



**ASIC**

Australian Securities & Investments Commission

# ASIC review of proxy adviser engagement practices

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Report 578

About this report

The report provides an overview of ASIC's review of proxy adviser engagement practices and sets out some key observations and related good governance messages.

## About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

## Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## About this report

In 2017, ASIC hosted a roundtable attended by proxy advisers, investor representatives and relevant industry groups to discuss the issue of engagement between proxy advisers and companies. Following the roundtable, ASIC conducted a surveillance of proxy adviser engagement practices to gain further insight into these practices during the 2017 annual general meeting (AGM) season.

This report provides an overview of ASIC's observations arising out of a review of:

- the engagement policies of the major proxy advisers in Australia
- 80 proxy adviser reports where an 'against' recommendation was made in relation to one or more resolutions considered at a meeting held during the 2017 AGM season
- other information voluntarily provided by the proxy advisers on their engagement practices and activities during the 2017 AGM season.

It also sets out some of our good practice recommendations to encourage more effective engagement between companies and proxy advisers.

# Background

## The role of proxy advisers

Each year, proxy advisers provide their clients, typically institutional investors, with reports containing recommendations on voting on company resolutions. Proxy advisers play an important role in the market by assisting shareholders to make voting decisions and promoting a focus on corporate governance. Strong institutional shareholder engagement with voting is key to a well-functioning capital market.

Many institutional investors have advised ASIC that proxy adviser reports are only one input into their voting decision processes. During the 2017 AGM season, there were media reports of institutional investors taking positions regarding certain issues that differed from those of proxy advisers. Indeed, proxy adviser firms often have different views on the same issue and many institutional investors will subscribe to more than one adviser's reports.

Further, empirical data reviewed by ASIC in relation to the 2017 AGM season appears to suggest that concerns regarding the extent of influence of proxy adviser recommendations on the voting outcomes of company resolutions is overstated: see [Report 564 Annual general meeting season 2017](#) (REP 564) at page 9.

There are currently four major proxy advisers operating in Australia:

- CGI Glass Lewis
- ISS Australia
- Ownership Matters
- Australian Council of Superannuation Investors (ACSI).

Each of these four proxy advisers voluntarily participated in and formed part of our review of engagement policies and practices.

## Regulation of proxy advisers in Australia

Proxy advisers in Australia hold Australian financial services (AFS) licenses for only a portion of the services they provide – giving advice to wholesale investors on votes that relate to dealings in financial products. Providing voting recommendations on other matters (such as director elections and remuneration reports) does not require an AFS licence.

In relation to the financial services that proxy advisers do provide under their AFS licences, proxy advisers have obligations under s912A of the Corporations Act to:

- do all things necessary to ensure that the financial services are provided efficiently, honestly and fairly
- have adequate arrangements in place for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken in the provision of financial services
- have adequate resources (including financial, technological and human resources) to provide the financial services and to carry out supervisory arrangements
- maintain the competence to provide those financial services.

Proxy advisers are also subject to s1041H of the Corporations Act which states that a person must not engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive. This applies whether or not the activity is conducted under an AFS licence.

# The scope of ASIC's review

## 2017 ASIC roundtable on proxy advisers

In May 2017, ASIC hosted a roundtable discussion between proxy advisers, industry representatives and relevant industry groups to understand whether concerns that had been voiced regarding engagement practices of proxy advisers were warranted and how they could be addressed.

Some of the concerns expressed at the roundtable about the engagement practices of proxy advisers included instances where proxy advisers

- appeared unwilling to engage;
- provided very short response times to companies to clarify issues
- failed to correct inaccuracies in a report.

Discussions at the roundtable revealed variations in the engagement practices of different proxy advisers. Each of the proxy advisers also indicated:

- a willingness to engage with companies throughout the year (outside of any 'blackout' periods used by one proxy adviser), and a high number of actual engagements
- a willingness to obtain companies' feedback on any factual matters in their reports and to correct factual errors
- an acknowledgment of the time pressures of meeting during the meeting season
- that they had seen a noticeable increase in requests to engage from companies in recent years.

We published the outcomes of the roundtable in [Report 539 ASIC regulation of corporate finance: January to June 2017](#) (REP 539). One of those outcomes (and the subject of the remainder of this report) was ASIC's commitment to monitor the issues raised at the roundtable during the 2017 annual general meeting season to gain further insight into the engagement practices of proxy advisers.

We also reported the following reflections from the roundtable:

- active education and engagement will be a key driver in helping to solve the issues and concerns being raised by participants and the market
- there was no consensus on any specific areas in which existing industry guidance on the engagement process was deficient and should be updated
- whilst we encourage the development of best practice in this area, the pursuit of new industry best practice guidance may not be fruitful at this stage given the existing guidance that already covers engagement between companies, institutional investors and proxy advisers. For example, the Governance Institute of Australia's, [Improving engagement between ASX-listed companies and their institutional investors: Principles and guidelines](#), July 2014.

## ASIC's review of proxy adviser engagement policies and practices

The remainder of this report discusses ASIC's review of proxy adviser engagement policies and practices in the 2017 AGM season. It focuses on the four major proxy advisers in Australia, listed on page 4.

## Observations from ASIC's review

We reviewed:

- the engagement policies of the major proxy advisers in Australia
- 80 proxy adviser reports where an 'against' recommendation was made in relation to one or more resolutions considered at a meeting held during the 2017 AGM season (20 from each proxy adviser)
- other relevant information voluntarily provided by the proxy advisers on their engagement practices and activities during the 2017 AGM season.

### Observations in relation to engagement policies

A summary of the engagement policies of each of the four major proxy advisers in Australia is included in the appendix to this report.

There are some notable differences in the engagement policies of the different proxy advisers, including:

- CGI Glass Lewis is the only proxy adviser with a 'blackout' period for engagement
- ISS Australia is the only proxy adviser that provides pre-publication drafts to companies.

However, the policies of all the proxy advisers appear to reflect:

- a willingness to engage with companies and make a copy of their report available to companies either prior to or after publication
- a desire to ensure independence from the companies that are the subject of their reports
- a willingness to receive feedback from companies in relation to potential factual errors and to correct material factual errors.

### Observations in relation to actual engagement

Out of the 80 proxy adviser reports we reviewed, 20 of the reports were selected by proxy advisers and the remaining 60 reports were selected by ASIC.

Based on the data provided to us, we observed that:

- Engagement with companies who were the subject of the reports appeared consistent with the approach outlined in the published engagement policies of proxy advisers.
- Table 1 shows that of the 80 reviewed reports, engagement with companies who were the subject of the reports occurred in 65 cases. In 11 cases, the proxy adviser offered to engage but the company declined or did not respond. In two cases, the company requested engagement but the proxy adviser declined (this included when the proxy adviser was unavailable to meet). In two cases, there was no contact with the company at all.

**Table 1: Engagement with companies who were the subject of reports**

Observation	Number of cases
Engagement occurred	65 (20 of these cases related to reports that were self-selected by proxy advisers)
Proxy adviser offered to engage but company declined or did not respond	11
Company requested engagement but proxy adviser declined (this included when the proxy adviser was unavailable to meet)	2
There was no contact with the company	2

- There were instances of both companies and proxy advisers initiating engagement.

- Despite engagement having occurred in 65 out of the 80 reports reviewed, only 52 reports disclosed some kind of engagement with the company who was the subject of the report. There were also variations in the level of detail and content of the disclosure. For example, some proxy advisers had upfront disclosure in their reports about the timing and method of engagement as well as general topics discussed, whilst others did not have the upfront disclosure but did contain detail to reflect, for example, additional information provided by the company on a particular issue or a summary of the company's views where that view differed from the proxy adviser.
- Topics of discussion during engagement included matters relating to corporate governance, remuneration, board accountability, independence and skill sets, clarifications of company disclosure, and communications to inform companies of an 'against' recommendation and the rationale.
- Where engagement data was available, it appeared that, for proxy advisers without 'blackout' periods, most engagement occurred from September to October.

### Other observations in relation to the 2017 AGM season

A summary of further data and key trends observed in relation to proxy adviser recommendations during the 2017 AGM season more generally is contained in [REP 564](#).

For example, [REP 564](#) makes the following observations based on data provided by three commercial proxy advisers in relation to their voting recommendations in the 2017 AGM season:

- There were 148 'against' recommendations<sup>1</sup> out of 1,125 resolutions (13%) put forward by ASX 200 companies, with a 17% average vote against these resolutions.
- Resolutions that attracted 'against' recommendations received a lower average 'for' vote. However, the average 'against' vote for resolutions attracting at least one 'against' recommendation was not sufficiently significant to alter the outcome of the resolution (in terms of the resolution being passed or a strike being achieved on the remuneration report).<sup>2</sup>
- There were also reports during the 2017 AGM season of large institutional shareholders deciding to vote against resolutions that were the subject of a 'for' recommendation by proxy advisers. This is consistent with representations made to ASIC by institutional shareholders that they do not follow proxy advisers' recommendations automatically, but make their own voting decisions.

See [REP 564](#) for further observations from ASIC's review of the 2017 AGM season.

<sup>1</sup> The total number of resolutions put forward by boards of ASX 200 companies that received at least one 'against' recommendation. In total, this affected 71 companies.

<sup>2</sup> We note voting outcomes of resolutions receiving an 'against' recommendation may be attributable to matters other than proxy advisers' recommendations, such as company performance.

# ASIC's recommendations

## The purpose of engagement with proxy advisers

Engagement between companies and proxy advisers can assist shareholders if that engagement improves the quality of information provided to shareholders in the proxy adviser reports. The focus of these engagements must always be on ensuring investors receive independent, well-informed recommendations based on accurate information. It should be an opportunity for proxy advisers to ensure the factual bases or contexts for their conclusions are correct. It should not be viewed simply as an advocacy opportunity by companies to influence a proxy adviser's recommendation in relation to a particular resolution.

## Proxy advisers

It is up to the individual proxy adviser as to how it wishes to strike a balance between the sometimes competing priorities of engaging with companies (including fact-checking), maintaining independence from companies (including preventing receipt of non-public information and avoiding undue influence), and managing timing constraints in their engagement policies.

However, we encourage proxy advisers to clearly explain and make available their policies in relation to engagement to ensure there is not a gap in expectations from companies regarding what engagement will take place. Engagement policies should be easily accessible, for example, published on the proxy adviser's website.

Likewise, voting guidelines, which set out the factors that the proxy adviser takes into consideration when providing voting recommendations, should also be easily accessible to assist companies to understand proxy advisers' views on particular issues.

Where a draft report is provided to the subject company for fact-checking or where clarification is sought from the company, proxy advisers should endeavour to provide sufficient time for the company to consider the request and respond.

Further, if it is intended that a draft report will be provided to the subject company, proxy advisers may wish to consider doing this in a controlled way, for example, without communicating recommendations or opinions that would be included in the final report. This may reduce disagreements between proxy advisers and companies as to whether errors reported by companies relate to fact or opinion.

Following publication of the final report, we encourage proxy advisers to notify companies of any 'against' recommendations and explain the reasons for those recommendations, to assist companies in understanding concerns held by the proxy adviser and responding to investors in the context of those concerns.

We encourage proxy advisers to be transparent in their reports about their engagement with companies who are the subject of their reports and any changes made to their reports as a result. Proxy advisers may wish to consider disclosing in their reports:

- the nature, extent and outcome of engagement with the subject company
- a summary of the subject company's view on a particular issue where that view is different from the proxy adviser's, or any additional information that has been provided by the company as a result of engagement.

We consider that this information may be useful for shareholders.

Proxy advisers should also promptly consider feedback in relation to factual errors in their reports and take steps to rectify any substantive errors as soon as possible.



## Companies

We encourage companies to:

- actively seek out information about the engagement practices of proxy advisers – proxy advisers may have different engagement policies for a number of different reasons. Understanding the best way to engage with a proxy adviser (including the best time for engagement) may reduce instances where companies have been unsuccessful in meeting or speaking with proxy advisers
- engage proactively with proxy advisers outside of peak periods as an extension of ongoing active engagement with their shareholders. We would envisage a large part of this engagement would involve understanding the proxy adviser's policies and views on particular governance issues
- release their notices of meeting to the market as early as possible – proxy advisers are subject to timing constraints such as voting deadlines and need to ensure their clients have adequate time to consider their advice. Releasing notices of meeting to the market as early as possible will maximise the time proxy advisers have to consider the materials and request clarification if required
- ensure disclosure to the market is fulsome, clear and not overly complex – proxy advisers should be able to base their analyses on publicly available information. This will minimise the risk of proxy advisers misinterpreting the information and reduce the need to seek clarification. This particularly relates to the basis upon which remuneration will be paid or will vest. Clearly explaining the rationale, context and purpose of the matter that is the subject of a resolution will also assist shareholders in making an informed voting decision

- continue engaging directly with investors regarding any voting decision – shareholders are ultimately responsible for making a decision on how they wish to vote
- in relation to 'against' recommendations, seek to understand the concerns underlying the recommendation through engaging with the proxy adviser and their voting policies to assist the company in responding to those concerns.

Companies should also ensure that confidential, price-sensitive information is not selectively disclosed to proxy advisers during engagement.

If a subject company discovers a matter that is materially false or misleading in a proxy adviser report, the company should:

- notify the proxy adviser of the matter promptly and seek a correction
- consider whether it would be appropriate to respond to the matter by way of an ASX announcement or other communication to investors.

## Conclusion

Voting on resolutions is an important shareholder right which enables shareholders to play a role in the governance of a company. Voting allows shareholders to express their views on important issues as well as hold the board to account for the company's performance. Accordingly, we encourage proxy advisers and companies to work together to ensure shareholders have accurate information to enable them to make informed voting decisions.

Proxy advisers should note their obligations under s1041H and actively seek out confirmation of factual matters where some uncertainty or ambiguity exists. Similarly, companies should engage with proxy advisers to resolve any ambiguities or uncertainties.

## Appendix: Summary of engagement policies

It was revealed at ASIC's roundtable that there were some material differences in the engagement policies of proxy advisers. It was also clear that to ensure effective engagement takes place, companies need to understand the engagement policies of each proxy adviser.

To assist companies, we have created a summary below of the engagement policies of each of the proxy advisers in Australia, as at the date of this report. These policies are largely found on the advisers' websites (although the summaries below also include other information the proxy advisers voluntarily provided to ASIC). Companies wishing to engage with proxy advisers should refer to the policies on the proxy advisers' websites and ensure they keep up to date with any changes to these policies.

### CGI Glass Lewis

CGI Glass Lewis:

- engages with companies to provide clarification as to its business model, operations and guidelines, to share its perspective on contemporary environmental, social and governance (ESG) issues facing the company, and to learn about the specific strategic and ESG issues facing the company
- will generally not meet with companies during the period from the date the notice of meeting is released to the day of the meeting (unless clarification on a particular issue is required) to avoid being provided with information that has not been publicly disclosed to the market

- will contact all of the companies under its coverage to inform them about its engagement policy and to offer the opportunity to engage, however, availability during proxy season periods is not guaranteed
- does not provide pre-publication draft reports to companies for fact-checking but will make its reports available for purchase by companies, to be delivered after the report is delivered to clients
- does not notify companies of 'against' recommendations in relation to its resolutions
- will disclose in its reports whether it has attempted to engage with the company, when that engagement took place, the general matters discussed and whether the company has purchased the report
- if contacted about a potential factual error in one of its reports, will investigate and republish the report with a correction (highlighting whether any recommendations have been changed as a result) if an inaccuracy is confirmed (as opposed to a difference in methodology or opinion).

We have been advised that Glass, Lewis & Co., CGI Glass Lewis' parent company, is a signatory to the Best Practice Principles Group's [Best practice principles for shareholder voting research & analysis](#) (PDF 784 KB), March 2014, which is adhered to by all of its subsidiaries, and includes guidance on communication policies.

### ISS Australia

ISS Australia:

- engages with companies to gain deeper insight into governance and voting issues to ensure a full understanding of the facts and circumstances and to check material facts relevant to its research

- during the AGM season, may limit in-person meetings with companies to contentious issues while engagement on other issues is handled by telephone
- will include an engagement summary in its research reports, outlining all dialogue that has taken place with the company and other relevant parties. Where relevant, the company's point of view may be reflected in the report
- will provide draft reports at its discretion as a courtesy to allow a company to check factual information in the report prior to publication (draft reports will not be provided where there is insufficient time to do so having regard to voting deadlines)
- will make a copy of its final report and voting recommendations available to companies free of charge after publication to its clients but will not proactively notify companies of 'against' recommendations outside of the pre-publication draft review process described above
- if contacted about a potential error in one of its reports, will promptly issue an 'alert' report to relevant clients if it agrees that there is a material error that should be brought to its clients' attention – the 'alert' report will inform clients of any corrections of fact and vote recommendation changes.

We have been advised that Institutional Shareholder Services Inc., ISS Australia's parent company, is a signatory to the Best Practice Principles Group's [Best practice principles for shareholder voting research & analysis](#) (PDF 784 KB), March 2014, which is adhered to by all of its subsidiaries, and includes guidance on communication policies.

## Ownership Matters

### Ownership Matters:

- engages with companies to probe board decision making and establish commercial context behind director judgements
- subject to availability, will meet with issuers on governance issues at any time of the year, without 'blackout' periods or restrictions
- where factual uncertainties exist, will use best endeavours to contact issuers to resolve them
- when considering an 'against' recommendation, will use best endeavours to seek any publicly available information or commercial context that might inform its position without selectively revealing its final recommendation
- does not provide pre-publication draft reports to companies for fact-checking but will make a copy of its final report and recommendations available to companies, free of charge, at the same time that the report is published to its client group
- if contacted about a potential error in one of its reports, will immediately issue a correction if there is a material factual inaccuracy but will not issue a correction on matters of differences of opinion or immaterial grammatical mistakes.

## Australian Council of Superannuation Investors (ACSI)

ACSI:

- engages with companies to discuss, understand and improve ESG management on behalf of its members
- engages with a company's board to understand the company's position before providing voting advice
- does not provide pre-publication draft reports to companies for fact checking but sends a copy of the final report to the subject company shortly after it has been issued to members (on a reasonable-efforts basis)
- notifies companies of 'against' voting recommendations following publication of the report
- where factual errors are established, or where new information comes to light, issues an alert to members and an updated report.

## Key terms

<b>AGM</b>	annual general meeting
<b>ACSI</b>	Australian Council of Superannuation Investors
<b>AFS</b>	Australian financial services
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ASX 200</b>	S&P/ASX 200
<b>ESG</b>	environmental, social and governance

## Related information

### Legislation

Corporations Act, s912A, 1014H

### ASIC documents

[Report 539](#) *ASIC regulation of corporate finance: January to June 2017*

[Report 564](#) *Annual general meeting season 2017*