



4 June 2021

Market Conduct Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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## **ASA SUBMISSION - MARKET CONDUCT DIVISION CONSULTATION PAPER - GREATER TRANSPARENCY OF PROXY ADVICE**

Dear Madam/Sir

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support.

ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

Australian Shareholders' Association (ASA) wishes to comment on the consultation paper "Greater transparency of proxy advice" (the paper) as a representative of the interests of retail shareholders and a strong supporter of investors ensuring their voices are heard via voting at company meetings of shareholders. We do this as a not-for-profit member organisation which stands up for the rights of retail shareholders.

### **Defining proxy advice**

We note, similar to the recent reforms proposed in UK and US, the paper specifically identifies the four larger commercial proxy advice firms who provide proxy advice to a range of wholesale clients.

Both UK and US initiatives refer to charging fees for "proxy advice".

The UK definition of a proxy adviser<sup>1</sup> refers to the shareholder rights directive as follows:

Are you a proxy advisor within the meaning of point (g) of the Shareholder Rights Directive? i.e., are you a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where

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<sup>1</sup> <https://www.fca.org.uk/markets/primary-markets/proxy-advisors>

relevant, other information of listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights?

In the US market, the Securities and Exchange Commission<sup>2</sup> proposed rule, 17 CFR Part 240 Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, also captures "firms and any person who markets and sells proxy voting advice as "proxy voting advice businesses."

### **Existing situation**

As noted in the paper, ASIC held a roundtable in May 2017, and produced [Report REP 578](#) ASIC's review of proxy adviser engagement practices. ASA participated as a stakeholder and was satisfied with the outcome, and that the level of tension identified between companies and investors was appropriate.

Discussions at the roundtable revealed variations in the engagement practices of different proxy advisers and emphasised the time pressures of proxy advisors meeting with companies during the meeting season.

As an insight to the time pressures, some constraints are associated with most ASX-listed companies having a 30 June year-end, and others are associated with the timing of the elements of individual meetings.

All market participants are required to deal with a large number of meetings held in a short time period.

ASX-listed companies are legally required to hold their annual meetings within 5 months of their year-end (outside of pandemics). The process required to report final results to the ASX, as well as produce audited annual reports (which for a number of companies are also released along with the results), and the requirement for notices of meeting (NOM) to be issued at least 28 days prior to the meeting date, leads to most companies holding their meetings in the fourth or fifth month after year-end.

ASA typically attend two-thirds of its annual meeting count in the final quarter of the year. During 2020, ASA attended around 290 company meetings, of which 220 were held during October, November, and December.

For the individual company general meetings of shareholders, as mentioned above, NOM are issued 28 days prior to the meeting date. Proxies are required to be lodged 48 hours (or two working days) prior to the meeting. Notionally that means there are 18 working days available to evaluate and communicate all that is required to vote at the company meeting.

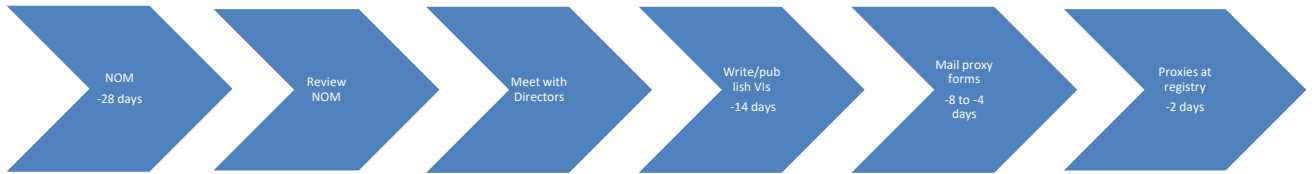
If an intermediary such as a custodian is utilised, lodgement of a proxy is required 1 or 2 working days earlier than cut-off time at the registry. Where investors such as retail investors prefer to receive and submit proxies in physical form by post, that removes additional days from the timeline.

Attending 50 or 60 meetings in a month means there is little time for anything else!

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<sup>2</sup> <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>

## ASA timeline for attending company meetings and voting proxies.



### Need for shareholders to actively engage

ASA underlines that we expect all market participants to fully engage in maintenance of robust corporate governance in the financial and economic system given its importance to Australia’s economic health and funding of individual’s retirement years.

We value the research<sup>3</sup> that proxy advice firms make available publicly, as well as their hosting and participating in various public roundtables, working groups and fora<sup>4</sup>.

We contend that remuneration reporting and voting provides an insight into any dislocation in the voting space.

Share registry Link Market Services notes in its annual AGM snapshot, more than 70% of remuneration reports received 90% and greater support, and 85% of remuneration reports received 80% and greater support<sup>5</sup>. The report states “Similar to trends observed in recent years, we have continued to see an increased focus on individual director re-elections, particularly in underperforming organisations with poor financial results or governance issues.” We agree with the assessment that against votes are typically tied to shareholder dissatisfaction.

We are aware of only two board spills following a second remuneration strike, Cromwell in 2020 and a company we didn't monitor, Collection House in 2018. These were related interests of large non-institutional shareholders rather than proxy advised investors.

ASA tracks the outcomes of remuneration report voting and presents the top 5 against votes of ASA monitored companies since 2013 in the table below.

It is notable that only three positions were attained in the past five years, and these were Financial Services companies where the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry hearings had highlighted poor remuneration policy structure and practice producing a poor culture.

If anything, it looks like shareholders have been too agreeable and voted in favour of too many company resolutions.

<sup>3</sup> E.g., <https://acsi.org.au/research-reports/promises-pathways-performance-climate-change-disclosure-in-the-asx200/>

<sup>4</sup> Guerdon Associates and CGI Glass Lewis annual Remuneration and Governance Forum

<sup>5</sup> [https://www.linkgroup.com/agmsnapshot/2020-meetings/files/LNK\\_AGM\\_Snapshot\\_2020.pdf](https://www.linkgroup.com/agmsnapshot/2020-meetings/files/LNK_AGM_Snapshot_2020.pdf)

While concerns have been raised in the media about investors seeking to raise standards of corporate governance, we only need to refresh ourselves on recommendations of the final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry to remind ourselves we haven't been getting it right.

#### **Top 5 against votes on remuneration reports since 2013 (ASA monitored companies)**

Company	AGM date	Remuneration report vote - against
National Australia Bank	19-Dec-18	88.4%
Harvey Norman Holdings	25-Nov-14	75.8%
Buru Energy	23-May-14	71.8%
AMP	08-May-20	67.3%
Westpac	12-Dec-18	64.2%

Source: Australian Shareholders' Association

#### **Retail Shareholders voting at company meetings**

ASA is focussed on advancing and protecting the interests of retail shareholders.

We encourage all retail investors to exercise their right to vote at company meetings. We encourage companies to respect their retail shareholders and to effectively communicate and engage with them. Over the breadth of a company's shareholding base, it is often difficult for companies to assess the collective will of retail shareholders and ASA's company monitoring program aims to assist in that regard.

Our company monitors (who are volunteers and themselves retail shareholders drawn from the member base) engage with companies prior to their AGM and attend AGMs to vote proxies and ask questions from the retail shareholder viewpoint. All this work is done free-of-charge as a service to the ASA members and to the general retail shareholder public.

These individuals act as the ASA's corporate representative for any shareholders who have appointed Australian Shareholders' Association as their proxy. We receive both directed and open proxies and present an aggregated retail shareholder voice, which at times is a consensus view and at other times is a balance of a range of views.

We publish our voting "intentions" or VIs, along with the reasons behind each decision, rather than proffering recommendations, in order to deal with air matters of concern to retail shareholders. We are aware that a number of ASA members determine whether they will give ASA their proxy after reading how the ASA representative will vote open proxies.

ASA aggregates the interests of retail shareholders, who may or may not be members of our association. We believe it is important to make the will and concerns of retail shareholder more apparent to companies.

We do not have sufficient resources to monitor all listed companies, so we concentrate our efforts on those with a greater number of retail shareholders such as those companies included in the Standard and Poors ASX200 Index. We have a high attendance at these AGMs and more often than not are the principal public questioner representing retail shareholder interests on the resolutions up for voting at these meetings.

## **What is purpose of a shareholder vote?**

Shareholder voting enable members to have a say on various matters of the operation of companies, such as the reasonableness of Executive and Board member remuneration, the choice of directors put up for (re)election, the approval for raising additional capital, as well as in general, making directors and boards accountable for the decisions they make on behalf of their shareholders.

Shareholders have a long-standing interest in how companies remunerate executives and directors. There is an inherent conflict where company representatives set their own pay, and retail shareholders particularly object to high rewards for poor performance which was regrettably commonplace in the nineties. The two-strikes rule introduced in 2011 requires directors to take note of shareholder concerns on this specific topic.

## **Options**

### **Option 1: Improved disclosure of trustee voting.**

Many fund managers already report on funds under management's proxy voting both in detail and in summary, as evidence of their stewardship and in the interest of responsible investing. These reports are freely available on their websites and take little effort to locate.

Examples of reports include [Future Fund FY20 proxy voting summary](#) and [Future Fund FY20 voting activity summary](#). Refer also pages 9 and 10 of [BlackRock's quarterly stewardship report for first quarter 2021](#) for a summary of engagement.

Signatories to UN Principles for Responsible Investment (UNPRI) provide detailed reporting of engagement. UNPRI provides outlines of best practice disclosure on engagement activities as well as good quality reporting on voting activities.<sup>6</sup>

### **Option 2: Demonstrating independence and appropriate governance.**

In relation to seeking options that aim to ensure independence between superannuation funds and proxy advice we see proxy advisors as service providers which augment voting processes operating within the fund. Independence is required between the large shareholders, which is already covered by the relevant interest and substantial holding provisions of the Companies Act.

We see the current situation as a good balance between competing interests.

### **Option 3: Facilitate engagement and ensure transparency.**

We do not support this option as outlined. It introduces additional time burdens on the process.

### **Option 4: Make materials accessible.**

We do not support this option as it introduces additional time burdens on the process.

We highlight that if any such company response to the proxy adviser's report was to be provided to their clients, it should be made publicly available to all shareholders. If not, there will be less rather than greater transparency.

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<sup>6</sup> <https://www.unpri.org/listed-equity/a-practical-guide-to-active-ownership-in-listed-equity/2717.article>

### **Option 5: Ensuring advice is underpinned by professional licensing.**

We consider the existing laws require suitable licensing for the provision of proxy advice which is in the nature of financial advice. As noted in the paper, proxy advisors must comply with applicable provisions of the Corporations Act, and we emphasise providers of proxy advice must also meet client expectations for efficient and effective of delivery of a service which enhances their assessment of the sustainable returns by the companies in which they are long term investors. These clients utilise the advice in their processes to fulfil their stewardship<sup>7</sup> roles.

We encourage companies to put their “best foot forward” when engaging with shareholders, buy- and sell-side analysts and proxy advisers.

As non-professional investors, retail shareholders manage their investments during their everyday life, and only rarely as a full-time activity. Such investors benefit from a company operating at the highest standards of governance and communicating effectively by way of their market disclosures and annual reports, rather than having to engage or lobby proxy advisers about the details of the company’s remuneration structure, for example.

### **Conclusion**

It is in the interests of retail shareholders and other stakeholders, that companies operate at a high corporate governance standard and that unnecessary costs are not imposed on shareholders either directly or by increased costs to companies. As with most such processes, a certain level of polarity amongst all stakeholders is indicative of a healthy system.

If you have any questions about these comments or other matters, please do not hesitate to contact me, or Fiona Balzer, Policy & Advocacy Manager on (02) 9252 4244.

Yours sincerely



John Cowling  
Chief Executive Officer  
Australian Shareholders’ Association

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<sup>7</sup> The PRI defines stewardship as: “the use of influence by institutional investors to maximise overall long-term value including the value of common economic, social and environmental assets, on which returns, and clients’ and beneficiaries’ interests depend.” <https://www.unpri.org/stewardship/about-stewardship/6268.article>