

28 May 2021

Email: MCDproxyadvice@treasury.gov.au

The Manager
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

CONSULTATION PAPER: GREATER TRANSPARENCY OF PROXY ADVICE

The Stockbrokers and Financial Advisers Association (SAFAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SAFAA members hold AFSL's and provide sell-side research to wholesale and retail clients in accordance with the provisions of the Corporations Act.

Thank you for the opportunity to provide feedback on the consultation paper *Greater transparency of proxy advice*.

SAFAA is concerned that the proposals contained in the Consultation Paper will impact analyst reports other than those from proxy advice firms and that the research of sell-side brokers would be caught under any proposed laws. While on its face the Consultation Paper specifically identifies the four main proxy advisers (Institutional Shareholder Services Australia, CGI Glass Lewis, Ownership Matters and the Australian Council of Superannuation Investors) and states that the options for improving independence and transparency of proxy advisers are aimed at those defined entities, there are many firms that provide research that may impact on the voting decisions of investors.

'Proxy adviser' is not a defined term in the Corporations Act. 'Proxy advice' is simply the provision of financial research that may impact on the voting decisions of investors. Many sell-side brokers provide commentary that would influence an investor's decision to vote for or against a resolution at a company meeting, including a resolution on the remuneration report or appointment or reappointment of directors. This would result in them being caught up in the proposed provisions outlined in Options 3 and 4 of the Consultation Paper.

For example, we note that Option 3 would require proxy advisers to provide their report containing the research and voting recommendations for resolutions at a company's meeting to the relevant company five days before distributing the final report to subscribing investors. The effect of this proposal would be that a sell-side broker who prepared an opinion for clients that voiced concern about the board or criticised a board-sponsored resolution or the remuneration structures of a listed entity — which could influence the voting intentions of

shareholder clients at general meetings — would be required to send the report to the company before it went to clients. SAFAA considers that a government requirement for an entity to provide private intellectual property to a third party that is the subject of that research outside of contractual arrangements is entirely inappropriate.

SAFAA is also concerned that the proposal is in conflict with ASIC Regulatory Guide 79 *Research report providers: Improving the quality of investment research* which states at paragraph 141:

‘Research report providers should ensure that research reports or information about their contents are not communicated outside the research report provider before the report is provided to clients in the normal course of business. This does not mean that a research report provider cannot check the factual accuracy of parts of a research report with a product issuer before it is provided to clients. However, we expect that this checking would be done in a carefully controlled way (e.g. without communicating the recommendations or opinions also contained in the report).’

ASIC’s Regulatory Guide 79 specifically prohibits the disclosure of research and recommendations prior to publication to facilitate fair, orderly and transparent markets. SAFAA is of the view that any legislative reform which undermines the independence of research has the potential to disrupt fair, orderly and transparent markets.

SAFAA opposes the proposed reforms in the Consultation Paper that we consider would capture the research and advice activities of firms in the stockbroking and investment advice industry.

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SAFAA’s policy manager, Michelle Huckel, at michelle.huckel@stockbrokers.org.au.

Kind regards

A handwritten signature in black ink, appearing to be 'J Fox', written in a cursive style.

Judith Fox
Chief Executive Officer