



Australian Government

Department of the Prime Minister and Cabinet Office of Best Practice Regulation

Reference: 44007

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Mr Robert Jeremenko
Acting Deputy Secretary
Markets Group
The Department of the Treasury

Dear Mr Jeremenko,

Regulation Impact Statement – Second Pass Final Assessment – Greater Transparency of Proxy Advice

Thank you for your letter received on 2 December 2021 submitting a Regulation Impact Statement (RIS) on Greater Transparency of Proxy Advice for formal second-pass Final Assessment. I note the RIS has been formally certified at the Deputy Secretary level consistent with the *Australian Government Guide to Regulatory Impact Analysis*.

I appreciate the Department of the Treasury's (Treasury's) constructive engagement with the Office of Best Practice Regulation (OBPR) during development of the RIS.

The OBPR's assessment is that the quality of the regulatory impact analysis in the RIS is adequate and therefore sufficient to inform a decision.

That said, the RIS does not clearly demonstrate that proposed action under Option 2, to address the posited potential conflict of interest between proxy advisers and clients, provides the highest net benefit over the status quo. Given the potentially significant impact on one of the existing proxy adviser firms, the RIS would have benefited from more thorough analysis as to why the conflict of interest requirements under the Australian Financial Services Licence would not have been sufficient alone to manage the potential conflict of interest between proxy advisers and clients. In addition, the conclusion to Option 3 infers that similar benefits to Option 2 could be achieved without the requirement for proxy advisers to be meaningfully independent from their clients, and without affecting the viability of existing market participants. Option 3 is ultimately only discounted due to the large regulatory burden associated with a sub-option that does not appear in Option 2, but the net benefits of the options are not immediately evident or comparable.

To be considered 'good practice' as per the *Australian Government Guide to Regulatory Impact Analysis*, the RIS would have benefitted from:

- Providing stronger evidence of the conflict of interest between proxy advisers and their clients, and explaining the interactions with existing requirements such as the

Best Financial Interests Obligation and why these safeguards are not adequate to address the cited potential influence of activist funds; and

- Discussion in the consultation section reflecting that many stakeholders had stated that there was no evidence of a problem that warrants the proposed regulatory interventions.

The RIS may now be provided to the decision-maker to inform a final decision.

I would appreciate Treasury advising the OBPR when a final decision has been announced and forwarding a copy of the RIS in a form meeting the Government's accessibility requirements. The OBPR will publish the RIS, along with your certification and this assessment, on the OBPR's website at <https://obpr.pmc.gov.au/>.

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

Yours sincerely

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

Jason Lange
Executive Director
7 December 2021