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Market Conduct Division

The Treasury

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**Submission to Treasury Consultation Paper on Greater Transparency of Proxy Advice**

Dear Treasury

Thank you for the opportunity to provide this submission to the Consultation Paper on *Greater Transparency of Proxy Advice* (Consultation Paper).

**About the Australasian Investor Relations Association**

The Australasian Investor Relations Association (AIRA) is the peak body representing Investor Relations practitioners in Australia and New Zealand. Our members include the majority of ASX100 companies and Australia’s leading share registries.

AIRA exists to provide listed entities with a single voice in the public debate on corporate disclosure and to improve the skills and professionalism of members.

Our mission is to advance the awareness of, and best practice in, investor relations in Australasia and to achieve better outcomes for all capital market stakeholders. We drive industry best practice and reform through our engagement with government, financial regulators, and other stakeholders to promote a supportive environment for the sector.

We have published valuable guidance for listed companies on what constitutes best practice in the field in its *Best Practice Investor Relations: Guidelines for Australasian Listed Entities* and *ESG Engagement Guidelines: Recommended Practices for Australasian Listed Entities*. These are the definitive guides for the practice of investor relations across Australasia.

**Executive Summary**

AIRA supports the objectives of this consultation to strengthen the transparency and accountability of proxy advice in Australia and to assess the adequacy of the current regulatory framework.

The overarching aim of our submission is to provide constructive and balanced recommendations to help ameliorate some of the challenges facing our members based on their experiences with proxy advisers, including some of the issues we have observed since our inception in 2001.

More importantly, our submission is focused on outlining some practical solutions to foster stronger, more rigorous, and more transparent engagement between proxy advisers and companies, as well as the institutional investors who use proxy advice to inform their decision-making on company resolutions.

Proxy advisers play an extremely important role in Australia’s capital markets by critically analysing proposals and resolutions put to shareholders by companies. Their voting recommendations on these resolutions put at a company’s meeting are a valuable resource for institutional investors as they exercise their voting rights, often across highly diversified holdings in a large number of ASX listed companies. Their advice is highly influential and can have a profound effect on companies, directors and their shareholders. Companies, therefore, must work constructively with proxy advisers to ensure that institutional shareholders receive accurate advice on voting matters. It is in all parties’ interests and the integrity of the capital markets, for proxy reports to be factually correct and for proxy advisers to receive important context about a company’s decisions across financial, environmental, social, and corporate governance matters.

**The interactions between companies and proxy advisers, however, are in constant competition with the tight timeframes of the AGM season, the large number of ASX listed companies that require analysis, the volume of data that shape each company’s financial results, and the resources of proxy advisers to complete their analysis and deliver their recommendations**. Companies, similarly, are time poor during the period in the lead up to an AGM and financial reporting, and their investor relations teams are constantly engaging and consulting with their investors and other stakeholders throughout the year.

**Inconsistent engagement**

As the Consultation Paper notes, each of the four main proxy advisers in Australia has its own proxy voting guidelines and policies that outline how it engages with companies. Generally, there is a willingness to engage on both sides and in some cases, there is a willingness to address feedback from companies on factual matters. In other cases, AIRA members have experienced a concerning lack of engagement or willingness to address errors and inaccuracies. The existence of such mistakes in proxy adviser reports, often despite corrections being advised by companies, warrants close examination and reform.

To assist Treasury with its consultation, AIRA has attached the results of its member survey conducted in 2017. At a high-level, the research found that one third of ASX200 respondents identified one or more factual errors in the most recent proxy reports published on their companies and 94 per cent of respondents wanted the opportunity to fact check data before its release. Further, respondents said they wanted more constructive engagement with proxy advisers to ensure shareholders receive the best possible advice. Companies also requested that proxy advisers be signatories to and comply with a voluntary code of best practice to improve engagement and the quality of proxy reports.

The inconsistency of engagement has led to significant concerns from AIRA members – one of the most pressing being the lack of any requirement for proxy advisers to engage with companies on their analysis and recommendations, either before or after providing their reports to investors. However, many of the concerns highlighted by our members regarding the deficiencies in the current operating environment can, to a large extent, be resolved through more comprehensive and ongoing engagement between proxy advisers and companies throughout the financial year and not just within the 28-day notice period of a company meeting.

**Transparency**

Options 3 and 4 of the Consultation Paper provide positive steps to ensure more formal engagement occurs within the AGM window, amongst the range of informal interactions throughout the year. As such, **AIRA believes that only when a proxy adviser proposes to recommend *against* a Board recommended resolution, should it be required to share its report with the company and allow it three business days to respond. Further, the proxy adviser should be required to attach the company’s response to the report when it is distributed to clients.**

We do not believe this would compromise the independence or transparency of the advice that proxy advisers provide. Instead, it would ensure proxy advisers have accurate information and other important context around decision-making required to make their recommendations. **Further, it would benefit institutional investors with limited capacity to engage with multiple sources of information in relation to each AGM, by providing them with both the proxy advice and the company’s response to that advice. As some fund managers sometimes find it easier to follow a proxy adviser recommendation than to write a note to clients explaining why they have voted contrary to a proxy adviser recommendation, this additional recommendation is even more important.**

**Accountability**

As part of our in-principle support for greater accountability of proxy advice, AIRA supports Option 5, which if implemented, would mean proxy advisers would be required to obtain an Australian Financial Services License (AFSL) for the provision of proxy advice on all matters, financial or otherwise. We agree that this would ensure proxy advisers 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.

**Many fund managers and superannuation funds are already under resourced to fulfill their stewardship obligations, including considering the issues around proxy voting. It has been suggested, therefore, that the more shareholder resolutions there are for consideration at company AGMs, then the more this shifts the balance of power to proxy advisers.**

**Best practice standards**

Lastly, AIRA has for many years argued for in-depth reporting against international best practice standards, and for these reports to me made publicly available. As such, AIRA recommends that proxy advisers should be required to ratify the *Best Practice Principles for Providers of Shareholder Voting Research & Analysis* and make an annual statement of compliance with these principles. Likewise, superannuation funds, fund managers and other institutional investors should be required to ratify a stewardship code and provide an annual statement of compliance. These Principles are attached to this submission for Treasury’s consideration.

Dissension and disagreement are essential to the success of our modern economic and financial system. Such contests must remain a core tenet of Australia’s capital markets. While this consultation and our submission focus on strengthening the accountability and transparency of proxy advice, the boards and directors of our listed companies must also continue to be held to account by their shareholders. Boards must act in the best interests of shareholders, in good faith, and with the care and diligence required of them in their fiduciary position. No reforms being considered by Treasury should dilute this proposition.

**Response to consultation questions**

Our response is structured in relation to select questions and reform options posed by the Consultation Paper, informed by our knowledge and experience, and the perspective of AIRA’s members.

**Option 1**: *Improved disclosure of trustee voting. Under this option, superannuation funds would be required to disclose more detailed information in relation to their voting policies and actions for each financial year. The details to be disclosed could include how votes were exercised, whether any advice was received from a proxy adviser and who provided the advice.*

*If proxy advice is received, disclosure could include whether the voting actions taken were consistent with the proxy advice.*

**Option 2:** *Demonstrating independence and appropriate governance. Under this option, proxy advisers would be required to be meaningfully independent from a superannuation fund they are advising to ensure that proxy advice is provided to and used by superannuation funds on an ‘arm’s length’ basis.*

*Trustees could also be required to outline publicly how they implement their existing trustee obligations and duties around independent judgement in the determination of voting positions.*

**AIRA’s response**

AIRA supports improved disclosure of trustee voting under Option 1, including the release of detailed information regarding voting policies and how institutional investors exercised their votes. However, improved disclosure and transparency should apply to all institutional investors, not only superannuation funds.

AIRA supports the principle of proxy advisers being independent from superannuation funds or other institutional investors. Any reforms around meaningful independence of proxy advisers from institutional investors and the management of conflicts of interest should focus entirely on ensuring the objectivity and integrity of proxy adviser research, reports and recommendations.

**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.*

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

**Question 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?*

**AIRA’s response**

AIRA supports an amended version of Option 3, which would ensure proxy advisers provide their report to a company ***only when it recommends against a Board recommended resolution*** allowing the company ***three business days to respond***.

Once the company has had the opportunity to respond, the proxy adviser should be required to attach the company’s response to the report when it is distributed to clients. Alternatively, proxy advisers should be required to provide their clients with the link to the company’s response, which would be made available on their website or at another location prior to publication on their website. We believe this measure would accelerate the communication between companies and the parties or individuals who are actually exercising the vote, who are often different to those who are making the investment decisions.

Further, there should be no charge or cost to the company for this service, nor for the proxy adviser sharing its report.

These changes will provide certainty for our members in terms of the ability to review and correct any factual inaccuracies. It would also give companies the opportunity to provide proxy advisers with information and context that has informed their decisions across a range of financial, governance and other matters.

Importantly, this framework would benefit institutional shareholders. It would provide these investors with a more thorough and nuanced set of information and advice with which to make their voting decisions. It will also foster stronger formal engagement between proxy advisers and companies and bolster the range of interactions that occur between the two parties, including in-person meetings, phone calls, email and letters throughout the financial year, as well as the period leading up to, and at, a company meeting or AGM.

**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.*

**AIRA’s response**

AIRA’s members have expressed support for proxy reports and responses being made available on their websites.

**AIRA’s response**

**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.*

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

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

AIRA supports the implementation of Option 5 to ensure proxy advisers making assessments on issues that have a material impact on the conduct of business in Australia have appropriate regulatory oversight and the necessary care and skill required to make those assessments.

AIRA believes the AFSL is an appropriate licensing system with which to regulate the provision of proxy advice, however, there needs to be additional layers of self-regulation against international best practice standards.

Firstly, AIRA recommends that proxy advisers be required to ratify the *Best Practice Principles for Providers of Shareholder Voting Research & Analysis*, developed by the Best Practice Principles Group, and make an annual statement of compliance with these principles. Institutional investors should also be required to ratify a stewardship code and provide an annual statement of compliance annually.

The Principles are produced by the Best Practices Principles Group (BPPG) and refers to the latest updated stewardship codes globally. The Principles promote the integrity and efficiency of processes and controls related to the provision of proxy advice and intend to foster greater understanding of the role of proxy advisers in facilitating the voting decisions made by institutional investors.[[1]](#footnote-1) According to the BPPG:

*“The Principles may be regarded as reflecting widely-held and accepted general views on how providers of shareholder voting research and analysis contribute to the roles and responsibilities of investors and issuers in fostering effective stewardship and robust corporate governance and ensuring efficient markets.”*

The Principles and their accompanying guidance state that proxy advisers:

* Deliver their services in accordance with agreed-upon investor client specifications and should publicly disclose their research methodology and “house” voting policies.[[2]](#footnote-2)
* Publicly disclose a conflicts-of-interest policy that details their procedures for avoiding or addressing potential or actual conflicts of interest that may arise in connection with the provision of services.[[3]](#footnote-3)
* Deliver high-quality research that enables investor clients to review the analysis sufficiently in advance of the vote deadline ahead of a general meeting. As part of this service, proxy advisers should disclose their policies for dialogue with issuers, shareholder proponents and other stakeholders and inform clients about the nature of any dialogue with relevant parties in their research reports, which may also include informing clients of the outcome of that dialogue.[[4]](#footnote-4)

These are a balanced set of principles that are internationally tested. AIRA believes that their adoption will foster more effective engagement between AIRA members, listed companies and proxy advisory firms in Australia.

**Conclusion**

Thank you for the opportunity to provide these comments. We hope our submission assists Treasury’s consultation. As discussed, we have attached copies of the following documents for your review and consideration:

* The results of AIRA’s Snap Poll of its members’ views on proxy advisers and engagement practices; and
* The Best Practice Principles for Providers of Shareholder Voting Research & Analysis 2019 prepared by the Best Practices Principles Group.

Should you wish to discuss AIRA’s comments further, or require additional information, please do not hesitate to contact me at ian.matheson@aira.org.au.

Yours sincerely

Ian Matheson

**CEO, Australasian Investor Relations Association**

1. Best Practice Principles Group, *Best Practice Principles for Providers of Shareholder Voting Research & Analysis 2019*, p 5. [↑](#footnote-ref-1)
2. Ibid p 10. [↑](#footnote-ref-2)
3. Ibid p 11. [↑](#footnote-ref-3)
4. Ibid p 11. [↑](#footnote-ref-4)