberations on these matters. Please contact ICGN Policy Director George Dallas if you would like to discuss this in further detail: george.dallas@icgn.org

Yours sincerely,

Kerrie Waring
Chief Executive

Copies:
Bram Hendriks, Co-Chairman, ICGN Shareholder Rights Committee, BHendriks@ktmc.com

Eugenia Unanyants-Jackson, Co-Chairman, ICGN Shareholder Rights Committee: Eugenia.Jackson@pgim.com

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[3] US Securities and Exchange Commission, “Statement on Compliance with the Commission’s 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(1), 14a-2(b), 14a-9”, 1 June 2021: https://www.sec.gov/news/public-statement/corp-fin-proxy-rules-2021-06-01?utm_medium=email&utm_source=govdelivery

[4] Best Practice Principles for Shareholder Voting Research, 2019: https://bppgrp.info