The Honourable Greg Abbott, Governor
Office of the Texas Governor
P.O. Box 12428
Austin, Texas 78711

16 June 2025

Dear Governor Abbott,

Subject: S.B. 2337, Relating to the regulation of the provision of proxy advisory services.

The International Corporate Governance Network (ICGN) would like to offer its perspective as you consider whether to sign S.B. 2337 as passed by the Texas Legislature on 2 June.

Led by investors responsible for assets under management of >US$ 90 trillion, including over $23 trillion owned by US asset owners and managers, ICGN promotes high standards of corporate governance and investor stewardship globally. Our membership is based in more than 40 countries, and comprises asset owners, asset managers and advisers. Many of our members are invested in companies headquartered in Texas, incorporated under the laws of Texas, or redomiciled in Texas.

Risks to investors, the operation of capital markets and the competitiveness of Texas-based companies

ICGN believes that the final enactment of S.B. 2337 would be detrimental for investors and the operation of capital markets in the United States, the world's largest economy.

We are concerned that the Bill will impact the competitiveness of Texas-based companies, by interfering with the critical communication channel between issuers and their investors that proxy voting provides, as well as increase the costs of voting for company proposals in Texas.

Investors must be able to act in the best interest of their beneficiaries

Institutional investors have a fiduciary duty to act based on the best interests of their funds' beneficiaries. These beneficiaries are pension funds and other investors, including 401k saver plans, individuals, and institutions.

Exercising stewardship is a fundamental component of that fiduciary duty. An important aspect of investor stewardship is voting on major issues affecting investee companies, for example on capital allocation matters, incentive schemes and the appointment of directors.

We are concerned that the Bill will impact the competitiveness of Texas-based companies, by interfering with the critical communication channel between issuers and their investors that proxy voting provides, as well as increase the costs of voting for company proposals in Texas. Effective investor oversight and voting on company proposals supports capital formation and efficient markets. Companies rely on investors to exercise their voting responsibility, particularly when management proposals need investor votes for passage. For example, in some cases, if this bill is enacted, companies may have difficulty passing certain proposals where they require supermajority support.

ICGN is concerned that S.B. 2337 could have a detrimental effect on investors' ability to make voting decisions at Texas domiciled companies.

Governance factors are financially material

In the view of ICGN's members, matters relating to investment stewardship impact the financial performance of issuers and the financial returns of members' investments.

- Governance of investee companies is considered to be financially material by investors, as are certain environmental and social risk factors in certain sectors and for certain companies.
- Virtually all management proposals relate to governance, in one form or another. The company proxy statement, the source of key governance related information, is filled with material information to help investors understand the board's and management's views on the company's growth potential, financial performance, audit reports, and the election of board members, among other proposals.
- These governance related factors are material because they can be value accretive and can also provide important downside risk protection to prevent loss of investor capital.
- There are many known examples of governance related scandals that have resulted in loss of shareholder value.
- The determination of financial materiality and risk/return expectations differ among global investors. Depending on their investment objectives, strategy, risk appetite, and time horizons, it is possible that two investors may arrive at different conclusions as regards possible material financial impacts of the same proposal and vote differently as a result. If all investors had the same views on the risks and opportunities associated with their investments, we would not have the robust capital markets we do today.

Use of proxy advisory services by institutional investors

When casting their votes, investors inform and make their decisions based on multiple and variable inputs, such as in-house voting policies, investment theses, constructive engagement with companies, as well as research provided by third parties. Exactly what these inputs are will vary by manager and investment due diligence approach. Proxy advice is one of several sources of information that aid investors making voting decisions.

- The use of the services of proxy advisors does not replace or outsource fiduciary decisions. The investor remains the decision-maker.
- Proxy advisors are contractually obliged to conduct research in a manner that is consistent with aiding their clients in fulfilling their fiduciary responsibilities.

The vast majority of institutional investors have their own, bespoke voting policies, known as "custom policies".

- While these institutional investors use the services of proxy advisors for research and execution, they do not merely follow the recommendations of benchmark policies – they set their own voting principles and oversee their implementation.
- Custom policies are an effective way for large institutional investors, with different investment strategies and investing horizons, to execute their voting at scale based on their own carefully crafted considerations.

- The clients of proxy advisors are sophisticated investors, who may base their custom policies on their expectations of the financial impacts of a range of factors. These may include:
    - their expectations of financial impacts of poor governance or good governance.
    - the issues and factors they believe to be financially material in their investment experience.
    - their financial expectations which are based on their values or their mission (e.g., religious institutions, various endowments, etc.).
- By virtue of custom policies, the existence of differing custom recommendations on the same proxy proposal at any one company does not necessitate that a conflict exists, as suggested. Rather, each shareholder who has voluntarily contracted the services of the proxy advisor, is merely incorporating their own considerations in order to fulfil their fiduciary duties.

Investors may also use proxy advisors for standardization and presentation of complex and variable information published by companies. For many institutional investors, the recommendations of a proxy advisor are secondary considerations.

Clarity regarding the genesis and purpose of proxy advisor's benchmark voting policies is imperative. Proxy advisors' benchmark policies reflect the voting preferences of their clients and are developed after regular and extensive client outreach. Proxy advisors regularly consult with their clients to understand what information and data points are useful to them and should therefore be included in their research reports. They also consult on the evolution of their own voting policy direction to reflect evolving clients' views and update them to reflect regulatory changes around the world.

Implementation challenges

We are concerned that the requirement for proxy advisors to immediately disclose the basis and identity of recipients of such custom policies to companies in question, likely ahead of their annual meeting dates, may have many unintended consequences including but not limited to:

- Negative impacts on timeliness
- Undermining of investors' intellectual property in custom instructions
- Burden of over reporting
- A pre-disclosure regime creating costs for investors.

The Bill requires proxy advisers to provide an economic analysis of the impact of each proposal on their clients. This is problematic. A single proxy adviser client may hold an issuer's shares in multiple portfolios with different investment objectives. The investor retains full responsibility for evaluating the financial impact of their voting decisions on their ultimate clients. The proxy advisor is not privy to this information and has not been hired to provide their clients with this kind of financial advice. For example, the bill requires advisers to provide "an analysis of whether the proposal is consistent with the investment objectives and policies of the client." Investors do not share their investment objectives or investment policies with their proxy advisers, so it is unclear to us how this economic analysis could be performed or used.

In addition, investors are concerned with the disclosures and notifications that the Bill proposes under sections 101 and 102. Investors consider these would be additional, unnecessary boilerplate disclosure. E.g.:

- The clients of proxy advisors are sophisticated investors, who determine their policy positions based on their expectations of financial impacts of poor governance or poor management of material environmental or social risks or, alternatively, based on their values and their mission (e.g., religious institutions, various endowments, etc.).
- Most AGM/EGM proposals attract at least some votes against and given that most institutional clients have their own custom policies and do not rely on proxy advisors' benchmark recommendations.
- It is therefore likely that the notifications of "conflicting voter advice and recommendations" would have to be issued on every shareholder meeting.
- This would create a costly and meaningless disclosure burden for proxy advisers and a costly and meaningless burden of receiving and processing these notifications for companies and investors.

Risk of cost increases

We note that use of outsourced specialist service providers, such as proxy advisors, can support reduced costs. Undue interference with the use of any relevant service providers for asset management firms, pension funds, 401k providers and other investment product providers risks adding costs to the end beneficiary, which may then negatively impact long-term returns and reduce market competitiveness.

We would be happy to discuss our perspective with you directly and provide additional input from the investor community as you consider this Bill if that would be helpful. Please contact Carol Nolan Drake, Senior Advisor- Americas, at Policy@icgn.org.

Yours faithfully,

Jen Sisson

Jen Sisson

Chief Executive Officer, ICGN