CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

# CSA Notice and Request for Comment
# Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*

**April 24, 2014**

## Introduction

The Canadian Securities Administrators (CSA or we) are publishing for a 60-day comment period proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (the Proposed Policy).

The text of the Proposed Policy is contained in Annex A of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.fcaa.sk.ca
www.msc.gov.mb.ca

## Substance and purpose

Institutional investors are increasingly engaged in advancing good corporate governance in companies, and one of the ways by which they do so is the exercise of their voting rights. Issuers also rely on proxy voting to approve corporate governance matters or certain transactions. Accordingly, proxy voting is an important feature of our capital markets.

We note that proxy advisory firms play an important role in the voting process by assisting institutional investors in exercising their voting rights at shareholders' meetings. Institutional investors, in making their voting decisions, may use the services of proxy advisory firms in different ways and to varying degrees. Some proxy advisory firms also provide services to issuers, including consulting services on corporate governance matters.

In Canada, the proxy advisory industry is dominated by two firms - Institutional Shareholder Services Inc. and Glass, Lewis & Co.

A number of factors are contributing to the growing demand for the services offered by proxy advisory firms, including enhanced continuous disclosure requirements, the number and complexity of matters to be voted upon by shareholders and the time constraints imposed by the concentrated proxy season in Canada.

In recent years, certain market participants, including issuers, issuer associations and law firms, have raised concerns about the services provided by proxy advisory firms. There is general agreement amongst all market participants of the potential for conflicts of interest which may compromise the independence of services provided by proxy advisory firms. There are also concerns raised by issuers, issuer associations and law firms about the manner in which vote recommendations and proxy voting guidelines, which may have an influence on the voting decisions of institutional investors and the corporate governance practices of issuers, are developed. However, the extent of the actual influence of proxy advisory firms on market behaviour is subject to debate.

The Consultation Paper (as defined below), along with other international initiatives, brought a renewed focus on the activities of proxy advisory firms, with the result that proxy advisory firms are reviewing, and engaging in dialogue with market participants about, their practices to address the concerns raised by market participants.

Based on the comments received and our analysis of the concerns raised, we are of the view that a CSA response is warranted. In our view, there are several areas, and in particular, those relating to conflicts of interest, transparency and accuracy, where a policy-based approach providing guidance on recommended practices and disclosure will (i) promote transparency in the processes leading to a vote recommendation and the development of proxy voting guidelines; and (ii) foster understanding among market participants about the activities of proxy advisory firms.

Although the Proposed Policy applies to all proxy advisory firms, the guidance is not intended to be prescriptive. Instead, we encourage proxy advisory firms to consider this guidance in developing and implementing their own practices. We also remind proxy advisory firms that this guidance is not intended to be exhaustive and that it does not detract proxy advisory firms from their responsibility to comply with applicable securities law. The Proposed Policy will provide institutional investors or other proxy advisory firms' clients as the legitimate judges with a framework for evaluating the services provided to them by proxy advisory firms.

**Background**

On June 21, 2012, the CSA published for comment Consultation Paper 25-401 *Potential Regulation of Proxy Advisory Firms* (the Consultation Paper).

The purpose of the consultation was to provide a forum for discussion of certain concerns raised about the services provided by proxy advisory firms and the potential impact on Canadian capital markets and to determine if, and how, these concerns should be addressed by the CSA.

We sought additional information and views to determine whether we needed to address the following concerns identified in the Consultation Paper:

- potential conflicts of interest;
- perceived lack of transparency;
- potential inaccuracies and limited dialogue between proxy advisory firms and issuers;
- potential corporate governance implications; and
- the extent of reliance by institutional investors on the recommendations provided by proxy advisory firms.

The Consultation Paper outlined possible CSA responses and requested feedback.

The comment period ended on September 21, 2012. We received 62 comment letters from various market participants, including issuers, institutional investors, industry associations, proxy advisory firms and law firms. The comments differed among the respective market participant groups.

While issuers generally acknowledged the important role of proxy advisory firms, they seemed concerned about their influence on the voting decisions of institutional investors. Most issuers agreed with each of the concerns identified in the Consultation Paper. Issuer associations and law firms generally shared the issuers' view.

Institutional investors noted that proxy advisory firms provide them with useful and cost effective services when exercising their voting rights. They subscribe to the research reports prepared by proxy advisory firms to inform their voting decisions which, they explained, are based on their own assessment of the proposals and their proxy voting guidelines and do not necessarily follow the vote recommendations of proxy advisory firms. Institutional investors are generally satisfied with the services provided by proxy

advisory firms. Associations representing institutional investors generally expressed the same views.

Proxy advisory firms indicated that they have appropriate policies and procedures in place to address the concerns identified in the Consultation Paper. They noted that they are committed to providing objective and accurate services to their clients and have demonstrated a willingness to respond to concerns by voluntarily making changes to some of their processes. Proxy advisory firms do not believe that their activities should be regulated.

The Consultation Paper, along with other international initiatives, brought a renewed focus on the activities of proxy advisory firms. These initiatives include:

- The U.S. Securities and Exchange Commission (the SEC) published for comment on July 14, 2010 its *Concept Release on the U.S. Proxy System* which included a discussion on the concerns raised by market participants about proxy advisory firms. On December 5, 2013, the SEC held the Proxy Advisory Services Roundtable to discuss these concerns;
- The New York Stock Exchange Commission on Corporate Governance carried out a comprehensive review of corporate governance principles and published a report dated September 23, 2010 which sets out recommendations regarding proxy advisory firms;
- The French Autorité des marches financiers (AMF France) issued *AMF Recommendation No. 2011-06 of 18 March, 2011 on Proxy Advisory Firms*. AMF France recommended standards for proxy advisory firms in order to promote transparency and manage conflicts of interest;
- The European Commission published for comment on April 5, 2011, the *Green Paper: The EU Corporate Governance Framework*, aimed at assessing the need for improvement of corporate governance in European listed companies. On April 9, 2014, the European Commission published *Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement*, which includes proposed amendments designed to enhance the transparency of proxy advisory firms;
- The European Securities and Markets Authority (ESMA) published for comment on March 22, 2012 the *Discussion Paper: An Overview of the Proxy Advisory Industry. Considerations on Possible Policy Options.* ESMA published its *Final Report: Feedback Statement on the Consultation regarding the Role of the Proxy*

*Advisory Industry* on February 19, 2013 and encouraged the proxy advisory industry to develop its own Code of Conduct; and

- The Best Practice Principles for Governance Research Providers Group, formed as a result of the recommendations in ESMA's final report, published for comment on October 28, 2013 *Public Consultation on Best Practice Principles for Governance Research Providers.* Following the consultation, the Group published in March 2014 a set of *Best Practice Principles for Providers of Shareholder Voting Research & Analysis*.

As a result of this renewed focus, proxy advisory firms are reviewing, and engaging in dialogue with market participants about, their practices to address the concerns raised by market participants. In light of the foregoing, we concluded that a policy-based approach providing guidance on recommended practices and disclosure for proxy advisory firms represents a sufficient and meaningful response to address the different perspectives of the respective market participant groups while recognizing the private contractual relationship between proxy advisory firms and their clients. We believe that the best practices recommended by the Proposed Policy are consistent with the recommendations arising from the international initiatives and can be implemented by international proxy advisory firms operating in other jurisdictions.

**Summary of the Proposed Policy**

The guidance contained in the Proposed Policy is intended to address the areas discussed below.

***Conflicts of interest***

There is general agreement amongst market participants of the potential for conflicts of interest in the proxy advisory industry. Potential conflicts of interest, including those related to the business model or the ownership structure of a proxy advisory firm, may compromise the independence of services provided by the proxy advisory firm.

We expect proxy advisory firms to identify, manage and mitigate actual or potential conflicts of interest. We suggest certain steps that proxy advisory firms may consider taking to address actual or potential conflicts of interest, including establishing policies and procedures, internal safeguards and controls and a code of conduct. We expect proxy advisory firms to disclose to their clients any actual or potential conflict of interest and to publicly disclose their policies and procedures, internal safeguards and controls and code of conduct. We also encourage proxy advisory firms to evaluate the effectiveness of their processes on a regular basis to ensure that they remain appropriate.

***Transparency and accuracy of vote recommendations***

Without appropriate disclosure of the processes leading to vote recommendations, market participants may not be able to question or evaluate the quality of the information, research and analysis that underlie the proxy advisory firm's vote recommendations, and to evaluate their merits. Also, potential factual errors or inaccuracies in the proxy advisory firm's reports may lead to misinformed voting decisions by clients.

We expect proxy advisory firms to implement appropriate practices to promote transparency and accuracy of vote recommendations. Proxy advisory firms may consider, among other things, establishing and, where possible and without compromising the proprietary or commercially sensitive nature of information, disclosing policies and procedures describing the approach or methodologies used in the analysis as well as internal safeguards and controls to increase the accuracy and reliability of the information and data used in the preparation of vote recommendations. We encourage proxy advisory firms to ensure that they have the resources, knowledge and expertise required to perform their duties in the ordinary course of business.

***Development of proxy voting guidelines***

Because of their potential influence, proxy voting guidelines developed by proxy advisory firms may have an impact on the corporate governance practices of issuers. Market participants agree that proxy advisory firms should avoid a "one-size-fits-all" approach and should ensure that their proxy voting guidelines are tailored to the Canadian context.

To foster understanding among market and industry participants, we encourage proxy advisory firms to establish and, without compromising the proprietary or commercially sensitive nature of information, disclose policies and procedures describing the process followed in developing proxy voting guidelines and to engage with their clients, market participants and the public. We expect proxy advisory firms to publicly disclose their proxy voting guidelines and updates, and encourage proxy advisory firms to explain the rationale for their proxy voting guidelines.

***Communications with clients, market participants, the media and the public***

Although the services provided by proxy advisory firms are part of a contractual relationship with their clients, these services may have an impact on investors, issuers

and the public when their comments or statements are reported in the press or public forums.

We expect proxy advisory firms to consider communicating certain information when issuing their vote recommendations to their clients in their reports, including any actual or potential conflicts of interest, the approach or methodologies used and a description of the extent to which proxy voting guidelines are applied when preparing vote recommendations.

Although it is for proxy advisory firms to determine whether or not to engage with issuers when they prepare vote recommendations and if so, in what manner, we expect proxy advisory firms to publicly disclose their approach to any dialogue or contact with issuers.

We expect proxy advisory firms to publicly disclose their policies and procedures governing their communications with clients, market participants, the media and the public.

**Corporate governance practices**

Some issuers, issuer associations and law firms have raised concerns that proxy advisory firms may have become de facto corporate governance standard setters and that, as a result, issuers are compelled to adopt certain "one-size-fits-all" standards which may not be entirely suitable for their specific circumstances.

We wish to remind issuers that they may engage with their shareholders, who have the ultimately responsibility of determining how to exercise their right to vote, to explain why they have adopted a given corporate governance practice. Where appropriate, issuers may discuss corporate governance and proxy voting matters with institutional investors to address their concerns. If issuers have practices that are different from the standards set out in the proxy advisory firms' proxy voting guidelines, these practices can be discussed with institutional investors.

The information circular is the primary means for issuers to communicate their corporate governance practices to their shareholders. An issuer can include in its information circular a comprehensive discussion of its approach to corporate governance, including the practices of the board of directors and the issuer's executive compensation programs.

Issuers may also choose to participate in consultations organized by proxy advisory firms and to communicate their views on corporate governance issues and proxy voting

guidelines. Such contacts may help both parties to better understand each other's positions.

**Remarks on Proposed Policy**

We recognize that proxy advisory firms have demonstrated a willingness to respond to the concerns raised in the Proposed Policy and have brought changes to some of their practices. We intend to continue monitoring market developments in the proxy advisory industry to evaluate if the Proposed Policy addresses the Canadian marketplace's concerns.

**Request for comments**

We would appreciate feedback on the Proposed Policy generally, as well as on the following questions:

1. Do you agree with the recommended practices for proxy advisory firms? Please explain.

2. Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.

3. Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?

4. We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?

5. We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?

6. A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we

encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?

We welcome your comments on the Proposed Policy and feedback on the specific questions we have posed.

Please note that comments received will be made publicly available and posted on the website of the Ontario Securities Commission at www.osc.gov.on.ca and on the website of the Autorité des marchés financiers at www.lautorite.qc.ca and may be posted on the websites of certain other securities regulatory authorities. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please provide your comments in writing by June 23, 2014. Please provide your comments in Microsoft Word.

Please address your submission to all members of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please deliver your comments only to the addresses that follow. Your comments will be distributed to the other CSA member jurisdictions.

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
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Fax: (416) 593-2318
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**Questions**

Please refer your questions to any of the following:

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**Annex A**

**PROPOSED NATIONAL POLICY 25-201**
***GUIDANCE FOR PROXY ADVISORY FIRMS***

## Part I Purpose and application

### 1.1 Purpose of this Policy

The Canadian Securities Administrators (CSA or we) recognize that proxy voting, which provides a means for investors and issuers to engage in dialogue about matters concerning the issuer, is integral in maintaining confidence in our capital markets.

We acknowledge that proxy advisory firms play an important role in the proxy voting process by providing services that facilitate investor participation in the voting process such as analyzing proxy materials and providing vote recommendations. Some proxy advisory firms also provide other types of services to issuers, including consulting services on corporate governance matters.

The purpose of this Policy is to set out recommended practices for proxy advisory firms in relation to the services they provide to their clients and their activities. This Policy provides guidance to proxy advisory firms designed to:

(a) promote transparency in the processes leading to a vote recommendation and the development of proxy voting guidelines, and

(b) foster understanding among market participants about the activities of proxy advisory firms.

The guidance addresses conflicts of interest, the determination of vote recommendations, the development of proxy voting guidelines and communications with clients, market participants, the media and the public.

The guidance in this Policy is not intended to be prescriptive or exhaustive.

The CSA encourage proxy advisory firms to consider this guidance in developing and implementing practices that are tailored to their structure and activities.

### 1.2 Application

This Policy is designed to assist all firms that provide proxy advisory services. Proxy advisory services include any of the following:

(a) analyzing the matters put to a vote at a shareholders' meeting;

(b) making vote recommendations;

(c) developing proxy voting guidelines.

Although some proxy advisory firms may provide other types of services, this Policy addresses processes that lead to vote recommendations and proxy voting guidelines determined or developed by proxy advisory firms.

## Part 2 Guidance

### 2.1 Conflicts of interest

(1) Effective identification, management and mitigation of actual or potential conflicts of interest are essential in ensuring the ability of the proxy advisory firm to offer independent and objective services to a client.

(2) A conflict of interest exists where the interests of a proxy advisory firm are or may be perceived to be inconsistent with, or diverge from, those of a client. A conflict might also arise between the interests of one group of clients and another. By way of example, a conflict of interest exists in any of the following circumstances:

(a) a proxy advisory firm provides vote recommendations to an investor client on corporate governance matters of an issuer to which the proxy advisory firm provided consulting services;

(b) an investor client of a proxy advisory firm submits a shareholder proposal to be put to a vote at a shareholders' meeting that could be the subject of a favourable vote recommendation by the proxy advisory firm;

(c) a proxy advisory firm is owned, in whole or in part, by an investor client who invests in issuers in relation to which the proxy advisory firm is or has been mandated to make vote recommendations.

(3) Proxy advisory firms may address actual or potential conflicts of interest by implementing appropriate practices. Proxy advisory firms may consider taking the following steps to address actual or potential conflicts of interest:

(a) establishing, maintaining and applying written policies and procedures designed to identify, manage and mitigate actual or potential conflicts of interest that could influence their research and analysis, vote recommendations or proxy voting guidelines;

(b) designing and implementing internal safeguards and controls designed to monitor the effectiveness of the policies and procedures, including organizational structures, lines of reporting and information barriers, to mitigate actual or potential conflicts of interest;

(c) establishing, maintaining and complying with a code of conduct that sets standards of behaviour and practices for the proxy advisory firm, including individuals acting on its behalf, which incorporates guidance to promote the independence of the proxy voting process, including guidance that is intended to prevent individuals acting on behalf of the proxy advisory firm from benefiting on the basis of material, non-public information available to the proxy advisory firm;

(d) obtaining affirmation of the code of conduct from all individuals acting on their behalf upon hiring and on an annual basis thereafter and providing related training on a regular basis;

(e) evaluating the effectiveness of their policies and procedures, internal safeguards and controls and code of conduct on a regular basis to ensure that they remain appropriate and effective.

(4) The chief executive officer and the board of directors (or equivalent body) of a proxy advisory firm are generally expected to be responsible for

(a) setting and preserving a culture of compliance respecting conflicts of interest,

(b) endorsing the policies and procedures and the code of conduct adopted to address actual or potential conflict of interest situations and ensuring that the individuals acting on behalf of the proxy advisory firm are made aware of its policies and procedures and code of conduct.

(5) To assist with addressing actual or potential conflicts of interest, proxy advisory firms may wish to consider designating an appropriately qualified person who would be responsible, among other things, for

(a) monitoring and assessing compliance by the proxy advisory firm, and individuals acting on its behalf, with its policies and procedures and code of conduct,

(b) assessing the appropriateness of the internal safeguards and controls adopted by the proxy advisory firm and monitoring conflicts of interest identification and management, and

(c) periodically reporting on his or her activities to the chief executive officer and the board of directors of the proxy advisory firm or any equivalent body.

(6) We expect proxy advisory firms to disclose to their clients, in a timely manner, any actual or potential conflict of interest between the proxy advisory firm and the client and to provide sufficient information to enable the client to understand the nature and substance of the conflict.

(7) Where possible and without compromising the proprietary or commercially sensitive nature of information, we expect proxy advisory firms to post or describe on their website their policies and procedures, internal safeguards and controls, code of conduct and compliance program respecting conflicts of interest, including any related amendments.

**2.2 Transparency and accuracy of vote recommendations**

(1) It is important for market participants to understand how proxy advisory firms arrive at a specific vote recommendation and to assess the quality of the research and analysis behind such a recommendation. Proxy advisory firms can facilitate this by ensuring that vote recommendations are determined in a transparent manner and that the information underlying those recommendations is accurate.

(2) We expect proxy advisory firms to ensure that

(a) vote recommendations are determined in a consistent manner in accordance with the proxy voting guidelines of the proxy advisory firm or the proxy voting guidelines of the clients,

(b) vote recommendations are determined based on up-to-date publicly available information about the issuer, and

(c) vote recommendations are prepared in accordance with an approach or methodologies aimed at, amongst other things, reducing the risk of factual errors or inaccuracies.

(3) Proxy advisory firms may consider taking the following steps when determining vote recommendations:

(a) establishing, maintaining and applying written policies and procedures describing the approach or methodologies used to prepare vote recommendations, such as research, information and data gathering, benchmarks, sources of information from third parties, local market or regulatory conditions, criteria, analytical models and assumptions, and the relative weight of these elements in preparing vote recommendations;

(b) designing and implementing internal safeguards and controls to increase the accuracy and reliability of the information and data used in the preparation of vote recommendations. We encourage proxy advisory firms to have in place a quality assurance process to review vote recommendations before they are provided to clients, including verifying the accuracy of information and data used and reviewing the research and analysis performed by individuals acting on their behalf;

(c) evaluating the effectiveness of their policies and procedures as well as internal safeguards and controls on a regular basis to ensure that they remain appropriate and effective.

(4) We encourage proxy advisory firms to have the resources, knowledge and expertise required to prepare rigorous and credible vote recommendations. This includes hiring and retaining individuals that have the particular experience, competencies, skills and training required to perform their duties on behalf of the proxy advisory firm in the ordinary course of business.

(5) Where possible and without compromising the proprietary or commercially sensitive nature of information, we expect proxy advisory firms to post or describe on their website their policies and procedures as well as internal safeguards and controls leading to vote recommendations, including any related amendments.

**2.3 Development of proxy voting guidelines**

(1) It is good practice for proxy advisory firms to ensure that their proxy voting guidelines, which may have an influence on corporate governance practices of issuers, are developed in a consultative and comprehensive manner. This promotes a clearer and more complete understanding of the proxy voting guidelines and their underlying rationale and enables market participants to evaluate the applicability of the proxy voting guidelines to the corporate governance practices of issuers.

(2) Proxy advisory firms may consider the following when developing proxy voting guidelines:

(a) establishing, maintaining and applying written policies and procedures describing the process followed in developing and updating proxy voting guidelines, such as identification of standards and practices, policy formulation and approval, implementation and evaluation of proxy voting guidelines;

(b) regularly consulting with and considering the preferences and views of their clients, market participants and the public on corporate governance issues and on their proxy voting guidelines;

(c) taking into account local market or regulatory conditions.

(3) We encourage proxy advisory firms to ensure that they have the resources, knowledge and expertise required to develop and update appropriate proxy voting guidelines. This includes hiring and retaining individuals that have the particular experience, competencies, skills and training required to perform their duties on behalf of the proxy advisory firm in the ordinary course of business.

(4) Without compromising the proprietary or commercially sensitive nature of information, we expect proxy advisory firms to post on their website their proxy voting guidelines and any updates to them. We encourage proxy advisory firms to explain the

rationale for their proxy voting guidelines and to provide any other relevant information which could contribute to understanding the reasons behind the proxy voting guidelines and any updates to them.

(5) Where possible and without compromising the proprietary or commercially sensitive nature of information, we expect proxy advisory firms to post or describe on their website their policies and procedures and consultations leading to the development of proxy voting guidelines, including any related amendments.

### 2.4 Communications with clients, market participants, the media and the public

(1) It is good practice for proxy advisory firms to properly manage their communications with clients, market participants, the media and the public to foster understanding of the activities of proxy advisory firms.

(2) When issuing its vote recommendations, we expect proxy advisory firms to also communicate all of the following information to their clients in their reports:

(a) any actual or potential conflicts of interest arising from the vote recommendations;

(b) the approach or methodologies used, the factors considered and the weight of these factors in determining the vote recommendations;

(c) the identification of the information that is factual and the information that comes from analytical models and assumptions, and their reasons for the vote recommendations;

(d) a description of the extent to which proxy voting guidelines are used or applied when preparing vote recommendations and the reasons for any deviation from the proxy voting guidelines;

(e) where applicable, the nature and outcome of any dialogue or contact with an issuer in the preparation of the vote recommendations;

(f) any known or potential limitations or conditions in the research and analysis used to prepare the vote recommendations;

(g) a statement that the vote recommendations and the underlying research and analysis are intended solely as guidance to assist the clients in their decision making process.

(3) We expect proxy advisory firms to post or describe on their website their policies and procedures regarding dialogue or contact with issuers when they prepare vote recommendations, including whether they provide drafts of reports to the issuers for review and comment before sending the final reports to their clients.

(4) We expect proxy advisory firms to correct any factual error or inaccuracy found in a report and to duly inform their clients in a timely manner. We also encourage proxy advisory firms to duly inform their clients of any report updates or revisions to reflect new publicly available information about an issuer in a timely manner.

(5) We encourage proxy advisory firms to establish, maintain and apply written policies and procedures governing their communications with clients, market participants, the media and the public, including in relation to the preparation or release of any vote recommendation.

(6) We encourage proxy advisory firms to establish a contact person to manage communications with clients, market participants, the media and the public, including any questions, concerns or complaints that the proxy advisory firm may receive.

(7) Where possible and without compromising the proprietary or commercially sensitive nature of information, we expect proxy advisory firms to post or describe on their website their policies and procedures governing their communications, including any related amendments.

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July 23rd, 2014

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Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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**Re: Proposed National Policy 25-201 *Guidance for proxy advisory firms***

Dear Sirs/Mesdames:

We have reviewed the proposed National Policy 25-201 *Guidance for proxy advisory firms* ("Proposed Policy") and we thank you for the opportunity to provide our comments.

Addenda Capital Inc. is a privately owned investment management firm responsible for investing more than $23 billion in assets for pension funds, insurance companies, foundations, endowment funds and third party mutual funds of major financial institutions.

**General comments**

The Canadian Securities Administrators' focus on proxy voting is welcome but we believe that efforts should be focused on addressing the systemic problems in the proxy voting system like accurate vote reconciliation and end-to-end vote confirmation. There does not appear to be strong evidence that the guidance in the Proposed Policy is necessary or that it would change the behaviour of proxy advisory firms. The Best Practice Principles for Shareholder Voting Research & Analysis and the associated Guidance appear to address the issues outlined in the Proposed Policy.

As you note, proxy voting is an important feature of the capital markets. Proxy advisory firms provide their clients, investors, with valuable information that is useful for monitoring the governance practices of companies and exercising voting rights. Well informed and conflict-free voting advice helps investors consider relevant information and make optimal voting decisions for their beneficiaries or clients. Proxy advisory firms help investors in many ways by, for example, applying local market corporate governance expertise to analysis and voting recommendations for global investors, translating languages and helping deal with the time constraints of concentrated proxy seasons.

As the CSA has determined that a response to the comments received on Consultation Paper 25-401 *Potential regulation of proxy advisory firms* is warranted, we are pleased that the nature of the Proposed Policy is guidance that is "not intended to be prescriptive or exhaustive."

One item the Proposed Policy does not seem to address in depth is the development of custom voting policies and the accuracy of vote recommendations adherence to those policies. Institutional Shareholder Services' response to this consultation indicates that this is an important consideration, saying, "for clients representing over 60 percent of the aggregate assets held by all of our clients, ISS manages and applies over 400 custom policies."[1]

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[1] See http://www.osc.gov.on.ca/documents/en/Securities-Category2-Comments/com_20140621_25-201_carterm-sistid.pdf

**Responses to specific questions**

***Question 1.*** *Do you agree with the recommended practices for proxy advisory firms? Please explain.*

Yes, we agree with the guidance included in the Proposed Policy.

***Question 2.*** *Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.*

We do not have any material concerns and hence it is not possible for any to not be covered in the Proposed Policy.

***Question 3.*** *Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?*

We do not think the Proposed Policy will change the behaviour of proxy advisory firms.

***Question 4.*** *We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?*

The additional guidance proposed in this question sounds overly prescriptive.

***Question 5.*** *We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?*

The additional guidance proposed in this question sounds overly prescriptive.

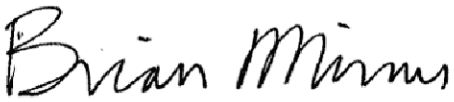
***Question 6.*** *A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and*

*following any amendments to the proxy advisory firm's proxy voting guidelines?*

The concept of having proxy advisory firms hold investors accountable for their stewardship activities is not suitable for the Proposed Policy. We are very supportive of enhanced engagement between investors and issuers and see a role for the CSA in promoting effective engagement. We have a favourable view of developments like the UK Stewardship Code, the Japanese Stewardship Code and the Canadian Coalition for Good Governance's 2010 Principles for Governance Monitoring, Voting and Shareholder Engagement.

In closing, thank you for soliciting comments on the Proposed Policy. If you would like to discuss our comments, please do not hesitate to contact me at +1 647-253-1029 or b.minns@addenda-capital.com.

Yours Sincerely,



Brian Minns
Sustainable Investment Specialist

c.c. Frank Bomben, Director, Public Affairs and Government Relations, The Co-operators Group Limited

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**Eric B. Miller**
Senior Vice President, Chief Legal Officer

June 23, 2014

**VIA EMAIL**

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Financial and Consumer Services Commission of New Brunswick
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 2S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

- and -

M$^{e}$ Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
Email: consultation-en-cours@lautorite.qc.ca

**RE: National Policy 25-201 Guidance for Proxy Advisory**

Dear Sirs:

It is with great interest that your proposed National Policy 25-201 Guidance for Proxy Advisory Firms (the "Proposed Policy") was reviewed and the opportunity to comment on the Proposed Policy is

appreciated. This letter addresses what is considered to be the most important elements of the Proposed Policy from our experience.

***Questions of General Governance versus Situational Expertise***

Proxy Advisory Firms ("PAFs") serve a very useful function on matters of pure governance related to accepted governance standards. The Proposed Policy rightfully is concerned with not hampering institutional shareholders ability to rely on the recommendations of the PAFs, and to allow the PAFs accreditation in governance. However, the Proposed Policy lacks both an appreciation of the issuer's perspective and rigor in approaching the activities and impacts that PAFs have in the proxy voting market place (which Proxy Voting System already has its own compounding issues which the CSA is exploring). In doing so the CSA has failed to take the opportunity to clearly distinguish the pure governance situations from those where PAF's do not have the expertise such as "Contested Situations" (ie. hostile takeovers / contested proxy battles based on different opinions of strategy). In these situations, because of the influence of the PAF's, recommendations should be highly caveated unless they can show a level of expertise that the CSA is satisfied with.

***Understanding the Proxy Landscape***

While everyone can appreciate the enormity of the requirement on institutions to review virtually every investment's proxy circular for good governance in order to meet the obligation to their investors, it is probably also recognized that to farm out the decision in Contested Situations to the PAFs would be a dereliction of such obligation. And while most institutions will say that in Contested Situations they do their own analysis and arrive at their own conclusions, a PAF recommendation is difficult to ignore in the marketplace. An additional and very important unintended consequence of all of this however, is the fact that many index funds and other smaller funds that do not have the resources rely solely on the PAFs recommendation. This can be a significant percentage of an issuer's shareholdings.

As a policy matter therefore, putting the onus on institutions to certify to their investors that in Contested Situations they have met an appropriate level of due diligence (to be defined) to meet their obligation would be a reasonable step to consider. As an additional consideration, the CSA might look to recent European proposals which would see institutions explain how their decisions match their investment objectives and profile.

***Required Consultation***

And lastly with respect to expecting PAFs to engage in "consultation" with issuers the engagement with issuers would most often be described as a hurried submission, not consultation. The process must be hardwired such that when a PAF has reasonably determined that it will make a recommendation adverse to the issuer that the duty to consult is immediate. Leaving the "consultation" to the day or two before the report will be issued is not good or fair process.

Given this background, it is submitted that a policy-based approach providing guidance on recommended practices and disclosure is not appropriate in Contested Situations. At a minimum, the CSA should recognize and require that:

1. Institutions have an obligation to their investors and must do their own unbiased consultation and analysis in Contested Situations;
2. Institutions should establish an internal process to certify that they have complied with their obligation in Contested Situations;
3. It can be argued that PAFs do not have the expertise to opine in Contested Situations, and that to do so requires additional expertise certification from the CSA;

Again, thank you for the opportunity to comment on the Proposed Policy. Should you have any further questions or wish to discuss, please contact the undersigned.

Sincerely,

Eric B. Miller
Senior Vice President, Chief Legal Officer

ALARIS ROYALTY CORP.

Phone: (403) 228-0873
Fax: (403) 228-0906

July 23, 2014

**DELIVERED VIA EMAIL**

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

**Attention**:
Me Anne-Marie Beaudoin
Corporate Secretary Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Attention:

Dear: Sirs/Mesdames

**RE: CSA Notice and Request for Comment – Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms***

This letter is submitted on behalf of Alaris Royalty Corp. ("**Alaris**") in response to the Canadian Securities Administrators' (the "**CSA**") request for comment (the "**Request for Comment**") dated April 24, 2014 with respect to the proposed *National Policy 25-201 Guidance for Proxy Advisory Firms* (the "**Proposed Policy**") dated April 24, 2014.

In recognition of the increasingly influential role proxy advisory firms play in the capital markets, Alaris is generally supportive of the objectives the CSA has set out in the in the Request for Comment; however, as an issuer listed on the Toronto Stock Exchange (the "**TSX**"), Alaris feels that the Proposed Policy lacks the necessary scope to address the concerns raised in the Request for Comment as well as the additional concerns of Alaris and other issuers, namely: potential inaccuracies and limited dialogue between proxy advisory firms and

issuers; the impact of proxy advisory firms on corporate governance practices; and, generally, the manner in which voting recommendations are developed. We feel that the Proposed Policy should go further to: (a) prescribe a minimum level of training for analysts and specified credentials of proxy advisory firms who prepare proxy voting recommendations; and (b) prescribe a minimum level of engagement with issuers.

**(i) Minimum Training Levels and Credentials / Publication of Analyst Training and Credentials**

Given the generally compressed time frame for the proxy season in Canada and the number of portfolio companies for which institutional investors receive proxy materials for, institutional investors often rely heavily on the research and voting recommendations of proxy advisors. As such, proxy advisors play an important role in our capital markets and in that role they have a high degree of influence over governance practices, in particular compensation matters, through their influence over proxy voting. With this level of influence it is important to ensure that the analysis conducted and provided by proxy advisors is of sufficient quality and accuracy to make a fully informed recommendation to their clients and to ensure their clients are able to make fully informed decisions. Prescribing a minimum training level and specified credentials will help to ensure that proxy advisors are hiring personnel that are capable of handling the complex analysis involved in a proxy review. Most other capital market participants, including lawyers, investment bankers, investment advisors and accountants, are subject to some minimum level of applicable training/education and/or are required to hold specified credentials, and given the noted influence proxy advisory firms can have, it is appropriate to impose some minimum level of training and specified credentials on the analysts who generate the proxy advisory reports for such firms.

We note that some proxy advisory firms have commented that they have established internal training procedures to ensure the quality and accuracy of the reports prepared by them. However, there is no transparency with respect to the training provided by or the credentials required by such firms and, as such, issuers, including Alaris, have concerns with respect to the skills and experience of the analysts they deal with when reviewing proxy advisory reports and recommendations. In this regard, we would suggest that the CSA also require proxy advisory firms to include the qualifications and credentials of the analyst responsible for preparing a report in the report itself. This requirement will ensure compliance with the aforementioned minimum training standards and specified credentials and also provide issuers, clients and other market participants with additional comfort with respect to the training and qualifications of proxy advisory firm analysts and the quality and accuracy of the proxy advisory reports.

**(ii) Engagement with Issuers**

Proxy advisory firms generally develop a set of standard corporate governance guidelines that apply to all issuers, with no flexibility for deviations from the core principles. This is often referred to as the "one-size-fits-all" approach. This lack of flexibility is a source of frustration between issuers and proxy advisory firms, as it leads to a "check-the-box" style of review, rather than a results orientated review that is focused more on guiding principles. The approach taken by proxy advisors fails to consider actual historical results of compensation plans and the compensation and governance practices as a whole rather than individual parts. In particular, proxy advisors do not consider what issuers have historically done with respect to the issuance of stock based compensation as compared to what an issuer potentially could do under compensation plans that are fully compliant with the TSX's requirements. Further, this approach fails to appreciate the unique circumstances of individual issuers and the philosophy and reasons for each issuer's governance and compensation practices.

The one-size-fits-all approach of proxy advisory firms was demonstrated to Alaris in connection with its last annual meeting of shareholders where it sought shareholder approval, as required by the policies of the TSX, of the unallocated entitlements under its equity compensation plans. The initial advisory report issued by the proxy advisory firm recommended that shareholders vote against these resolutions to be considered at the Alaris shareholder meeting. When Alaris attempted to engage with the proxy advisory firm, it found the response deadlines imposed by the proxy advisory firm (which Alaris was required to meet or the proxy advisory report would be issued without any input or response from Alaris) to be unworkable and not conducive to a meaningful dialogue between Alaris and the proxy advisory firm. Nevertheless, Alaris attempted to explain why it had deviated from the proxy advisory firm's published standards and the basis for the Alaris compensation program as

well as our internal guidelines with respect to the issuance of stock based compensation (which were publicly disclosed in our information circular). We were informed that there was no flexibility with respect to the guidelines of the proxy advisory firm, regardless of Alaris' actual historical stock based compensation grants, and that a negative voting recommendation could not be changed without compliance with the guidelines. Following the issuance of the advisor's report, and after noticing extensive voting against our compensation plans, we determined to amend our compensation plans to comply with the requirements of the advisor. Following such amendments, the advisor issued an updated report and there was an immediate and substantial change in the voting results such that our equity compensation resolutions were approved at our shareholder meeting. However, in our view, the recommended changes did not add value to our shareholders and resulted in a significant amount of management and director time being directed to addressing the amendments in a compressed time frame, rather than being directed towards our operations.

Through this process, we noticed the significant influence that the proxy advisor's report had on our voting results and the extent of reliance on such report by our institutional shareholder base. It also highlighted the concern of the "one-size-fits-all" approach. At Alaris, our board and management have spent a considerable amount of time developing our compensation program and principles in a manner that best aligns the interests of management, the board and shareholders and that is suitable for our particular business model. However, after our recent experience, in addition to focusing on the core principles behind our compensation program, we now also have to consider what is necessary in order to obtain a favourable voting recommendation from various proxy advisors, which may not always be in line with our compensation principles, our business model and the best interests of the Corporation and its stakeholders. This experience has demonstrated that the influence and inflexibility of proxy advisory firms has the effect of proxy advisors essentially regulating governance standards.

While we understand that it is the mandate of proxy advisory firms to supervise and advocate for stronger governance practices, given the significant influence proxy advisory firms wield, and the impact their recommendations can have on an issuer and the capital markets in general, it is important to ensure that they are providing sufficient and accurate information so as to permit a fully informed voting decision. Furthermore, with the utilization of a one-size-fits-all approach, we feel it is increasingly important for institutional shareholders to understand why an issuer may deviate from an advisor's standard guidelines; such issuers may very well have a *bona fide* reason for such deviation without compromising the overall level of its governance practices. We believe and propose that this can be done by requiring proxy advisory firms to engage with an issuer on some level prior to issuing an advisory report.

We do appreciate that, given the generally compressed nature of the proxy season in Canada and the number of issuers proxy advisors generally cover, full and continuing dialogue with an issuer is not a realistic approach. As such, we believe the Proposed Policy should require a proxy advisory firm to: (a) provide a draft copy of the a report to an issuer and provide a reasonable period of time for the issuer to respond prior to finalizing and distributing a report to its clients (we believe that 24 to 48 hours, which, in our experience, seems to be the current practice among proxy advisors, is not a sufficient response period); (b) include the substantive comments of an issuer relating to adverse recommendations in the final reports provided to their clients; and (c) disclose in the report what level of dialogue the proxy advisor has undertaken with an issuer during the course of its research.

Implementing the foregoing requirements will help to alleviate concerns arising from the "one-size fits-all" standards by allowing an issuer to express why their governance practices deviate from an advisor's guidelines while also ensuring that institutional shareholders have sufficient information to make a fully informed decision. In addition, such recommendations will help to reduce factual inaccuracies in proxy reports by permitting issuers a sufficient time to review and comment. We note the CSA's comments in the Request for Comment with respect to an issuer being able to engage with its shareholders directly to discuss such matters and that an issuer can include disclosure in its information circular regarding its approach to corporate governance and executive compensation. However, we do note that it may be difficult to identify all of an issuer's institutional shareholders given the regulatory requirements imposed on reporting issuers in Canada, which can limit the effectiveness of shareholder discussions. In addition, although Alaris (and other issuers) include detailed disclosure relating to its governance and compensation practices in its annual information circular, with the increasing reliance by institutional shareholders on proxy advisors' voting recommendations, including the utilization of automatic

voting procedures and the use of a proxy advisor's address for delivery of meeting materials, the use of the information circular alone may not be sufficient in order to provide the relevant information to allow institutional investors to make fully informed voting decisions.

We believe our recommendations strike a reasonable balance between concerns raised by proxy advisors, issuers, institutional shareholders and other market participants.

We would like to thank the CSA for providing us with the opportunity to comment on the Proposed Policy and appreciate its continuing efforts to ensure the fair and efficient operation of our capital markets.

Yours truly,

ALARIS ROYALTY CORP.

(signed) "*Michael D. Ervin*"

Michael D. Ervin
Vice-President, Legal

**De :** Andrew Swarthout [redacted]
**Envoyé :** 16 juin 2014 10:04
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

To whom it may concern,

I concur with and strongly support Mr. Budreski's initiatives in the attached letter. As a CEO and Director on three boards, I have experienced firsthand the disservice done to shareholders through the unfettered practices of ISS and Glass Lewis. Reform is critical for the good of the Canadian capital markets.

Sincerely,
Andrew T. Swarthout
CEO/Director
Bear Creek Mining Corp.
Vancouver, B.C.
CANADA
C: [redacted]

AUSTRALIAN INSTITUTE
*of* COMPANY DIRECTORS

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22 July 2014

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Montréal (Québec) H4Z 1g3

Email: consultation-en-cours@lautorite.qc.ca

Dear Me Beaudoin,

**Proposed National Policy 25-201 Guidance for Proxy Advisory Firms**

Thank you for providing us with the opportunity to comment on the proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (Guidance).

The Australian Institute of Company Directors (Company Directors) is one of the two largest member-based director association worldwide with over 35,000 members, including individual members from a wide range of corporations: publicly-listed companies, private companies, not-for-profit organisations, charities, and government and semi-government bodies. As the principal professional body in Australia representing a diverse membership of directors, we offer world class education services and provide a broad-based director perspective to current director issues in the policy debate.

While we are based in Australia, we believe that it is important to comment on the proposals set out in the Consultation Document as there is a tendency for Australian regulators to look to the regulations that are in place in other jurisdictions when developing regulation for Australia.

We are also a member of the Global Network of Director Institutes (GNDI), of which we are currently the Secretariat. GNDI brings together member-based director associations from around the world with the aim of furthering good corporate governance. It is the international network for leading membership organisations of directors in Australia, Brazil, Canada, Europe, Hong Kong, Malaysia, Mauritius, New Zealand, South Africa, Thailand, the United Kingdom, and the United States. This submission has been informed in part by members of GNDI, including the Institute of Corporate Directors in Canada.

We have attached a copy of the global perspective paper of the GNDI in relation to **Board-Shareholder Communications** and hope that this will be of assistance when considering submissions on the draft Guidance.

You may also find it useful to refer to an independent research report that Company Directors commissioned in 2011, **Institutional share voting and engagement**[1], which explores the effectiveness of the engagement between directors, institutional shareholders and proxy advisers and provides a map of the institutional share voting process in Australia. While the report was limited to looking at companies in Australia, we expect that many of the findings of the report will be relevant to the issues that the Canadian Securities Administrators (CSA) is seeking views on.

Additionally, while we do not intend to comment specifically on all of the issues raised by the Notice and Request for Comment, Company Directors would like to take this opportunity to make some general comments relating to some of these issues.

**General comments**

In our view, it is important for proxy advisors to be governed by a set of "good practice" principles and guidance. The exercise of voting rights by shareholders is a critical component of corporate governance and proxy advisory firms play an important role in this. In order for shareholders to make informed voting decisions, the information that they are provided with must be accurate and not misleading, whether the information is provided by the issuer, its directors or from some other intermediary, such as proxy advisory firms.

Despite proxy advisory firms playing such an important role and, in our view, exerting significant influence over their clients with respect to the exercise of voting rights, they are currently not held to any standard with respect to the communications that they make to shareholders. Some but not all proxy advisory firms may be registered as investment advisors, however the full scope of their work extends well beyond those specific advisory areas that are regulated. This relatively light regulatory burden is to be compared with the obligations of issuers and their directors who, in most jurisdictions, must comply with a number of regulations with respect to shareholder communications, and have potential liability in the event the materials that they send to shareholders contain inaccuracies, misrepresentations and/ or misleading statements.

There is clearly a disconnect between the influence and the accountability of proxy advisory firms. We believe that this disconnect undermines the exercise of voting rights by shareholders and impacts on the integrity of capital markets. In our view, this disconnect needs to be addressed. While the draft Guidance represents a useful step towards this, there are still a number of areas of concern that have not, in our view, been adequately addressed. These are set out in more detail below.

**Voluntary approach – the need for accountability**

We do not agree that the Guidance should apply to the proxy advisory industry on an entirely voluntary basis. Unlike corporate governance principles, where retaining a certain amount of flexibility is necessary, a code of practices that is intended to govern the professional conduct of an industry and hold participants accountable does not require similar flexibility, as complying with such practices should not involve matters of judgement.

Currently, proxy advisory firms are relatively unregulated, even though, as noted above, one of their key activities (ie shareholder communications) is subject to a number of regulations when undertaken by an issuer or its directors or, to a lesser extent, by a

[1] A copy of this research report can be located at: http://www.companydirectors.com.au/~/media/Resources/Director%20Resource%20Centre/Research/AICD%20%20ISVotingWeb_FINAL.ashx

broker or analyst. While we do not necessarily think legislative intervention is required at this stage, we do think that proxy advisory firms should, at a minimum, be required to meet the standards set by the Guidance. Our view is that the proxy advisory industry should be regulated by an industry body that could set and enforce professional standards, investigate complaints and administer discipline to ensure the integrity of the services being provided by proxy advisory firms.

**Conflicts of interest**

Having an appropriate conflicts of interest policy in place to manage potential and actual conflicts is essential to ensure the integrity of the advice that proxy advisory firms provide to their clients. It is also essential that proxy advisory firms publicly and comprehensively disclose all conflicts on any matter in respect of which they are issuing a voting recommendation. Proxy advisory firms should also set up "Chinese walls" and adopt other structural solutions to further reduce the likelihood of bias in the advice that they provide.

Currently, 2.1 of the Guidance does not go far enough to ensure that conflicts of interest will be appropriately dealt with. Where the management and disclosure of a potential or actual conflict will not be sufficient to ensure the integrity of the advice given, proxy advisory firms should be required to refrain from providing the particular service. One such circumstance will be where a proxy advisory firm is asked by a client to make recommendations with respect to an issuer that it has provided consulting services to.

To address these issues and to strengthen the proposed conflicts of interest requirements under 2.1 of the Guidance, at a minimum we believe that 2.1 should be expanded to include requirements that:

- proxy advisors avoid conflicts of interest with their clients. The proxy advisor should adequately disclose any conflict and the steps which it has taken to mitigate the conflict in order that the client can make a properly informed assessment of the proxy advisor's advice;
- where a conflict actually or potentially arises with respect to a voting recommendation that the proxy advisory firm will be issuing, the conflict be publicly and comprehensively disclosed;
- "Chinese walls" and other appropriate structural solutions be adopted and set up to further reduce the risk of bias in the advice provided by the proxy advisory firms; and
- voting recommendations not be issued on matters where the proxy advisory firm has provided consulting services to the issuer or, if applicable, where the proxy advisory firm's owner or significant investor has a material interest.

While the above amendments are required to strengthen the Guidance, there is one area where we believe the Guidance does in fact go too far. In particular, the expectation under 2.2(4) of the Guidance that the board of directors of a proxy advisor preserve the culture of compliance respecting conflicts of interest and also ensure that individuals acting on behalf of the proxy advisory firm are made aware of its policies and procedures and code of conduct. These expectations are, in our view, inappropriate, unreasonable and not practicably achievable by the board of directors. It places too high a burden on the board (particularly non-executive directors who are not part of management) and blurs the roles and responsibilities of the board with those of senior management.

As overseers of compliance, the board is not in a position to "preserve" or "ensure" the matters that it is expected to under the Guidance as they are either matters that are

outside their purview or they are matters that are not really capable of being determined with the requisite degree of certainty. The role of the board of a company is one of monitoring, oversight and strategy. Management, on the other hand, is responsible for the day-to-day operations of the company and for the implementation of strategy set by the board. The expectation for the board to "preserve" a culture of compliance and to "ensure" that individuals acting on the proxy advisory firm's behalf are made aware of its policies and procedures and code of conduct are unreasonable standards that would require boards to become intimately involved, akin to management, in the compliance systems of the company, rather than taking an oversight role, setting the compliance culture and satisfying itself that the compliance framework is sound. For this reason, 2.2(4) of the Guidance should be amended to remove these expectations from the board.

**Transparency and accuracy of voting recommendations**

Where proxy advisory firms provide clients with information that is intended to influence or assist in deciding how to exercise their voting entitlements, it is crucial that the information provided is meaningful, accurate and not misleading.

Company Directors and a number of the other GNDI member organisations are aware of circumstances in their relevant jurisdictions where the voting recommendations of proxy advisory firms have contained, or have been based on, mistakes and inaccuracies. This could be addressed by requiring that all voting recommendations be "fact checked" by the relevant issuer before the recommendation is finalised – especially where the recommendation is to vote against a resolution.

It is essential that proxy advisory staff be sufficiently experienced and have appropriate expertise and knowledge to understand the drivers of shareholder value creation in companies. Globally, directors and issuers have expressed their concerns about the quality and inexperience of proxy advisory staff who are required to analyse and opine on complex subject matter but who are unable to form a proper understanding of the issues. This is particularly an issue where the recommendations relate to remuneration resolutions (for example, to approve a remuneration policy or to approve a director or executive's remuneration arrangements) as understanding these matters often requires a high level of financial and legal expertise and/or experience. In our experience, the proxy advisory staff who are analysing these issues do not necessarily possess this.

We do not think that 2.3 of the Guidance goes far enough to address these concerns to provide assurance and accountability with respect to the quality of the services being provided by proxy advisory firms.

At a minimum, 2.3 should be expanded to include requirements that:

- before voting recommendations are finalised, that an opportunity be provided for them to be "fact checked" by the relevant issuer;
- proxy voting guidelines not be applied rigidly as a "one size fits all" by allowing flexibility to take into account local market and other regulatory conditions as well as the particular circumstances of the issuer where its corporate governance practices do not strictly conform with the guidelines;
- proxy advisory staff possess appropriate qualifications and experience to analyse or advise on the relevant issues. Details of the qualifications and experience of the staff should be disclosed, as well as the resources that the proxy advisory firm allocates to the analysis of meeting resolutions and outsourcing arrangements for the purposes of making voting recommendations; and

- sufficient time, resources and expertise must be allocated to analysing the issues necessary to make informed and accurate voting recommendations.

**Communications with clients, market participants, the media and the public**
We do not agree that it is appropriate for proxy advisory firms to be able to decide whether or not to engage with issuers.

Where a proxy advisory firm intends to issue a contrary voting recommendation, the firm should be required under the Guidance to share its report with the issuer and discuss its proposed contrary recommendation **before** the recommendation is finalised and published. In the event that the proxy advisory firm still intends to recommend a contrary voting recommendation after this engagement, the proxy advisory firm should be required to include the company's response to the firm's analysis and conclusions together with the proxy advisor's voting recommendation.

In our view, by requiring this engagement and disclosure, the likelihood of contrary recommendations being made that are based on inaccuracies or are misleading will be greatly reduced. It will also mean that proxy advisory firms will be able to present a more fully considered view in their final recommendations and, importantly, that their clients will be able to make more informed voting decisions based on these recommendations.

Accordingly, as a minimum, we believe that the 2.4 of the Guidance should be expanded to include requirements that:

- where a proxy advisory firm intends to issue a contrary voting recommendation with respect to an issuer, they must take active steps to engage with the issuer by sharing a copy of its draft report with the issuer and discussing the proposed contrary recommendation **before** the recommendation is finalised and published to voters; and
- if, following this engagement, the proxy advisory firm still intends to make a contrary recommendation, the issuer should be provided with sufficient time and opportunity to provide a response to the proxy advisory firm which must be included as part of the analysis in the materials that is provided to the proxy advisory firm's client.

If you would like to discuss any aspect of our views please contact our Senior Policy Advisor, Gemma Morgan on (02) 8248 6600.

Yours sincerely,

John H C Colvin
Chief Executive Officer &
Managing Director

BLACKROCK

July 23, 2014

Submitted via email

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Me Anne-Marie Beaudoin
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**Re: CSA Notice and Request for Comment – Proposed National Policy 25-201: *Guidance for Proxy Advisory Firms***

Dear Sir or Madam,

BlackRock, Inc. ("BlackRock") is pleased to have the opportunity to respond to the Canadian Securities Administrators ("CSA") consultation paper on the Proposed National Policy 25-201: *Guidance for Proxy Advisory Firms* (the "Proposed Policy").

BlackRock believes that proxy advisory firms play an important role in enabling institutional investors to better fulfill their duties towards their clients. As discussed in more detail in our response[1] to the CSA Consultation Paper 25-401: *Potential Regulation of Proxy Advisory Firms*,

[1] http://www.osc.gov.on.ca/documents/en/Securities-Category2-Comments/com_20120920_25-401_zivnuskar.pdf

proxy advisory firms have become an integral and necessary part of institutional investors' execution of voting rights. At the very least, institutional investors rely on proxy advisors to repackage relevant shareholder meeting materials such as issuer publications and publicly available news flow into a concise and consistent format that can be more efficiently reviewed. Institutional investors are likely to also use proxy advisory research to help determine which resolutions will require greater attention or more in-depth analysis.

To summarize our view on the Proposed Policy, we agree with the CSA that institutional investors or other proxy advisory firms' clients are the best positioned to evaluate the services provided to them by proxy advisory firms. We broadly agree with the recommended practices in the Proposed Policy because we believe that transparency around proxy advisors' policies and processes can foster greater credibility as well as broader market comfort with the proxy advisory industry. In our view, the recommended practices for proxy advisory firms appear generally in line with the steps that proxy advisory firms have already taken to both mitigate potential conflicts of interest and increase transparency in their activities. We believe strongly in the merits of the advisory firms taking these steps, however we do not believe that investors will experience incremental benefit or protection by codifying these standards in prescriptive regulation. We believe that substantial additional regulation of proxy advisory firms would likely impose costs that will ultimately be borne by their clients (i.e., investors), and it should therefore be clear how such regulation would benefit investors. As such, we agree with the CSA's approach to provide policy-based guidance that is not intended to be prescriptive or exhaustive.

Attached please find responses to some of the specific questions posed in the Proposed Policy. We appreciate the opportunity to address and comment on the issues raised by the Proposed Policy. We are prepared to assist CSA in any way we can, and welcome continued dialogue on these important issues. Please contact us if you have any comments or questions regarding BlackRock's view.

Yours faithfully,

Zachary M. Oleksiuk
Vice President
Head of Corporate Governance and Responsible Investment, Americas

*BlackRock is a leader in investment management, risk management and advisory services for institutional and retail clients worldwide. As of June 30, 2014, BlackRock's AUM was US$4.594 trillion. BlackRock offers products that span the risk spectrum to meet clients' needs, including active, enhanced and index strategies across markets and asset classes. Products are offered in a variety of structures including separate accounts, mutual funds, iShares® (exchange-traded funds), and other pooled investment vehicles.*

*Our client base includes corporate, public funds, pension schemes, insurance companies, third-party and mutual funds, endowments, foundations, charities, corporations, official institutions, banks and individuals. BlackRock attempts to act as a voice for our clients and to communicate to policy makers the impact of proposals on the end investor. BlackRock supports regulatory reform globally where it increases transparency, protects investors, facilitates responsible growth of capital markets and, based on thorough cost-benefit analyses, preserves consumer choice.*

*BlackRock Asset Management Canada Limited is a member of the Canadian Coalition for Good Governance and a number of national industry associations reflecting our global activities and reach.*

Responses to select questions in the Request for Comments on the Proposed Policy:

**1. Do you agree with the recommended practices for proxy advisory firms? Please explain.**

We broadly agree with the recommended practices in the Proposed Policy. Although we believe that no market failure has stemmed from the current practices of the proxy advisory industry, we welcome public disclosure by proxy advisory firms regarding policies on conflicts of interest, transparency and accuracy of vote recommendations, development of proxy voting guidelines, and communications with clients, market participants, the media and the public. We believe that transparency around proxy advisors' policies and processes can foster greater credibility as well as broader market comfort with the proxy advisory industry.

We agree with the CSA's approach to provide guidance that is not intended to be prescriptive or exhaustive. In our view, the recommended practices for proxy advisory firms appear generally in line with the steps that proxy advisory firms have already taken to mitigate potential conflicts of interest and to increase transparency in their activities. We believe strongly in the merits of the advisory firms taking these steps, however we do not believe that investors will experience incremental benefit or protection by codifying these standards in regulation. We believe that substantial additional regulation of proxy advisory firms would likely impose costs that will ultimately be borne by their clients (i.e., investors), and it should therefore be clear how such regulation would benefit investors.

**3. Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?**

In our view, the CSA correctly identifies institutional investors or other proxy advisory firms' clients as the best positioned arbiters for evaluating the services provided to them by proxy advisory firms. We believe institutional investor clients already have access to the information required to assess proxy advisors' policies on conflicts of interest, transparency and accuracy of vote recommendations, development of proxy voting guidelines, and communications with clients, market participants, the media and the public. Such information is typically reviewed in the context of a request for proposal or due diligence by investor clients.

We support the Proposed Policy's emphasis on protecting proprietary or commercially sensitive information belonging to proxy advisory firms, because there is already an effective market oversight mechanism in place in the form of the commercial relationship between proxy advisors and their investor clients. We do not believe that there would be significant public benefits associated with the disclosure of proxy advisors' proprietary or commercially sensitive information and note the potential for harm to proxy advisory clients in the event that their proprietary information is compromised.

**5. We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?**

We believe that proxy advisory firms should be transparent in their policies regarding dialogue with issuers, including whether they do engage with issuers when they prepare vote recommendations. However, we do not believe that it is necessary or appropriate for regulators to encourage proxy advisory firms to engage with issuers during the vote recommendation process.

We believe that the CSA correctly reminds issuers that they may engage with their shareholders, who have the ultimate responsibility of determining how to exercise their right to vote, to explain why they have adopted a given corporate governance practice. Direct and private engagement with issuers allows investors to share their philosophy and approach to investment and corporate governance with issuers and to enhance the issuers' understanding of investors' objectives. It also

gives investors the opportunity to improve their understanding of issuers and the issuers' governance structures as well as to better inform their voting and investment decisions.

At the same time, we do not believe that issuers, investors, and/or proxy advisors should be overly reliant on engagement to communicate views on corporate governance or to inform voting decisions, or that engagement for its own sake is necessarily a valuable activity; this is because the information circular is the primary means for issuers to communicate their corporate governance practices to shareholders, and shareholders can make their views on governance issues publicly available through website posting and/or other means. As with any other resource allocation decision, investors must prioritize their engagement activities in part according to their need for clarification of publicly disclosed information, their views regarding governance-related risks at an issuer, and their expectations of the potential outcomes associated with their engagement.

We expect that proxy advisors must similarly prioritize their resources, and we note that the costs of proxy advisor engagement activities would be borne by proxy advisors' clients. As such, it should be clear how engagement by proxy advisors would benefit investors; in our view the primary benefit of engagement for proxy advisors would typically be limited to clarifying proxy advisors' understanding of publicly disclosed information in order to potentially better inform their analysis of proxy issues.

**6. A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?**

We believe these questions may in part relate to the debate over the influence of proxy advisory firms on how institutional investors vote. The level of influence proxy advisory firms have will depend on how investors use proxy advisors. On one end of the spectrum, some investors look at proxy advisory research primarily for the centralization and simplified digestion of information including details on the issuer's governance structure, directors' biographies, strategic updates and compensation structures. They regard this research to be solely an information tool to supplement their own internally produced research. On the other end of the spectrum are investors who outsource their voting activities to proxy advisory firms and therefore vote in line with all of the proxy advisor's recommendations. Investors can subscribe to research from more than one advisory firm, and also take into consideration materials published by the company, research produced by sell side investment houses, and internal research, among other inputs. Ultimately, the investors have final responsibility for the vote decision on their assets.

We expect that investors that adopt a proxy advisory firm's proxy voting guidelines would review those guidelines from time to time to assess agreement. However, we do not see the benefit of encouraging proxy advisory firms to obtain confirmation that their clients have reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations, and we would be concerned about the incremental costs associated with such an activity, which would ultimately be borne by proxy advisory firms' clients. Rather, while likely outside of the scope of the Proposed Policy, we believe that any effort to build market confidence in proxy advisors should include encouraging institutional investors to provide transparency regarding their use of proxy advisors, as well as what resources the investors themselves devote to voting and stewardship more broadly.

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July 22, 2014

**VIA E-MAIL AND MAIL**

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The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
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Superintendent of Securities, Newfoundland and Labrador
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Re: Canadian Securities Administrators Proposed National Policy 25-201 – Guidance for Proxy Advisory Firms

Dear Sirs:

We are pleased to respond to your request for comments on the proposed policy.

Our national law firm represents a large number of public company issuers, of varying size, industry sector and principal provincial jurisdiction.

We are extensively involved in assisting issuers in preparing disclosure contained in proxy management circulars, and providing advice on matters forming the subject matter of such meetings.

We are also extensively involved in assisting and advising issuers on corporate governance requirements and practices.

We also have an extensive public company M&A practice. Our deal studies (the Blakes Public M&A Deal Study) done over the past five years indicate that most significant M&A transactions in Canada are effected through a plan of arrangement, which are subject to a shareholder vote.

Our response is focused with respect to the matters with which we have day-to-day experience arising out of our practice on behalf of issuers and attempting to provide comments of a practical nature to facilitate accurate disclosure concerning reporting issuers and shareholder consideration of matters which come before them for voting.

**Purposes of Securities Legislation**

We believe it is important to put in context our comments in the context of the purposes of securities legislation. The *Securities Act* (Ontario) (the "Act") in Section 1.1 provides that the purposes of the Act are (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets. *The primary means for achieving the purposes of the Act are set out in Section 2.1 of the Act, which include requirements for timely, accurate and efficient disclosure of information and requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants*. The legislation administered by the other Canadian Securities Administrators have similar purposes and provide for similar means.

We recognize that the primary relationship of proxy advisors is to their clients and thus the degree and form of any regulatory response should be proportionate and attempt to obtain maximum benefit at the least cost to participants through practical measures.

However, we believe that, if there are practical steps which can be taken to facilitate better disclosure to shareholders and the orderly shareholder consideration of matters on an informed and effective basis, these steps should be taken, consistent with the purposes of securities legislation.

**Inaccuracies and Opportunity for Issuer Engagement**

Based on years of assistance, and advice, to many issuers, it has been our experience that proxy advisory reports have on many occasions contained factually inaccurate information. In many cases, these are detected after being introduced into the market place (although sometimes with difficulty by issuers following the issuance of the report) requiring corrections. Often they are discovered when management investigates a significant, and unexpected, "no vote" on some matter, or a "withheld" vote for a director, which turns out to be based on inaccurate information in a proxy advisory report (which information was often correctly

provided in the proxy circular, or would have been if the issuer had been aware of the significance of the information to the proxy advisory firm).

As well, in our experience, such errors can have a number of significant results. Firstly, inaccurate information is provided to investors regarding the issuer, nullifying the correct disclosure provided by the issuer. As well, incorrect information and analysis may lead to inappropriate advice regarding the election of the board of directors, an important decision. In some cases, recommending a "withhold" vote on a technically incorrect basis has a reputational implication for individuals. Thirdly, it may affect other aspects of governance, such as corporation's compensation plans and policies. These matters affect all of the investors in the issuer, not just those who retain the proxy advisory firms.

A company's management proxy circular is regarded as a "core" document under applicable securities legislation for the disclosure of information, evidencing that the disclosure in such proxy circulars is regarded under securities legislation as an important aspect of disclosure regarding issuers. Proxy advisory firms, as professional organizations, provide such disclosure, and analysis of it. For proxy circulars, materiality of disclosure may be determined by whether it would reasonably be expected to have a significant effect on a shareholder's voting decisions. The disclosure and analysis prepared and provided by proxy advisory firms is for that very purpose. If such reports contain inaccuracies, including misrepresentations, one of the "means" under securities legislation, of timely, accurate and efficient disclosure of information, is thwarted.

This suggests that measures in some form designed to minimize the chances of misrepresentations regarding a reporting issuer in a proxy advisory report is appropriate.

Security regulators have also, primarily through the means of disclosure, attempted to promote awareness of corporate governance practices, pursuant to National Instrument 58-101 Disclosure of Corporate Governance Practices and related Corporate Governance Guidelines contained in National Policy 58-201. Disclosure of such practices is apparently of important concern to Canada Securities Administrators in fulfilling the purposes of the securities legislation. Apart from simply providing information and disclosure, it is evident proxy advisory firms are playing a more and more prominent role with respect to corporate governance practices, assessing these in relation to voting recommendations as to directors.

As well, proxy advisory firms provide services as to advice on substantive corporate decisions, being the election of directors, appointment of auditors, equity based compensation plans, compensation policies and practices through "say on pay" votes, and M&A transactions. These decisions, which have economic

consequences, are of significant relevance to issuers. They therefore are relevant to all investors in those companies.

The directors are legally obligated under corporate law to supervise the management of the corporation – the most significant decision made by shareholders relates to the election of directors.

In addition to required corporate shareholder votes for arrangements, securities legislation itself requires in certain circumstances additional voting requirements for M&A transactions, such as under MI 61-101 Protection of Minority Security Holders in Special Transactions.

Accordingly, with a view to ensuring, so far as possible that disclosure, and the analysis of disclosure, regarding reporting issuers is accurate, both for its own sake as regards accurate disclosure regarding the issuer, but also in regard to disclosure that may affect aspects of corporate governance such as the election of directors, M&A transactions and compensation matters, consideration should be given to address in some manner codification of the prior review by issuers of draft reports and consideration of corrections, as a fairly non-intrusive method of improving disclosure and avoiding confusion and disruption. We understand that the proxy firms and their institutional investor clients believe this is usually done in any event, so a mandated "regularization" of that may not be overly intrusive given the benefits of enhanced accuracy in disclosure. At a minimum, such prior engagement would be useful in the event of a recommended "withhold" or "against" vote.

Surely it is desirable to take some practical, minimal mandated steps to ensure a higher degree of accuracy in proxy advisory reports and thus have greater, not less, accuracy concerning disclosure relating to reporting issuers. Apart from detracting from the goal of accurate disclosure, inaccurate reports are highly disruptive to issuers, meaning other investors in the company bear the cost of such disruption and the time and cost of correcting errors after reports are published, which could have been relatively easily avoided to begin with.

**Corporate Governance Implications**

The Consultation Paper raised as a potential concern perceived corporate governance implications, being that proxy advisory firms may have become *de facto* corporate governance standards setters. As a matter of our experience, we can attest to the fact that issuers in many cases seek to understand the criteria used by proxy advisory services in formulating policies or practices which relate to matters that will be subject to shareholder approval – which includes corporate governance practices generally, as these are used for determining director election votes.

However, we recognize that the shareholders who utilize proxy advisory services, as a matter of corporate law, as between themselves, the corporation and other shareholders, typically have the right to vote their shares on whatever basis they wish. (We recognize that the obligations of the institutional investors to their own clients may impose other standards). This being the case, the role for others in the formulation of these policies is legitimately limited.

Having said that, there is likely a useful role for mandatory consultation with other market participants, such as reporting issuers, regarding voting guidelines, so that, in developing policies which will ultimately guide votes of the shareholders who contract with proxy advisory services, both the proxy advisors and their clients can be aware of, and take into account as they see fit, issuers' perspectives and input with respect to such policies. Again, while we appreciate that this imposes some additional burden, we think it is minimally intrusive given what proxy advisory firms state they already do, and would provide benefits to all participants.

**Conflict of Interest and Lack of Transparency**

Our experience has also been that issuers have felt compelled to use the advisory services offered by proxy advisory firms – in some cases, perhaps because they believe (rightly or wrongly) they have to "buy" the recommendation. However, perhaps more realistically, and significantly, given the criteria and models used for matters such as compensation plans, and compensation policies subject to a "say-on-pay" vote, this may be the only practical way an issuer can determine whether there will be a favourable proxy advisory recommendation, which may be critical to determining levels of possible approval, which in turn is necessary for corporate decision-making as to types of plans, and compensation matters, to be put forward to shareholders for approval. This, accordingly, is to buy, not the result, but to buy, in effect, knowledge of the likely outcome as only that proxy advisory service may have the criteria and models needed to determine that information.

Accordingly, the concern regarding "conflict of interest" is of importance not just to the institutional investors who purchase the services of proxy advisory firms. If issuers, as a practical matter, find it appropriate to purchase the service of proxy advisory firms in connection with approval of corporate measures which require shareholder approval or for which such approval is sought (such as compensation plans or say-on-pay votes), shareholders, others than those who have contracted with the proxy advisory firm, are affected. Their funds are used to buy the services. The compensation policies, practices and plans to be adopted by the companies in which they have invested will be shaped by the proxy advisor's report. As well, the type of plans put forward may in whole or in part be shaped by the proxy advisory service's advice to the issuer.

A possible solution to this “conflict” may be found in addressing a related, separate concern identified in the Consultation Paper, relating to a lack of transparency on the voting recommendations. For example, it may be useful to consider some codification of practices such that proxy advisory services be mandated to disclose publicly all of their criteria and policies with sufficient clarity and information that an issuer can reasonably determine what a proxy advisor’s recommendation may be, without being required to purchase their services.

Our experience has also been that proxy advisory firms have recommended “for” votes for certain plans or corporate actions, and, in the same proxy season, changed their recommendation for issuers who adopted identical plans or proposals to those which were supported. This leads to disruption and cost to issuers, their directors, and their shareholders and can be avoided by consistent application of disclosed policies.

It would appear to be not unreasonable, as a practical step, to mandate public disclosure of proxy advisor policies and practices sufficient for a reporting issuer to be able to determine a proxy advisor’s recommendation on relevant matters, and to mandate that such policies and criteria be consistently applied, so that issuers can develop their plans and policies accordingly and allow issuers to appropriately describe to their shareholders their reasoning where their approach differs from the proxy advisory firms’ voting guidelines. This would as a practical step would appear to benefit all market participants.

Yours very truly,

John M. Tuzyk

JMT/mtp

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Montréal, July 23, 2014

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**Object: Proposed National Policy 25-201: Guidance for Proxy Advisory Firms**

Dear Sir or Madam:

We have taken cognizance of the Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (the **Proposed Policy)** published by the Canadian Securities Administrators on recommended practices and disclosure for proxy advisory firms (the **PA Firms**) and thank you for giving us the opportunity to comment on the matters addressed therein.

We have participated in a working group which discussed the Proposed Policy and submitted a letter which we support and enclose hereto.

As further detailed in the letter enclosed, we are of the opinion that it is in the public interest to adopt a framework to oversee the activities of PA Firms. Although the Proposed Policy targets the right concerns, guidance is insufficient in certain key areas. As such, PA Firms should be required to register with securities commissions to ensure the monitoring of their activities. The introduction of binding measures should also be required to diminish the appearance of conflicts of interest, to guarantee a certain level of quality in voting recommendations, to prevent factual inaccuracies and to ensure the development of relevant proxy voting guidelines.

If you have any questions concerning these comments, please contact the undersigned at (514) 861-9481.

Best regards,

Daniel Desjardins
Senior Vice President, General Counsel
and Corporate Secretary

Enclosed

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July 22, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Our reference:
01016599-0016

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Dear Sir or Madam:

## Proposed National Policy 25-201: Guidance for Proxy Advisory Firms

This letter is submitted in response to the proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (the **Proposed Policy**) published by the Canadian Securities Administrators on recommended practices and disclosure for proxy advisory firms (the **PA Firms**). This letter reflects comments generated from a working group constituted of issuers having a combined market capitalization of more than $70 billion (the **Working Group**). We thank you for the opportunity to comment on this important topic.

### General

The business of providing services regarding proxy votes has grown and changed dramatically in the last two decades. Corporate governance issues are becoming more and more complex and institutional investors now own a majority of the shares in circulation. Many of these institutional investors have a diversified portfolio but limited resources to analyze and decide how to exercise their voting rights at shareholders' meetings. As a result, PA Firms have become important players in the public marketplace and have gained an unparalleled influence. As further described below, members of the Working Group are of the opinion that the Proposed Policy adequately targets but insufficiently addresses issuers' main concerns.

You will find below comments on each question set forth in the Consultation Paper with details as to the views of the members of the Working Group. Some of our comments are repetitive due to the nature of the questions. We apologize for any redundancy.

NORTON ROSE FULBRIGHT

## Comments on each question set forth in the CSA Notice and Request for Comment

***1. Do you agree with the recommended practices for proxy advisory firms? Please explain.***

The members of the Working Group agree with the recommended practices for PA Firms contained in the Proposed Policy. However, they are of the opinion that although the Proposed Policy targets the right concerns, guidance is insufficient in certain specific areas.

Because of their influence in the marketplace, regulation of PA Firms has become a matter of public interest and securities commissions should develop prescriptive rules to regulate certain key aspects of their activities. As further described below, members of the Working Group believe that the appropriate way to address issuers' concerns is through registration of PA Firms with the securities commissions and the development of binding measures to prevent conflicts of interest, to diminish inaccuracies in proxy advisors' reports and to ensure the development of proxy voting guidelines that are adapted to the Canadian context.

***2. Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.***

The Working Group is of the view that PA Firms should ideally be precluded from issuing a vote recommendation in any situation of conflict of interest. Conflicts of interest may arise, *inter alia*, when a PA Firm provides consulting services to the issuer subject to a vote recommendation or when a shareholder proposal has been put forward by a PA Firm's client. At a minimum, PA Firms should be required to insert a note in their recommendations to warn clients that an actual or potential conflict of interest exists. Members of the Working Group believe that PA Firms would benefit from the securities commissions' guidance in the development of their codes of conduct establishing best practices to prevent conflicts of interest.

Members of the Working Group are also concerned with inaccuracies in PA Firms' reports and the fact that institutional investors rely extensively on vote recommendations based on potentially flawed analysis. To ensure the quality of the analysis informing such recommendations, members of the Working Group believe that securities commissions should verify if PA Firms' analysts possess minimal standards of education, experience and training. The Working Group also expects PA Firms to immediately modify their vote recommendation after realizing that their decision was based on flawed analysis.

Members of the Working Group worry that PA Firms have a certain interest in promoting complex rules of corporate governance and have recently become *de facto* corporate governance standard setters. They believe securities commissions should ensure that PA Firms take sufficient measures to adapt proxy voting guidelines to the Canadian context and the reality of Canadian issuers. They are of the view that PA Firms should be strongly encouraged to obtain comments by a specific number of relevant Canadian market participants and required to publish empirical studies or methodologies used in the development of their guidelines.

Finally, members of the Working Group believe the appropriate way to address the abovementioned concerns is through registration and regulations. Registration will ensure the proper monitoring of PA Firms and enable securities commissions to receive complaints from market participants while regulation will prevent conflicts of interest, ensure the quality of the analysis informing voting recommendations and the development of relevant proxy voting guidelines.

Some may suggest that securities commissions should not regulate PA Firms on the basis that they provide private services to institutional investors and as such do not fall within their jurisdiction. However, because of the increasing role such firms are playing in the capital markets, members of the Working Group believe that it is in the public interest, and therefore at the heart of the securities commissions' mission, to request registration of all PA Firms with securities commissions and to introduce binding measures to address key areas of concerns. PA Firms bear many similarities with credit rating agencies and should be treated in a similar fashion.

***3. Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?***

The Working Group believes the Proposed Policy promotes meaningful disclosure to clients and the public related to conflicts of interest, the approach or methodologies leading to a vote recommendation and communication with market participants. However, PA Firms should be required to publish methodologies or empirical studies used in the development of proxy voting guidelines. Issuers should also be given the opportunity to include a brief response in the voting materials to be sent to investors when PA Firms issue a contrary recommendation. This information, together with the disclosure contemplated in the Proposed Policy, would foster a greater understanding of what clients and market participants can expect from PA Firms.

***4. We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?***

Members of the Working Group are in favour of PA Firms designating a person to assist with addressing conflicts of interest but prefer to leave it to PA Firms to determine how they should comply with the Proposed Policy and whether this person should also be participating in their day-to-day activities.

***5. We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?***

The quality of information provided to institutional investors is a priority to the Working Group. Each issuer should be given at least two business days to review a draft of a PA Firm's vote recommendation. Such draft should be sent to issuers free of charge. Issuers should be able to send their comments to PA Firms and engage with them in a discussion with respect to any mistake or inaccuracy in the PA Firms analysis. Should the outcome of the discussions between a PA Firm and the issuer still be a contrary recommendation, the issuer should then be allowed to include a brief response in the PA Firm's materials to be provided to investors.

***6. A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?***

Members of the Working Group are of the view that to ensure truly informed consent by clients, such confirmation should be obtained following each amendment to PA Firms' proxy voting guidelines.

NORTON ROSE FULBRIGHT

## Conclusion

In short, members of the Working Group believe that it is in the public interest to adopt a framework to oversee the activities of PA Firms. Although the Proposed Policy targets the right concerns, guidance is insufficient in certain key areas. As such, PA Firms should be required to register with securities commissions to ensure the monitoring of their activities. The introduction of binding measures should also be required to diminish the appearance of conflicts of interest, to guarantee a certain level of quality in voting recommendations, to prevent factual inaccuracies and to ensure the development of relevant proxy voting guidelines.

Thank you for allowing us to comment on this subject.

Yours truly,

(s) Norton Rose Fulbright Canada LLP

**De :** Brad Farquhar [mailto:brad@inputcapital.com]
**Envoyé :** 18 juin 2014 22:31
**À :** Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

I am fully supportive of the points being made by Mr. Budreski in his letter.

Brad Farquhar

---
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July 22, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

C/O: Anne-Marie Beaudoin
Corporate Secretary
Autorité des marches financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montreal, Quebec H4Z 1G3
Via Email: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Via Email: comments@osc.gov.on.ca

**Re: Canadian Securities Administrators Proposed National Policy 25-201: Guidance for Proxy Advisory Firms**

Dear Sir/Madame:

Thank you for the opportunity to provide comment on the most recent Proposed National Policy 25-201: *Guidance for Proxy Advisory Firms* ("Proposed Policy") regarding the role and influence of proxy advisory firms. It is crucial that the Canadian Securities Administrators ("CSA") evaluates all relevant information and takes into consideration a wide range of views on this important issue.

bcIMC manages a C$114 billion (gross) portfolio of globally diversified investments, as of March 31, 2014, on behalf of the public sector pension plans of British Columbia and publicly administered trust funds, as well as other public sector bodies. As a large, diversified investor, bcIMC believes that sound corporate governance and corporate responsibility practices contribute to the long-term success of the public corporations in which we own shares. bcIMC also believes that by being an active shareholder, we can influence directors and management to improve corporate governance practices and disclosure and hold company board of directors accountable when necessary.

Proxy voting is our most basic means of influence and holding directors to account. bcIMC votes our shares in every meeting of every Canadian company, all of our American holdings as well as 75% of the market value of our international holdings.

We devote substantial internal resources to proxy voting with dedicated professionals in the Public Equities Department and adhere to our Corporate Governance & Proxy Voting Guidelines which are continually updated to reflect evolving expectations. In the 2013-14 proxy voting season, bcIMC voted at more than 1,800 company meetings in 37 countries. With this volume of voting, bcIMC makes use of the research produced by proxy advisory firms.

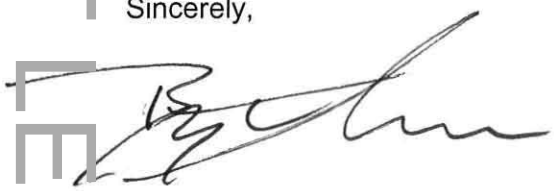
Our experience with proxy advisory firms would suggest that a regulatory response to address perceived concerns is not necessary. However, we acknowledge that the CSA has determined otherwise and are pleased that the Proposed Policy simply offers recommended practices and disclosure recommendations versus onerous regulatory obligations.

As members of the Canadian Coalition for Good Governance (CCGG), we are in full support of this organization's submission to the CSA on the Proposed Policy. We would reiterate their specific comments in terms of the Proposed Policy having little impact with many of the suggestions provided by the CSA already being implemented on a voluntary basis. We are also in agreement with the CCGG that there are many suggestions made by the CSA that are overly prescriptive and beyond the reach of the regulator.

Similar to the CCGG, bcIMC would encourage the CSA to not go any further than what has been proposed, as it would have limited benefit for shareholders and the capital markets more generally. Instead, we would prefer to see the CSA devote valuable resources to proxy voting infrastructure concerns, where there seems to be more widespread agreement of issues among the investor and issuer communities.

Thank you again for the opportunity to contribute our views to this discussion. If you have any questions about this submission please contact Jennifer Coulson at 778-410-7118 or jennifer.coulson@bcimc.com.

Sincerely,



Bryan Thomson
Senior Vice President Public Equities

**De :** Bruno Kaiser [redacted]
**Envoyé :** 19 juin 2014 10:55
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

Dear John,
I am a 23-year veteran investment banker in the mining industry. I have been aware of several issues that have arisen due proxy advisory firms. While I am certain their intentions are well-meaning, their execution is often 'one-size fits all' and as such can do a disserve to companies, in particular more junior companies. I support your measures and the issues identified. Their involvement in the markets can be impactful and as such needs to be well-scrutinized.
Regards,

Bruno Kaiser

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du Québec

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Le 10 juillet 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Commission des valeurs mobilières du Manitoba
Commission des valeurs mobilières de l'Ontario
Autorité des marchés financiers
Commission des services financiers et des services aux consommateurs (Nouveau-Brunswick)
Superintendent of Securities, Île-du-Prince-Édouard
Nova Scotia Securities Commission
Superintendent of Securities, Terre-Neuve-et-Labrador
Surintendant des valeurs mobilières, Yukon
Surintendant des valeurs mobilières, Territoires du Nord-Ouest
Surintendant des valeurs mobilières, Nunavut

Me Anne-Marie Beaudoin
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Courriel : comments@osc.gov.on.ca

**Objet : Avis de consultation publique des ACVM – Projet d'Avis 25-201 relatif aux indications à l'intention des agences de conseil de vote**

Madame, Monsieur,

Nous avons pris connaissance de *l'Avis de consultation publique des ACVM – Projet d'Avis 25-201 relatif aux indications à l'intention des agences de conseil de vote* (« projet d'Avis »). La Caisse remercie les autorités en valeurs mobilières du Canada (« ACVM ») de lui donner l'opportunité de commenter ce document.

La Caisse rappelle qu'elle a soumis ses commentaires sur le *Document de consultation publique 25-401 – Perspectives de réglementation des agences de conseil en vote*. Elle reprendra ici certains d'entre eux pour appuyer son raisonnement.

**La Caisse**

Conformément à sa loi constitutive, la Caisse gère des fonds provenant de ses déposants, principalement des régimes de retraite et d'assurance publics et privés. Elle est l'un des plus importants gestionnaires de fonds institutionnels au Canada et elle gère à long terme.

Chaque année, elle analyse toutes les questions soumises aux assemblées d'actionnaires des entreprises cotées dans lesquelles elle a un investissement.

Au cours de l'année 2013, la Caisse a ainsi voté sur 40 601 résolutions dans 3 972 assemblées d'actionnaires de sociétés à travers le monde. Toutes les positions de vote de la Caisse dans des sociétés canadiennes et américaines sont publiées sur son site Web (www.lacaisse.com).

Lorsque la Caisse exerce son droit de vote, elle bénéficie de ressources suffisantes lui permettant de saisir l'ensemble des enjeux liés à une résolution.

En effet, l'exercice du droit de vote à la Caisse est effectué par une équipe interne pour les assemblées d'actionnaires de sociétés canadiennes et américaines[1]. Certaines résolutions, si la complexité du sujet l'exige, feront l'objet de consultations plus poussées auprès de personnes au sein de la Caisse.

La Caisse a recours aux services des agences de conseil en vote pour alimenter sa réflexion lorsqu'elle se positionne par rapport à une résolution quelconque. Ce faisant, elle retient les services de plus d'une agence de conseil en vote.

Les recommandations fournies par ces agences, au même titre que les documents d'information des sociétés publiques et l'analyse de ses gestionnaires et personnel expert sont des outils précieux qui ensemble permettent à la Caisse d'exercer son droit de vote de façon éclairée.

La Caisse procède à ses propres analyses et décide du vote sans qu'il ne soit nécessairement le même que celui recommandé par les agences de conseil en vote.

**Commentaires généraux**

Compte tenu de l'utilisation qu'elle fait des services des agences de conseil en vote, la Caisse ne voyait pas la nécessité d'une intervention règlementaire à leur endroit sauf pour la question des conflits d'intérêts et particulièrement des services rendus aux entreprises pour lesquelles elles fournissent également des recommandations de vote. Cela dit, le projet d'Avis propose des indications qui sont normatives plutôt que prescriptives. De plus, elles reflètent généralement les pratiques mises en place par les principales agences qui œuvrent au Canada.

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[1] Pour les entreprises à l'international, le vote est effectué par un fournisseur externe, selon les politiques et les directives de la Caisse. La Caisse a ainsi engagé une agence de conseil en vote qui est responsable de voter les résolutions pour les entreprises conformément à la politique de la Caisse sur l'exercice du droit de vote (la « Politique» est disponible sur son site Internet).

Par ailleurs, la Caisse a consulté les documents qui ont alimenté la réflexion des ACVM et qui leur ont permis de formuler le projet d'Avis, notamment celui du *Best Practice Principles for Governance Research Providers Group* intitulé *Best Practice Principles for Providers of Shareholder Voting Research & Analysis*, publié en mars 2014 (« Principes »). Il s'agit d'un groupe d'agences en conseil de vote qui a élaboré ce document de meilleures pratiques. Les membres de ce groupe s'engagent à respecter les principes élaborés. Les deux principales agences œuvrant au Canada – ISS et Glass Lewis – y ont participé. On constate que le projet d'Avis est largement inspiré des Principes, à quelques exceptions près, qui sont déjà acceptés par les agences qui seraient visées par le projet d'Avis.

Aussi, dans ce contexte, la Caisse donne son appui au projet d'Avis et ses indications sous réserve des commentaires qui suivront.

Les agences de conseil en vote pourraient toutefois être invitées à expliquer les raisons pour lesquelles, elles ne se conformeraient pas à ces indications. Les Principes comportent ce volet.

**Questions spécifiques**

***1. Approuvez-vous les pratiques recommandées aux agences de conseil en vote?***

De façon générale, la Caisse est d'accord avec les pratiques recommandées aux agences de conseil en vote. Elles reflètent en grande partie les pratiques en place. Voici nos remarques à l'égard de certaines sections du projet d'Avis.

**Objet.** La portée de ce projet d'Avis s'étend aux communications avec les médias et le public. La Caisse s'interroge sur la pertinence de cette large portée. Elle en discutera plus amplement à la section sur les communications.

**Conflits d'intérêts.** La Caisse est d'avis qu'il s'agit d'une des plus importantes sections du projet. Les conflits d'intérêts réels et potentiels doivent être gérés et divulgués clairement pour assurer l'intégrité et la crédibilité des services offerts par les agences de conseil en vote.

La Caisse est principalement préoccupée par l'offre de services par certaines agences à la fois aux investisseurs pour les recommandations de vote et aux émetteurs pour des conseils en gouvernance. La meilleure façon d'éviter de tels conflits serait d'interdire aux agences de fournir des services directement aux émetteurs. La Caisse comprend que certaines agences de conseil en vote s'abstiennent de fournir de tels services et se consacrent à la fourniture de recommandations de votes aux actionnaires. Cela dit, si une telle avenue n'est pas envisagée, nous croyons que les mesures pour éviter, gérer et divulguer les conflits d'intérêts réels et potentiels doivent être très rigoureuses.

Le projet d'Avis offre un bon portrait de la situation et prévoit des mesures qui permettent de bien encadrer la situation des conflits d'intérêts. Nous sommes d'avis que toute agence

de conseil en vote devrait adopter ces mesures et s'assurer de leur efficacité. La Caisse souhaiterait toutefois voir de façon plus explicite une indication à l'effet que les clients institutionnels puissent requérir en tout temps, sur une base confidentielle, la liste des émetteurs qui reçoivent des services de conseil en gouvernance par la même agence ou par une personne lui étant liée.

**Transparence et exactitude des recommandations de vote.** La Caisse est d'avis que la transparence des processus de recherche et de formulation de recommandations de vote est pertinente et nécessaire pour les clients investisseurs et les émetteurs. Ils doivent connaître les politiques, les procédures et les mesures de protection et de contrôle afin de s'assurer de l'exactitude et la fiabilité des données utilisées. La divulgation de l'ensemble de ces éléments sur les sites Web des agences de conseil en vote est souhaitable dans la seule optique d'informer les émetteurs qui ne sont pas clients et d'offrir une description du processus aux clients potentiels.

Ce volet du projet d'Avis nous semble relever davantage de la relation client – fournisseur de services. Nous sommes toutefois tout à fait d'accord avec les recommandations de transparence à l'égard des émetteurs.

**Élaboration des lignes directrices en matière de vote par procuration.** Les remarques faites à la rubrique précédente s'appliquent également à la présente. La Caisse est d'accord avec l'approche consultative proposée qui existe déjà dans le marché. La consultation auprès des investisseurs et des émetteurs nous semble essentielle à l'élaboration de lignes directrices représentatives. Par contre, nous ne sommes pas d'accord avec la consultation auprès du public en général. Il semble qu'une telle recommandation va au-delà des intérêts des parties dans la relation privée entre les clients institutionnels et les fournisseurs de services. Nous ne voyons pas quelle serait la valeur ajoutée par cette consultation.

**Communication avec les clients, les participants au marché, les médias et le public.** La Caisse est d'avis qu'il est opportun de fournir des indications quant aux communications avec les clients et les participants au marché. Toutefois, elle ne voit pas la nécessité de recommander l'élaboration de politiques et processus de communications avec le public. Les agences sont libres de le faire si elles le jugent utile mais ça ne doit pas nécessairement faire partie des indications du projet d'Avis.

Pour ce qui est des médias, il peut être utile de les inclure afin de s'assurer qu'un encadrement soit en place et connu des clients et participants au marché lors de divulgations publiques de recommandations de vote. Il est utile pour ceux-ci de connaître à l'avance les pratiques de divulgation des agences auprès des médias.

***2. Y a-t-il des préoccupations qui ne trouvent pas de réponse dans le projet d'avis relativement aux agences de conseil en vote?***

Non, sauf peut-être pour des remarques faites à la question #1 sur les conflits d'intérêts.

***3. Le projet d'avis favorise-t-il la communication d'information utile aux clients des agences de conseil en vote, aux participants au marché et au public? Dans la négative, quels autres éléments d'information devraient être ajoutés?***

Ce projet d'Avis favorise la communication d'information aux différents intervenants, en ce sens qu'il propose un cadre plus formel à ce qui existe déjà. Les processus de communication proposés sont pour la plupart déjà en place et le projet d'Avis les encourage et les propose comme modèle pour toute agence de conseil en vote.

Nous réitérons toutefois nos remarques faites auparavant quant à la pertinence d'élaborer des processus de communication avec les médias et le public sur une base générale.

***4. Nous encourageons les agences de conseil en vote à envisager de désigner une personne qui l'aidera à traiter les conflits d'intérêts. Devrions-nous aussi les encourager à faire en sorte que cette personne les aide dans la formulation de leurs recommandations de vote, l'élaboration des lignes directrices en matière de vote par procuration et les questions relatives aux communications?***

La désignation d'une personne dédiée à la gestion des conflits d'intérêts est souhaitable et permet d'assurer l'application des politiques et processus élaborés à ce sujet ainsi que des mesures de contrôle à cet égard. À noter qu'il s'agit d'un élément qu'on ne retrouve pas dans les Principes mais qui nous semble justifié.

Toutefois, nous ne voyons pas la pertinence de faire participer cette personne à la formulation des recommandations de vote ou à l'élaboration des lignes directrices. En fait, il faut préserver la neutralité de cette personne et une telle participation risquerait de l'entacher. Cela dit, cette personne aurait avantage à participer à l'établissement des politiques et processus relatifs à ces sujets dont il est question aux articles 2.2 par. 3a) et 2.3 par. 2a) du projet d'Avis afin de minimiser les risques de conflits d'intérêts.

Cette personne pourrait également prendre part aux questions de communications compte tenu de la divulgation requise par le projet d'Avis.

***5. Nous nous attendons à ce que les agences de conseil en vote communiquent leur manière d'aborder le dialogue et les échanges avec les émetteurs dans l'élaboration de leurs recommandations de vote. Devrions-nous aussi les encourager à communiquer avec les émetteurs durant ce processus? Dans l'affirmative, quels devraient être les objectifs et la forme de ces communications?***

Le caractère d'indépendance de la recherche nous semble primordial pour ce type de services. Les investisseurs institutionnels veulent pouvoir se fier à des rapports de recherche indépendants pour effectuer leurs analyses en matière de vote.

Les agences de conseil en vote n'ont pas toutes le même modèle. Certaines décident sciemment de ne pas communiquer avec les émetteurs (sauf pour correction d'erreurs) afin de préserver ce caractère indépendant de la recherche. Partant de ce constat, il n'est pas souhaitable, même dans le cadre d'indications normatives, de requérir

systématiquement un échange avec les émetteurs pendant le processus d'élaboration des recommandations de vote. Chaque agence devrait pouvoir décider de son modèle. Celui-ci doit toutefois être clairement divulgué.

Les émetteurs bénéficient de la circulaire dans laquelle ils peuvent inclure toute information nécessaire à l'exercice du droit de vote par les investisseurs. Ils peuvent de plus, en tout temps communiquer avec ces derniers afin de discuter plus amplement de certains enjeux ou même des recommandations de vote faites par les agences s'ils sont en désaccord.

Toutefois, il est impératif qu'un processus transparent de communication avec les émetteurs soit en place afin de permettre la correction d'erreurs factuelles.

Pour les investisseurs, ce qui importe est de :

- s'assurer du caractère indépendant de la recherche
- connaître les processus de communication des agences avec les émetteurs et les raisons qui les sous-tendent
- être assuré que les erreurs factuelles puissent toujours être signalées, corrigées et que la divulgation à cet égard soit faite
- être assuré que les échanges ne mènent pas à des conflits d'intérêts et si c'est le cas, en être informé.

***6. Les agences de conseil en vote peuvent fournir aux clients des services de vote automatique reposant sur leurs lignes directrices en matière de vote par procuration. Devrions-nous les encourager à envisager d'obtenir la confirmation que le client a lu et accepté ces lignes directrices? Dans l'affirmative, devrions-nous les encourager à obtenir cette confirmation annuellement et après toute modification de ces lignes directrices?***

Nous sommes d'avis que ce sujet relève de la relation privée entre le client et le fournisseur de services. Il existe plusieurs situations différentes quant à l'utilisation totale ou partielle du vote automatique et il appartient aux deux parties de s'entendre sur le fonctionnement et les processus de communication entre elles.

**Conclusion**

La Caisse appuie le projet d'Avis dans la mesure où il reflète de façon générale les pratiques des agences en conseil de vote déjà en place et les Principes qu'un groupe d'entre elles ont élaborés. Dans ce contexte, les agences de vote pourraient être invitées à expliquer pourquoi elles n'adoptent pas ces indications, le cas échéant.

La Caisse encourage toutefois les ACVM à revoir la situation de conflits d'intérêts relative aux services de conseil en gouvernance offerts aux émetteurs, et à exiger une divulgation plus précise auprès des clients institutionnels qui reçoivent les recommandations de vote à l'égard de ces émetteurs.

Par ailleurs, de l'avis de la Caisse, les préoccupations que l'on vise à aborder dans ce projet d'avis s'insèrent dans un contexte problématique plus large à l'égard du système de vote par procuration. La Caisse encourage donc les autorités à les inclure également dans les travaux entrepris de revue plus globale des inefficacités et lacunes quant à l'intégrité du système dans son ensemble.

Veuillez agréer, Madame, Monsieur, l'expression de nos sentiments les plus distingués.

Ginette Depelteau,
Vice-Présidente Principale,
Conformité et Investissement responsable

June 17, 2014

**BY EMAIL**

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
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Superintendent of Securities, Newfoundland and Labrador
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and

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E-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

**Re: Proposed National Policy 25-201 Guidance for Proxy Advisory Firms (the "Proposed NP")**

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the Proposed NP and wishes to provide some general comments on the Proposed NP.

[1]The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of

We generally agree with the CSA's recommended practices for proxy advisory firms. Given their importance to the voting decisions of institutional investors, their methodologies, conflicts of interest and communication practices should be disclosed to clients and publicly as set out in the Proposed NP. As CFA charterholders, we must exercise diligence, independence, and thoroughness in analyzing investments, as well as have a reasonable and adequate basis, supported by appropriate research and investigation, for any investment recommendation or action. While we are permitted to rely on third party research, we are required to make reasonable and diligent efforts to determine whether such research is sound, which includes testing the assumptions used and an evaluation of the objectivity and independence of the recommendations. Ideally, investors should not rely solely on the opinions provided by proxy advisory firms and should conduct their own research, but we realize that is not always practical for large portfolios or small positions held. Instead, it is important for the marketplace to have confidence that the voting recommendations set out by the proxy advisory firms are based on a sound foundation.

The notice indicates that the CSA expects proxy advisory firms to implement practices to promote the transparency and accuracy of vote recommendations, including by possibly disclosing policies and procedures describing the approach used in their analysis, provided such disclosure does not compromise the commercially sensitive nature of the information. Section 2.2(c) of the Proposed NP provides in part that the CSA expects firms to ensure that recommendations are prepared in accordance with an approach aimed at, among other things, reducing the risk of factual errors or inaccuracies. We believe that many factual errors or inaccuracies could be corrected at an early stage if the proxy advisory firms were encouraged to have additional communications with the issuers on which they are formulating a vote recommendation, and that such communication should include a description of the facts upon which the recommendation is made. We are aware of examples where issuers were not given the opportunity to correct errors in the methodology used by a proxy advisory firm (for example, with respect to the outstanding number of shares) which had an impact on the vote recommendation, without paying for that information from the proxy advisory firm. Firms should be required to be transparent with issuers (without cost) such that the risk of factual errors is decreased.

We agree with comments made by others to the effect that there is a large potential for conflicts of interest, particularly with respect to proxy advisory firms that provide consulting services to issuers on which they may later provide vote recommendations. While these particularly conflicts are specifically referenced in the Proposed NP, and there is a specific reference to information barriers, the two are not linked. We think there is sufficient concern about the inherent conflict in these scenarios that the Proposed NP should specifically provide that proxy advisory firms that consult to issuers should

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knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit www.cfainstitute.org.

consider information barriers to separate out those two separate functions. In addition, firms should be encouraged to specifically disclose when they are receiving a fee from issuers on which they are providing vote recommendations.

With respect to communications with their own clients, the notice provides that it should be up to proxy advisory firms to determine whether to engage with issuers when preparing vote recommendations, but that they should publicly disclose their approach to dialogue with issuers. We believe proxy advisory firms should be strongly encouraged to engage with issuers when preparing their vote recommendation policies, in part to help mitigate concerns about potential factual errors in their methodologies.

It will be useful to expand the duties of any person designated to assist with addressing conflicts of interest to also assist with addressing the determination of vote recommendations, development of proxy voting guidelines and communication matters. Tasking one or more persons with such responsibilities will help to provide accountability throughout the organization, as well as improve transparency of processes.

We do not believe it is necessary to obtain confirmation from clients that they have reviewed and agreed with the proxy advisory firm's guidelines. It is more important that those guidelines are disclosed, and then it is the investor's responsibility to perform their own diligence on a proxy firm's guidelines and recommendations.

**Concluding Remarks**

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Ada Litvinov*

**Ada Litvinov, CFA**
**Chair, Canadian Advocacy Council**

Canadian Coalition for GOOD GOVERNANCE

June 11, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
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Email: comments@osc.gov.on.ca

Dear Sir/Madam:

**Re: Canadian Securities Administrators ("CSA") Notice and Request for Comment Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (the "Proposed Policy")**

The Canadian Coalition for Good Governance ("CCGG") thanks you for the opportunity to provide our comments on the CSA Proposed Policy released on April 24, 2014.

CCGG's members are Canadian institutional investors that together manage over $2.5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada's regulatory framework to strengthen the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.[1]

***GENERAL COMMENTS***

As we stated in our comment letter on the 2012 CSA Consultation Paper 25-401: *Potential Regulation of Proxy Advisory Firms* (the "Comment Letter"), we do not believe that the concerns expressed by some market participants regarding the role of proxy advisors justify a regulatory response.[2] The Proposed Policy does not challenge the important role that proxy advisors play in helping institutional investors carry out their fiduciary obligations to their clients in voting proxies, nor does it suggest that the role is fundamentally flawed. As we stated in the Comment Letter, if issuers and their advisors believe that institutional investors are inappropriately delegating their voting responsibilities to proxy advisors, then this issue should be taken up with the investor and not the proxy advisor – regulating proxy advisors is not the answer. A better approach, as we stated in the Comment Letter, would be to encourage proxy advisory firms to develop a voluntary code of best practices. The Proposed Policy recognizes that institutional shareholders and other clients are the "legitimate judges" of proxy advisory services and is intended to provide a framework for that judgment;[3] a voluntary code would provide the same framework. The European Securities and Markets Authority recommended this course of action after studying the issue and, as the Proposed Policy points out, a voluntary code of best practices was recently released by a group of proxy advisory with operations in the EU.[4] CCGG intends to study this document and make our representations on the voluntary code directly to proxy advisory firms, which we believe is the appropriate process.

Further, we believe that much of the guidance as to best practices contained in the Proposed Policy does not add substantive value because proxy advisors operating here already have similar policies and practices in place and disclose them publicly. As a basic principle, regulation should not be imposed if market forces are already eliciting the desired behaviour. Some of the guidance in the Proposed Policy is based on concerns that, as we explained in our Comment Letter, have little merit (e.g., a lack of transparency in developing proxy voting guidelines). It also is unclear how compliance with the Proposed Policy would be assessed and what resources the CSA intend to put to that effort.

However, given that the CSA have determined that a regulatory response is warranted, we are pleased that the Proposed Policy merely provides guidance as to suggested policies and practices to be followed by proxy advisors and is not intended to be prescriptive. As we set out below in our specific comments, though, we believe the Proposed Policy overreaches in some areas.

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[1] Please note that to avoid any appearance of a conflict of interest as a result of their ownership of Glass Lewis, our members Ontario Teachers' Pension Plan and Alberta Investment Management Corporation did not participate in the preparation or approval of this submission.

[2] http://www.ccgg.ca/site/ccgg/assets/pdf/submission_re_csa_consultation_paper_25-401signed-1.pdf

[3] "The Proposed Policy will provide institutional investors or other proxy advisory firms' clients as the legitimate judges with a framework for evaluating the service provided to them by proxy advisory firms." Page 4341

[4] Best Practice Principles for Providers of Shareholder Voting Research & Analysis at http://bppgrp.info/wp-content/uploads/2014/03/BPP-ShareholderVoting-Research-2014.pdf

We also are pleased to see that the Proposed Policy appears to accept the view, supported by CCGG in its Comment Letter, that proxy advisory firms do not exert undue influence on the development of corporate governance practices but rather their guidelines reflect principles shared by their institutional shareholder clients that are developed in a symbiotic relationship rather than being forced on uninformed or unengaged institutional investors that are not carrying out their fiduciary obligations.

***SPECIFIC COMMENTS***

**Purpose of the Policy**

We would like to point out that characterizing proxy voting as a "means for investors and issuers to engage in dialogue about matters concerning the issuer" does not accurately capture the nature of the proxy vote. For example, with Say on Pay advisory votes, shareholders are expressing a view as to the issuer's approach to executive compensation and not telling the board what compensation policies to adopt or amounts to pay, so in this case shareholders can be said to be involved in a dialogue with issuers. In most other vote situations, however, the proxy vote is more than merely 'engaging in dialogue" with issuers and is generally a means of communicating shareholders' instructions on a particular matter to management and directors. Perhaps this misunderstanding reflects the broader debate about whether it is the primacy of shareholders or directors that should prevail and underlies some of the sense of grievance shown by issuers towards proxy advisors who are, after all, advisors to the shareholders and not the issuer and are working in the interests of shareholders rather than management or the board.

The Proposed Policy also refers here to communications with not only clients and market participants but also "the media and the public", which we believe is overreaching as is discussed in more detail below.

**Conflicts of interest**

The Proposed Policy's guidance with respect to addressing actual or potential conflicts of interests reflects best practices and we agree that proxy advisory firms should adopt the sort of policies and practices outlined. We believe as stated above, however, that proxy advisory firms operating in Canada already have such policies in place and so we do not expect that the Proposed Policy's guidance will result in any substantive change.

We are pleased that the Proposed Policy does not suggest that issuers disclose their use of a proxy advisor in the proxy circular since such disclosure would compromise any ethical walls set up by the proxy advisors between institutional research services and consulting services sold to issuers. In the view of CCGG's members, effective 'firewalls' are of the utmost importance in such circumstances and regulation should not lead to those walls being compromised. In support of this, we suggest that the guidelines make reference to the importance of proxy advisory firms ensuring that their compensation practices reflect a strict delineation between separate business units that could give rise to potential conflicts of interest (e.g. there should not be a common bonus pool for employees in institutional research services and employees in consulting services).

**Transparency and accuracy of vote recommendations**

As stated in our Comment Letter, we believe that a concern with a lack of transparency on the part of proxy advisory firms is without merit and there should not be regulatory intervention in this area. Their corporate governance guidelines and their approach to governance issues are publicly available on their websites.

We question whether it is important for 'market participants' other than institutional shareholder clients and the issuers to whom the vote recommendations are related to understand how proxy advisory firms arrive at specific vote recommendations and assess the quality of the research and analysis behind such a recommendation. We suggest that while it may be important for market participants to have a general understanding of how proxy advisory firms arrive at vote recommendations, the level of detail described, such as analytical models and assumptions used and sources of information from third parties, is not necessary for anyone else other than clients and issuers.

We are pleased to see an exemption from the need to disclose such information in situations which would compromise the "proprietary or commercially sensitive nature of information": such an exemption is essential in order to avoid undermining the proxy advisory firms' business model. We anticipate, however, that reliance on this exemption by proxy advisory firms will be a source of friction between issuers and proxy advisory firms going forward.

**Development of proxy voting guidelines**

As we stated in our Comment Letter, proxy advisors currently develop their proxy voting guidelines in a highly consultative and comprehensive manner, soliciting input from both institutional shareholders and issuers annually, so regulatory guidance in this area is not necessary. Perhaps the CSA should encourage issuers to take advantage of the channels currently offered by proxy advisory firms to contribute to shaping those guidelines.

We question whether proxy advisory firms need to regularly consult with and consider the preferences and views of the general public on governance issues and proxy voting guidelines. The proxy advisory firms are not regulators and their relationship with their clients is governed by private contractual arrangements. In order for their business model to work and for them to serve their clients effectively, we agree that they should request input from the issuers that are the focus of their vote recommendations, but we believe that guidance suggesting proxy advisors should solicit input from the general public is overreaching.

**Communications with clients, market participants, the media and the public**

We question whether the guidance to communicate in reports to clients "any known or potential limitations or conditions in the research and analysis used to prepare the vote recommendations" is reasonable or even possible to fulfill in practical terms. Similarly, is it practical to suggest that proxy advisors' reports provide "identification of the information that is factual and that information that comes from analytical models and assumptions"? The proxy advisors should be free to assume that the readers of their reports are sophisticated and have the requisite expertise to make these distinctions for themselves and the Proposed Policy should not set up unreasonable expectations.

Again, proxy advisory firms are not regulators and we question the guidance to put policies in place to manage communication with respect to the media and public in general and any questions, concerns or complaints that the proxy advisory firm may receive. Such policies are good business practice for any corporation and there is no reason to single out proxy advisory firms with such expectations.

**Should the CSA encourage proxy advisory firms to have the person designated to assist with addressing conflict of interest also assist with addressing determination of vote recommendation, development of proxy voting guidelines and communication matters?**

We suggest that the specific policies and practices that proxy advisory firms use to identity and manage risk should be left to the firms themselves and they should not have to follow external guidance on persons

involved in any particular role or the scope of one person's responsibilities. There may be reasons based on the firm's business model where it may not make sense to have the person designated to assist with addressing conflict of interest to also be involved in determining vote recommendations, for example.

**Should the CSA encourage proxy advisory firms to engage with issuers during the process of preparing vote recommendations?**

The Proposed Policy recognizes that "it is for proxy advisory firms to determine whether or not to engage with issuers when they prepare vote recommendations and if so, in what manner". Accordingly, CCGG is of the view that the CSA should not encourage proxy advisory firms to engage with issuers during the process of preparing vote recommendations but instead leave that decision up to the proxy advisors themselves as best reflects their business model and their clients' preferences.

As we also said in our Comment Letter, proxy advisors should not be required to address issuer comments in their reports. Institutional investors engage proxy advisors to obtain the benefit of their research and analysis, not to provide a forum for issuers' responses. Issuers have the proxy circular to disseminate information about their governance practices and the reasoning behind those practices and they are also free to comment publicly on proxy advisory analysis, including posting comments or corrections on their website. They are also free to reach out to shareholders to discuss any disagreement they might have with the analysis prepared by the proxy advisor.

We agree that public disclosure of the proxy advisory firms' approach to any dialogue or contact with issuers is advisable.

**Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?**

Again, we believe that decisions as to how best to ensure that clients' views are in alignment with a proxy advisor's proxy voting guidelines and whether the client continues to support those guidelines should lie with the proxy advisor working with its clients.

***SUMMARY***

The Proposed Policy provides best practices guidance that generally mirrors the policies and practices proxy advisors in Canada already follow as a result of market forces that help to ensure their clients' interests are met, though at times the guidance goes beyond what is practical. Without such policies and practices in place, proxy advisory firms could not survive and, accordingly, regulation appears unnecessary and a voluntary code of conduct the more appropriate route. On a cost/benefit analysis, regulation that does not provide positive benefits and that will presumably use scarce resources to assess compliance, is not desirable, even if the regulation takes the form of guidance rather than being of a prescriptive nature.

We believe that it is not the absence of such policies and practices that are the cause of the concerns expressed by issuers and their advisors about proxy advisory firms and their 'excessive' influence. Rather these concerns arise because of the nature of the proxy advisory firms' business model and the disagreements that inevitably occur at times between shareholders and management and/or directors on certain contentious issues. We suggest that the Proposed Policy will not prevent these concerns and disagreements from arising in the future and we believe issuers and their advisors may continue to be

frustrated with proxy firms and the level of influence issuers and their advisors perceive such firms to have. We encourage the CSA to not go beyond the Proposed Policy, however, and thus to resist any further suggestions to regulate proxy advisory firms.

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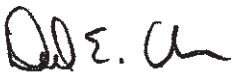
We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Erlichman, at 416.847.0524 or serlichman@ccgg.ca or our Director of Policy Development, Catherine McCall, at 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,



Daniel E. Chornous, CFA
Chair of the Board
Canadian Coalition for Good Governance

# CCGG MEMBERS

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund Board
Aurion Capital Management Inc.
BlackRock Asset Management Canada Limited
BMO Harris Investment Management Inc.
BNY Mellon Asset Management Canada Ltd.
British Columbia Investment Management Corporation (bcIMC)
Burgundy Asset Management Ltd.
Canada Pension Plan Investment Board (CPPIB)
Canada Post Corporation Registered Pension Plan
CIBC Asset Management
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management
Desjardins Global Asset Managment
Franklin Templeton Investments Corp.
GCIC Ltd.
Greystone Managed Investments Inc.
Healthcare of Ontario Pension Plan (HOOPP)
Industrial Alliance Investment Management Inc.
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel Ltd.
Lincluden Investment Management
Mackenzie Financial Corporation
Manulife Asset Management Limited
NAV Canada (Pension Plan)
New Brunswick Investment Management Corporation (NBIMC)
Northwest & Ethical Investments L.P. (NEI Investments)
Ontario Municipal Employees Retirement Board (OMERS)
Ontario Pension Board
Ontario Teachers' Pension Plan (Teachers')
OPSEU Pension Trust
PCJ Investment Counsel Ltd.
Public Sector Pension Investment Board (PSP Investments)
RBC Global Asset Management Inc.
Russell Investments Canada Limited
Sionna Investment Managers Inc.
Société de transport de Montréal - Régime de Retraite, Pension Funds
Standard Life Investments Inc.
State Street Global Advisors, Ltd. (SSgA)
TD Asset Management Inc.
Teachers’ Retirement Allowance Fund
The United Church of Canada (Pension Board)
UBC Investment Management Trust Inc.
UBS Global Asset Management (Canada) Co.
University of Toronto Asset Management Corporation
Workers' Compensation Board - Alberta
York University Pension Fund

CANADIAN COUNCIL of CHIEF EXECUTIVES
CONSEIL CANADIEN des CHEFS D'ENTREPRISE

The Honourable / L'honorable
John P. Manley, P.C., O.C. / C.P., O.C.
President and Chief Executive Officer
Président et chef de la direction

July 22, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
Montréal, Québec H4Z 1G3

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

**RE: Canadian Securities Administrators Proposed National Policy 25-201**
***Guidance for Proxy Advisory Firms***

On behalf of the 150 member chief executives of the Canadian Council of Chief Executives, I am pleased to submit our comments in response the CSA's proposal for a guidance document governing the conduct of proxy advisory firms (PAFs).

By way of introduction, we acknowledge the growing role and importance of PAFs in the smooth functioning of capital markets. In an increasingly complex world of corporate transactions, they can and do provide a useful function in sorting and assessing information that is relevant to shareholders and investment advisors.

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But with that role also comes important responsibilities, given the growing reliance on PAFs by many institutional investors and thus their potential impact on the market. These responsibilities particularly relate to their need to provide objective, well-researched and independent advice to their clients. Since PAFs routinely emphasize the disclosure obligations of issuers and seek to foster high levels of transparency, they should not be surprised to be asked to live by similar standards.

It also is important to acknowledge that PAFs exist because of a demand for their services by institutional investors, mutual funds, investment advisors and other market participants, and that these services are delivered through private, contractual arrangements. As well, the responsibility for sound and accurate assessment of corporate governance practices does not rest solely with PAFs. It is worth noting that the US Securities and Exchange Commission's recently released *Staff Legal Bulletin No. 20*, while it deals with important issues related to PAFs, is in fact primarily addressed to investment advisors with respect to their responsibilities in voting client proxies. The SEC document makes clear that investment advisors have a fiduciary duty to carefully examine and assess the basis upon which any PAF makes a vote recommendation. It is not enough to simply accept the recommendation at face value.

The CSA's 2012 consultation paper drew submissions from a number of interested parties, including CCCE members, and the renewed focus on the practices of PAFs has recently led to a better dialogue among key players in the debate. Nonetheless, consultation with our member companies has revealed a significant level of concern with respect to a number of current practices among PAFs, and considerable doubts about the effectiveness of the CSA's proposed approach.

We appreciate that securities agencies may be constrained by current legislative authority and institutional capacities from undertaking a more prescriptive approach, and we see the current proposal as a first step in what likely will be a multi-step process. We would urge that the policy adopted be as robust as possible given current regulatory authority, and we outline below some thoughts on how this might work. We also believe that CSA should commit to a thorough review of the policy, within 24 months, with a view to determining its effectiveness. This review should involve consultation with issuers, institutional

investors and other interested parties, and also examine further steps to ensure PAFs are adhering to best practices of transparency and professionalism.

Recognizing the proposed policy as a first step, we agree with the focus on three areas: 1) the obligation upon PAFs to avoid conflicts of interest, real or perceived; 2) the need to ensure the transparency and accuracy of vote recommendations prepared by PAFs; and 3) the need for PAFs to be open and consultative about how they develop and update their proxy voting guidelines.

**Conflicts of Interest**

Effectively dealing with potential conflicts of interest goes to the very heart of the role of PAFs and their ability to offer independent advice. The proposed policy adequately describes situations in which a conflict of interest may exist. As well, it outlines a number of important steps that PAFs should implement, including written policies to identify, manage and mitigate potential conflicts; internal safeguards and controls to monitor the effectiveness of their policies; and a code of conduct governing the firm and its staff.

The recently released SEC policy provides useful guidance in this area. Specifically, it suggests that PAFs must determine whether they have a "significant" relationship with the company that is the subject of the advice, and if so, the PAF must disclose such significant relationship or material interest to any recipient of its advice. In undertaking such disclosure the SEC cautions that the use of "boilerplate language that such a relationship or interest may or may not exist" is insufficient. As well, the paper suggests that such disclosure by a PAF must be sufficiently detailed to allow the client to assess the vote recommendation's reliability and objectivity.

**Transparency and Accuracy of Vote Recommendations**

Much of the recent concern with respect to PAFs can be traced to instances where an issuer disagreed with the vote recommendation issued by a PAF, and often related to a question of the information or assessment upon which the recommendation was based. These concerns can be exacerbated by an unwillingness to engage with the issuer and/or discuss the basis for the recommendation. While legitimate differences of opinion will always exist, it

is incumbent upon PAFs to ensure that they have a solid factual and analytical basis for any specific recommendation.

A related concern is whether PAFs have the internal resources and staff training to undertake analysis of potentially complex corporate transactions. As the recent SEC paper points out, it is the responsibility of institutional investors, and others who rely on a PAF's advice, to satisfy themselves that the PAFs they retain have the capacity and competency to adequately analyze relevant proxy issues.

**Proxy Voting Guidelines**

While proxy voting guidelines have their value, a too-rigid approach can lead to a "check-the-box" governance approach that fails to take account of specific corporate circumstances. Our members are concerned that PAF requirements can too easily become de facto corporate governance standards, without adequate consideration and discussion with affected stakeholders. As well, there have been instances where a PAF has chosen to change their proxy voting guidelines without adequate notice or consultation, leading to an adverse vote recommendation that was arguably unfair to the issuer.

**Our Recommended Approach: *Comply or Explain***

Our key recommendation is that CSA consider the implementation of a 'comply or explain' approach with respect to certain key responsibilities of PAFs. *Comply or explain* has been used successfully by securities regulators in Canada to deal with a number of important corporate governance practices. Such an approach can be an effective and streamlined alternative to more burdensome regulation. *Comply or explain* sets broadly acceptable policies or standards while allowing the party in question to justify why it has chosen a somewhat different path.

Were this approach to be adopted, we would see at a minimum that PAFs should devise practices in the following areas, or explain why they have chosen not to:

**Conflicts of interest.** PAFs should adopt and publish their policies and procedures related to the identification and mitigation of conflicts, implement internal safeguards and controls, develop a code of conduct for

all staff, and periodically evaluate the effectiveness of their policies and safeguards. While we believe that as a matter of principle a PAF should avoid making a vote recommendation where a conflict exists, should they choose to do so, they must be able to demonstrate the steps they have taken to ensure that the recommendation is independent and objective.

**Dialogue with companies that are the subject of a vote recommendation.** We are concerned about the unwillingness of some PAFs to effectively engage with issuers who are not clients. The proposed CSA policy suggests that, where applicable, a PAF should disclose the nature and outcome of any discussion or contact with an in issuer in the preparation of a vote recommendation. We would go further and suggest that at a minimum PAFs should have a policy of communication with firms about which they intend to issue a vote recommendation, or explain why they reject such a practice. This responsibility is heightened where it is a recommendation that is adverse to the company. The policy could also include the requirement for the PAF to acknowledge that the company disagrees with the information or analysis upon which the recommendation is based.

**Internal capacity and training**. Credible and reliable voting recommendations require that PAFs have sufficient internal resources and adequately trained staff to do the necessary research and analysis. We would encourage the proxy advisory industry to develop and disclose their training standards, their ongoing programs for capacity building, and their quality assurance programs.

**Proxy voting guidelines.** PAFs should publish their proxy voting guidelines and any updates to them and clearly describe the rationale for such guidelines. They also should make available to market participants a clear description of how they develop and update their guidelines. Proposed changes to the guidelines should be widely communicated to the issuer and investor community and sufficiently in advance of the upcoming proxy season. And finally, PAFs should regularly consult with clients, issuers and other market participants on evolving corporate governance practices and how they could affect their voting guidelines.

The current proposal and future activities of Canadian securities regulators in this area also have to be seen in a wider international context. The capital market regime is increasingly cross-border in nature, given that many of Canada's biggest issuers are cross-listed in both the United States and Canada. We referred above to the SEC's recent initiative in this area through *Staff Legal Bulletin No. 20*. As PAFs adopt best practices to meet ongoing SEC requirements, it is essential that Canadian policy developments align and keep pace in order to ensure enhanced levels of protection on both sides of the border. The SEC policy is a significant development and the Canadian response should not detract from it.

In closing, we commend CSA for taking this next step in addressing the role that proxy advisory firms play in Canadian capital markets. We look forward to further developments that can serve the interests of Canadian companies and their shareholders.

Sincerely,

July 22, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Me Anne-Marie Beaudoin, Corporate Secretary
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Dear Secretary and Me Beaudoin:

**Re: Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms***

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to comment on Proposed Policy 25-201 *Guidance for Proxy Advisory Firms* (the Proposed Policy). CIRI advocates and supports good corporate governance practices for its members and recognizes its value as a contributing factor in establishing and maintaining the integrity and efficiency of capital markets. CIRI has previously contributed to this dialogue with our submission in September 2012 in response to the CSA Consultation Paper 25-*401 Potential Regulation of Proxy Advisory Firms* and provided therein a series of recommendations.

CIRI membership represents over 200 publicly listed issuers with a combined market capitalization of just under $1.4 trillion. CIRI issuer members represent 87% of the S&P/TSX 60 Index companies and 54% of the S&P/TSX Composite Index companies. More information about CIRI is noted in Appendix 1.

**Overall Concerns**

We commend the CSA for reviewing proxy advisory firms, particularly in light of the impactful role they play in our capital markets. However, CIRI and its members are disappointed that the CSA have decided in the Proposed Policy to pursue a guidance-based approach rather than adopting regulations, which was the intent of the suggestions previously recommended by CIRI, issuers and other organizations representing the interests of the issuer community.

CIRI recognizes and understands that proxy advisory firms (PAFs) play a beneficial role in the capital markets by providing services that can improve institutional investors' ability to exercise their stewardship responsibilities. CIRI further recognizes that the primary relationship between PAFs and their principal clients is a contractual one and that regulators may be less willing to impose regulatory constraints on such relationships than on other market participants, such as corporate issuers and intermediaries.

However, the reports and voting recommendations produced by PAFs have a direct impact on the issuers. We contend that the existing practices of PAFs lack transparency, accuracy and engagement, all key drivers of market integrity and efficiency. While the Proposed Policy does go some way to improving transparency (assuming PAFs accept and implement the guidelines regarding disclosure of methodologies and procedures), it does little to foster improved accuracy and engagement with issuers.

One of CIRI's previous key recommendations was that draft research reports from PAFs should be provided to the subject issuer with a reasonable review period that allows for engagement should inaccuracies or misinterpretations be identified prior to distribution to clients. This is so factual errors can be identified and corrected, thus increasing the accuracy of such reports – to the benefit of all involved.

CIRI also recommended that in the event of a "negative" voting recommendation, that the reports issued to PAF clients include a section whereby the issuer has the option to provide commentary, an attempt to increase engagement and provide investors with a balanced view of a given issue – again to the overall benefit of all involved. CIRI continues to believe these are reasonable and appropriate requirements for PAFs.

The Proposed Policy, under the heading Corporate Governance Practices, states, in part, "*We wish to remind issuers that they may engage with their shareholders, who have the ultimately responsibility of determining how to exercise their right to vote, to explain why they have adopted a given corporate governance practice*." and "*If issuers have practices that are different from the standards set out in the proxy advisory firms' proxy voting guidelines, these practices can be discussed with institutional investors*."

One of the primary roles and responsibilities of the investor relations function in corporations, large and small, is to engage and communicate effectively with their shareholders and investors on a wide range of issues, including corporate governance practices. However, such engagement is significantly constrained in Canada where it is sometimes impossible to properly identify shareholders that have elected to be objecting beneficial owners (OBOs), unless their holdings exceed the current 10% Early

Warning Reporting (EWR) threshold. CIRI has been and continues to be supportive of proposed regulatory initiatives to reduce the EWR threshold to 5%. This change to 5% would provide additional opportunity for engagement and communication with identified shareholders not only during proxy season via the information circular but continually throughout the year.

In terms of issuer engagement with PAFs, only one-third of respondents to a recent CIRI poll of issuer members indicated that they have had discussions with one or more PAFs when those firms were developing their corporate governance policies/practices. Of the one-third of issuers who had such discussions all were large capitalization issuers (market capitalization of $5 billion or more) and engagement was inconsistent and infrequent. Engagement with issuers at lower capitalization levels was essentially non-existent.

**Detailed Issues Including Responses to CSA Questions**

CIRI continues to believe that the influence of PAFs in the proxy voting process is significant, that too many factual errors are being found in PAF research reports, that there is insufficient engagement between issuers and PAFs and that the conflicts of interest at PAFs continue to be a concern. It is from this perspective that CIRI is providing comments on the Proposed Policy and on the questions posed by the CSA.

1. **Policy-based Approach**

   In a 2014 survey of CIRI issuer members, 86% of respondents said that the Proposed Policy and its policy-based approach:

   - will not address the concerns issuers have with PAFs;
   - does little to address the undue influence of PAFs on shareholders;
   - does not improve the accuracy of the research reports; and
   - does not effectively address the issue of conflict of interest.

   Respondents felt that the Proposed Policy as presented is not sufficiently forceful to effect meaningful change with regard to PAF activities and disclosure and that a regulatory approach would be more effective over the long term.

2. **Material Concerns**

   According to the 2014 survey, 65% of respondents feel the Proposed Policy does not address a number of material concerns. A primary concern of issuers is that PAF reports frequently contain factual errors, which could be remedied by providing issuers with a draft of the research report and recommendations with sufficient time to review and respond before a final report is issued to the institutional investors.

   Issuers continue to be concerned that the Proposed Policy does not adequately address conflicts of interest whereby PAFs will continue to be able to recommend votes “against” specific issues and then turn around and sell their services to issuers who may wish to ensure compliance with the policies of the PAF. To address such conflicts, issuers suggest that PAFs or institutional investors should be required to disclose the use of PAF services.

**3. Transparent, Accurate and Meaningful Disclosure**

Approximately two-thirds of respondents felt that the Proposed Policy will NOT promote meaningful disclosure to market participants.

**Draft Research Reports**

In our 2014 survey, CIRI members strongly reiterated the recommendation from our 2012 submission that PAFs should be required to provide to all issuers draft research reports and voting recommendations for review for factual accuracy allowing 48 to 72 business hours for issuers to respond prior to the report being distributed to the PAF's clients.

**Comments from Issuers**

In addition, CIRI members have expressed the view that in some instances it may be appropriate and valuable for the final PAF research report to contain a section for any commentary that issuers may wish to provide as a result of their review of the draft research report, in order to provide a more balanced view of potentially contentious issues.

**Engagement with Issuers During Proxy Season**

Issuers clearly, consistently and unanimously have requested that the Proposed Policy include a specific requirement, not a guideline, that PAFs give issuers an opportunity to engage with them when preparing their vote recommendations, particularly in instances where a PAF recommendation is for an "against" or "withhold" vote on a specific issue. CIRI emphasizes that such reviews should be fact-based and are recommended solely to improve the accuracy and completeness of the research. Issuers should have an opportunity to explain aspects of their disclosures that PAF researchers may have misunderstood or overlooked. PAFs should be open to engagement and dialogue in the same manner as any significant shareholder.

4. **Conflicts of Interest – Ownership**

In 2012, CIRI recommended that PAFs prominently identify in the research reports and voting recommendations provided to their institutional investor clients any specific potential conflicts of interest with regard to the issuer and analyst/reviewer ownership interests. CIRI and its members continue in 2014 to stand by this specific recommendation. Companies and their directors are rightly required to disclose any and all conflicts in the interest of fairness and transparency among market participants. There is no reason that PAFs, given their acknowledged significant impact on the capital markets, should not be subject to the same requirements for disclosure of potential conflicts.

5. **Investor Confirmation of Proxy Voting Guidelines**

In the 2014 survey, 79% of respondents indicated that PAFs should obtain confirmation that their clients have reviewed and agree with the PAF's proxy voting guidelines leading to vote recommendations. Given the dynamic nature of PAF voting guidelines, which are routinely reviewed and revised annually, obtaining such confirmation annually and following any

amendments to the PAF's proxy voting guidelines is appropriate.

**6. Guideline Adoption and Compliance**

If the Proposed Policy is adopted by the CSA, applying a guidance-based approach rather than a regulation-based approach, CIRI and its members strongly encourage the CSA to closely monitor not only market developments in the proxy advisory industry, but specifically the adoption of the guidelines by the PAFs.

The majority of survey respondents felt that the CSA should conduct a comprehensive review of the guideline adoption by PAFs one year after promulgation of final guidelines to determine if the objectives of improved transparency, accuracy and engagement have been achieved. This CSA review process should include consultation with all stakeholders, including issuers. If sufficient improvement has not been achieved, survey respondents unanimously felt the adoption of a regulation-based approach would be appropriate.

7. **PAF Analyst Standards**

One concern frequently raised by issuers, but not addressed in the Proposed Policy, is that it is not clear if the analysts generating research reports and recommendations at the PAFs are required to meet minimum standards of training, education, certification or experience. It is widely accepted that the reports and recommendations of PAFs do have a significant impact on capital market participants and should therefore be promulgated under standards consistent with other such research generated by research analysts, such as those in brokerage and institutional investment firms.

We reiterate our disappointment that the CSA opted for a guidance-based approach rather than regulations.

CIRI would like to thank the CSA for the opportunity to comment on this important topic and would be pleased to answer any questions or enter into dialogue on any of the above.

Sincerely,

Yvette Lokker
President & CEO

**APPENDIX 1**

**The Canadian Investor Relations Institute**

The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

**Investor Relations Defined**

*Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications and marketing to achieve an effective two-way flow of information between a public company and the investment community, in order to enable fair and efficient capital markets.*

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include Nominating; Audit; Membership; Issues; Editorial Board; Resource and Education; and Certification.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is approximately 500 professionals serving as corporate investor relations officers in approximately 300 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of investors and shareholders in capital markets outside of North America. The President and CEO of CIRI also sits as a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.

Canadian Oil Sands

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June 6, 2014

***VIA EMAIL***

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

**Attention: Anne-Marie Beaudoin, Corporate Secretary**
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montreal, QC H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

**Attention: The Secretary**
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON M5H 3S8
Fax: (416) 593-2318
E-mail: comments@osc.gov.on.ca

**Re: Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (the "Proposed Policy")**

Canadian Oil Sands Limited ("**COS**") appreciates the efforts of the Canadian Securities Administrators (the "**CSA**") to enhance the transparency of the services that proxy advisory firms provide. COS also appreciates the opportunity to comment on the Proposed Policy.

COS is a reporting issuer listed on the Toronto Stock Exchange and has a market capitalization of approximately $11 billion. COS holds a 36.74 per cent working interest in the Syncrude joint venture and

is the only public entity providing a pure investment opportunity in Syncrude's crude oil producing assets. Located near Fort McMurray, Alberta, Syncrude Canada operates large oil-sands mines and an upgrading facility that produces a light, sweet crude oil on behalf of its joint venture owners. COS' primary business is its ownership in Syncrude and the marketing and sale of crude oil derived from such ownership.

COS has the following comments on the Proposed Policy:

***Conflicts of Interest***

There is potential for conflicts of interest in the proxy advisor industry and we agree with the potential conflicts of interest that have been identified in the Proposed Policy. We are encouraged that the CSA has suggested certain steps to manage actual or potential conflicts of interest, including establishing internal safeguards and controls. However, we are of the view that proxy advisory firms should be required to implement the steps outlined in the Proposed Policy. We also agree that proxy advisory firms should disclose actual or potential conflicts of interest to their clients and publicly disclose their procedures to deal with such conflicts.

***Transparency and Accuracy of Vote Recommendations***

The Proposed Policy does not encourage proxy advisory firms to consult with issuers prior to issuing their reports. Issuers spend considerable time and resources preparing the disclosure in their information circulars. The information circular disclosure contains important information on corporate governance and executive compensation and shareholder meetings allow shareholders to express their views on the governance of their company. Accordingly, it is imperative that the reports of the proxy advisory firms contain accurate information. To ensure that the reports of the proxy advisory firms do not contain mistakes of inaccuracies, issuers should be allowed to review the reports before they are issued. We are of the view that the CSA should strongly encourage proxy advisory firms to share their reports with issuers prior to issuing them.

We recognize that this may not always be practical as proxy advisory firms have to review a large volume of information circulars in a compressed period of time during the annual meeting season. However, where a proxy advisory firm intends to issue a recommendation to vote against a proposal of the issuer, then the CSA should mandate proxy advisory firms to discuss the negative vote recommendation and share their report with the issuer prior to issuing it. If the parties cannot resolve the issue, then issuers should be allowed the opportunity to provide a response in the report of the proxy advisory firm to ensure that the proxy advisory firm's clients are aware of the views of the issuer.

***Development of Proxy Voting Guidelines***

The Proposed policy states that proxy advisory firms may consider consulting with market participants in developing their proxy voting guidelines, but the Proposed Policy does not encourage such consultation. The proxy voting guidelines of proxy advisory firms have an influence on the corporate governance practices of issuers. Corporate governance should not have a "one size fits all" approach. Each issuer and industry is unique and often have differing corporate governance requirements and available resources. We are of the view that the CSA should, at the very least, encourage proxy advisory firms to take into account the perspectives of various issuers differing in size and industry when developing their proxy voting guidelines. This would allow proxy advisory firms to not develop policies that have unintended financial or governance consequences based on issuers size and/or business.

Thank you for the opportunity to comment on the Proposed Policy.

Yours truly,

**CANADIAN OIL SANDS LIMITED**

Trudy M. Curran
Senior Vice President, General Counsel and Corporate Secretary
TMC/

c. Donald J. Lowry, Chairman of the Board
Wesley R. Twiss, Chairman of the Audit Committee
Ian A. Bourne, Chairman of the Corporate Governance and Compensation Committee

CENTER FOR CAPITAL MARKETS COMPETITIVENESS

TOM QUAADMAN
VICE PRESIDENT

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June 20, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, NewFoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Me. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

**Re: National Policy 25-201, *Guidance for Proxy Advisory Firms***

Dear Me. Beaudoin and to Whom It May Concern:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region. The Chamber formed the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. It is an important priority of the CCMC to advance an effective and transparent corporate governance system that encourages shareholder communications and participation.

The CCMC appreciates the efforts by the Canadian Securities Administrators' ("CSA") and welcomes the opportunity to comment on the CSA's Proposed National Policy 25-201, Guidance for Proxy Advisory Firms ("Proposed Guidance").[1] We believe that it is imperative that transparency, disclosure, and accountability are the cornerstone of providing objective proxy advice that meets the needs and duties of the clients of proxy advisory firms. Such a system of oversight, which can be accomplished through guidance and voluntary efforts of the proxy advisory firms, will prevent conflicts of interest and help ensure that proxy advice is factually accurate and objective.

## Discussion

With the number of investments institutional investors must make to advance their investors' interests, proxy advisory firms play an important role in facilitating those funds' fulfillment of their duties as informed participants in the corporate governance process. The CCMC commends CSA's initiative to provide guidance outlining reasonable expectations for proxy advisory firms' conduct, an important first step in bringing greater transparency and accountability to the proxy advisory industry dominated by two firms, Institutional Shareholder Services ("ISS") and Glass, Lewis & Co. ("Glass Lewis"). These two firms collectively control 97% of the market for proxy advisory services,[2] and their proxy voting recommendations influence up to 38% of the votes cast on many company proxy issues.[3] Moreover, these two firms' tremendous influence over corporate governance is felt even prior to any vote, as corporate planners feel compelled to obtain their positive vote recommendation, whether or not they agree with the firms' underlying policies.[4]

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[1] Canadian Securities Administrators, National Policy 25-201, *Guidance for Proxy Advisory Firms* (Apr. 24, 2014) ("Proposed Guidance"), available at: http://www.albertasecurities.com/Regulatory%20Instruments/4818140-v1-CSA_Notice_and_Request_for_Comment_Proposed_NP_25-201_.pdf.

[2] *See* J. Glassman & J. Verret, *How to Fix our Broken Proxy Advisory System*, Mercatus Center, George Mason Univ., at p. 8 (Apr. 16, 2013), available at http://mercatus.org/sites/default/files/Glassman_ProxyAdvisorySystem_04152013.pdf.

[3] *See Y.* Ertimur, F. Ferri & D. Oesch, Shareholder Votes and Proxy Advisors: Evidence from Say on Pay, 7th Ann. Conf. on Empirical Legal Studies Paper (Feb. 25, 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2019239.

[4] A 2011 Conference Board survey found that 72% of companies reviewed the policies of proxy advisory firms, or engaged with these firms, to obtain guidance on their executive compensation plans, and 70.4% reported that their compensation programs were influenced by proxy advisory firm guidance. *See* D. Larcker, The Conference Board Director Notes, *The Influence of Proxy Advisory Firm Voting Recommendations on Say-on-Pay Votes and Executive Compensation*

Despite wielding the influence of *de facto* corporate governance standard setters, proxy advisory firms have steadfastly refused to provide transparency into their own policymaking and vote recommendation processes, and they fervently eschew any efforts to make themselves accountable for the consequences of their policy pronouncements and vote recommendations. The lack of transparency and accountability of proxy advisory firms undermines confidence in, and stalls the progress of, strong corporate governance.[5] The impact of proxy advisory firms has become even more pronounced as the number and complexity of issues on proxy ballots have grown.[6] And yet, proxy advisors have not taken meaningful steps to ensure their voting recommendations are developed based on clear, objective, and empirically-based corporate governance standards to help management and investors evaluate and improve portfolio companies' corporate governance as a means of increasing shareholder value.[7]

CCMC believes that government regulators should encourage public companies, investors and proxy advisory firms to engage in a constructive dialogue to ensure a proxy voting system that advances the economic interests of shareholders,

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*Decisions*, (2012) at p. 4, available at https://www.gsb.stanford.edu/sites/default/files/documents/TCB-DN-V4N5-12%20Proxy%20Survey%20results.pdf.

[5] *See* Securities and Exchange Commission ("SEC") Proxy Advisory Firm Roundtable, Remarks of Hoil Kim, Vice President, Chief Administrative Officer and General Counsel of GT Advanced Technologies, at pp. 137-38 (Dec. 5, 2013) ("SEC Roundtable"), transcript available at http://www.sec.gov/spotlight/proxy-advisory-services/proxy-advisory-services-transcript.txt ("[E]very minor signal that comes out of ISS or Glass Lewis is completely over read, and so the compensation committees in particular are looking over their shoulders at every possible indication that comes out, and the rationale, and it's not the transparency of what the policy is but what the process is and what the rationale might be. And . . . we have to ask whether the way we collectively have caused the system to operate is encouraging that or discouraging that.").

[6] For example, in the U.S., recent legislation ushered in advisory votes on executive compensation ("say-on-pay") on a nearly universal basis. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("DFA"), Pub. L. No. 111-203, 124 Stat. 1376, §951 (2010). DFA dramatically increased the already-significant workload of those responsible for institutional proxy voting. Moreover, between 2006 and 2011, the average length of proxy statements of Dow 30 companies grew by 54%, from 46 to 71 pages. *See* H. Gregory, Weil, Gotshal & Manges, LLC, *Innovations in Proxy Statements*, at p. 1 (Jul/Aug 2012), available at http://www.weil.com/files/upload/July-August2012_Opinion.pdf.

[7] Some academic research suggests that proxy advisory firms' favored corporate governance policies are negatively correlated with shareholder value. *See* D. Larker, A. McCall & G. Ormazabal, *The Economic Consequences of Proxy Advisor Say-on-Pay Voting Policies*, Stanford Grad. Sch. of Bus. Res. Paper No. 2105 (Jul. 5, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2101453. Thus, votes cast in accordance with these policies are often antithetical to portfolio managers' acknowledged fiduciary duties. *See*, *e.g.*, Inst'l Sh. Services Inc., SEC Staff No-Action Letter, at pp. 14-15 (Jan. 2, 1991) (copy is attached) ("The importance and the obligations and liability of fiduciaries are exactly the same for investment decisions as for proxy voting decisions.").

the ultimate owners of all corporations. To that end, and as part of an ongoing effort to initiate constructive dialogue, CCMC released its *Best Practices and Core Principles for the Development, Dispensation, and Receipt of Proxy Advice* ("*Chamber Principles*"), which discussed the applicable principles, and best practices, for all principal stakeholders in the corporate governance process, including proxy advisory firms, public companies and asset managers.[8] The CSA's Proposed Guidance provides a critical foundation for a constructive dialogue regarding the conduct of proxy advisory firms and their appropriate role in the marketplace, and we support CSA's assessment that issues presented by proxy advisory firms, as well as the effects of their policy pronouncements and vote recommendations, warrants guidance.[9] While we agree with a non-prescriptive approach, it is appropriate to highlight that the two dominant proxy advisory firms—ISS and Glass Lewis—have repeatedly resisted such efforts.

For example, in 2011, Frances's Autorité Des Marchés Financiers ("AMF France") issued AMF Recommendation No. 2011-06 ("AMF Recommendation"),[10] which called on proxy advisory firms voluntarily to adopt robust measures to address their conduct in four areas:

- Establishing and issuing voting policies;
- Establishing and submitting vote recommendations to investors;
- Communicating with listed companies, and;

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[8] *See* U.S. Chamber of Commerce, BEST PRACTICES AND CORE PRINCIPLES FOR THE DEVELOPMENT, DISPENSATION, AND RECEIPT OF PROXY ADVICE (Mar. 2013), available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/Best-Practices-and-Core-Principles-for-Proxy-Advisors.pdf. Despite being recognized, including by the current Chair of the Securities and Exchange Commission, as a constructive addition to the broader dialogue concerning the role of proxy advisory firms and others in the corporate governance process, to date neither ISS nor Glass Lewis have engaged in any effort to discuss or implement the *Chamber Principles*. *See* Remarks of SEC Chair Mary Jo White at the 8th Annual Capital Markets Summit, Washington, DC (Mar. 19, 2004) ("Chair White Capital Markets Summit Comments"), available at https://www.uschamber.com/event/8th-annual-capital-markets-summit.

[9] Proposed Guidance, *supra* n. 2 at pp. 4339-40.

[10] Autorité Des Marchés Financiers, AMF Recommendation 2011-06, Proxy Voting Advisory Firms (Mar. 18, 2011) ("AMF Recommendation"), available at http://www.amf-france.org/en_US/Reglementation/Dossiers-thematiques/Societes-cotees-et-operations-financieres/Gouvernement-d-entreprise/Les-recommandations-de-l-AMF-sur-les-agences-en-conseil-de-vote.html.

- Preventing conflicts of interest.

In response, ISS and Glass Lewis each took minimal, superficial, steps outlined in the AMF Recommendation,[11] touting them publicly in press releases, without addressing the spirit or intent of the AMF Recommendation.[12] Therefore, we urge the CSA to continue to devote appropriate time and attention to monitoring proxy advisory firms' adherence to the letter and spirit of the Proposed Guidance.

**a. Conflict of Interest Management, Mitigation and Disclosure**

CSA has taken a comprehensive approach to the identification, management, mitigation and disclosure of proxy advisory firm conflicts of interest.[13] Actual and apparent conflicts have been, and continue to be, a major concern that is shared by a broad array of stakeholders in the corporate governance process. For example, representatives of various stakeholders with conflicting views on many issues all voiced identical concerns about proxy advisory firms' conflicts of interest at a December 2013 SEC Roundtable on Proxy Advisory Firms,[14] and the issue has been

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[11] Both proxy advisory firms make their reports available to subject companies following release to clients, although AMF's recommendation was to make reports available to companies for *pre-publication* review. *See* ISS, ISS Updates Compliance with AMF Recommendation No. 2011-06 of March 18, 2011 on Proxy Advisory Firms (Mar. 2012), available at http://www.issgovernance.com/policy/FrenchDraftReviewAnnouncement. *See also* Glass, Lewis, *AMF Recommendation for Proxy Advisors*, available at http://www.glasslewis.com/issuer/amf/.

[12] AMF Recommendation, *supra* n. 11. *See also*, Tom Quaadman, *We Will Always Have…Proxy Advisory Firms?*, Free Enterprise (Dec. 5, 2012), available at http://www.freeenterprise.com/capital-markets/we-will-always-have-proxy-advisory-firms (observing the broad discrepancies between AMF's recommendations and ISS' and Glass Lewis' practices).

[13] Proposed Guidance, *supra* n. 2, at Part 2.1. The CSA has endorsed a similar approach to credit rating agency conflicts of interest, *see* CSA Notice, National Instrument 25-101, Designated Rating Organizations, Related Policies and Consequential Amendments, Appendix A, "Independence and Conflicts of Interest" (Jan. 27, 2012) ("CSA Credit Rating Release"), available at http://www.osc.gov.on.ca/documents/en/Securities-Category2/rule_20120127_25-101_amd-designated-rating.pdf.

[14] *See*, *e.g.*, SEC Roundtable, Remarks of Anne Sheehan, Dir. of Corp. Gov., CalSTRS, *supra* n. 6 at pp. 106-07 ("In terms of disclosure … [these firms] could be more transparent and [make their disclosures] more prominent. . . . "); Damon Silvers, Dir. of Policy and Spec. Counsel, AFL-CIO, at pp. 127-28 ("[T]he business model of having consulting services provided to issuers and at the same time providing proxy advisory services to investors . . . is inappropriate . . . . [W]here a proponent of a resolution is a client, that that ought to be disclosed. . . ."). *See also* N. Minow, *ISS May Be Under Fire, but Look How Far It—and Shareholder Rights—Have Come* (Mar. 16, 2011), available at http://www.cbsnews.com/news/iss-may-be-under-fire-but-look-how-far-it-and-shareholder-rights-have-come/ ("In my opinion, though, ISS really shouldn't do consulting work for companies it covers. I didn't allow it when I was CEO of ISS, and I didn't allow it at The Corporate Library.").

identified—both by Members of the U.S. Congress with jurisdiction over corporate governance issues, as well as by the Current SEC Chair—as a priority for the proxy advisory industry.[15]

In addition to CSA's expectation that proxy advisory firms maintain policies and procedures reasonably designed to detect and mitigate actual and apparent conflicts of interest, set a culture of compliance with respect to conflicts of interest, ensure that the CEO and board of directors (or equivalent body) are responsible for ensuring compliance with such policies, and posting such policies on a publicly available website, we suggest the CSA update its Proposed Guidance to provide that:

- All potential and *actual* conflicts be disclosed clearly and with specificity on the front page of advisory firm reports; and

- Advisory firm personnel responsible for doing factual research and formulating recommendations should attest to their independence and the due diligence they performed vis-à-vis the facts and recommendations therein.

Similar conflict disclosures have effectively been utilized in the U.S. and Canada vis-à-vis investment research analysts that, like proxy advisory firms, should make detailed disclosures to alert the recipients of their efforts that they are beholden to interests that may compromise the independence and integrity of the advice they render to otherwise unsuspecting investors.[16] The specificity and accountability (both at an individual and institutional level) we recommend contrasts sharply from ISS' and

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[15] *See* Letter from ten Members of Congress to SEC Chair Mary Jo White (Mar. 18, 2014), available at http://www.sec.gov/comments/4-670/4670-14.pdf. *See also*, Chair White Capital Markets Summit Comments, *supra* n. 9.

[16] SEC Adopting Release, Regulation Analyst Certification (Apr. 14, 2003), available at http://www.sec.gov/rules/final/33-8193.htm. *See also*, Investment Dealers Association of Canada, Dealer Member Rules, Rule 3400, "Research Restrictions and Disclosure Requirements," available at http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=201405341&tocID=848#para_4 (requiring, at a minimum, "clear, comprehensive and prominent [disclosure of potential conflicts of interest]. Boilerplate disclosure is not sufficient.").

Glass Lewis' current practices, which vary from non-existent to vague, non-committal, and inaccessible.[17]

Similarly, the SEC requires registered credit rating agencies to maintain a website containing information pertinent to its rating, and permit access to that data by other credit rating agencies solely for the purpose of issuing their own ratings.[18] In adopting that requirement, the SEC emphasized that provisions of this type "address conflicts of interest and improve the quality of credit ratings for structured finance products by making it possible for more NRSROs to rate structured finance products."[19] Given the proxy advisory industry's dominance by only two firms, each mired in substantial conflicts of interest recognized by the CSA, the impetus for creation of a similar system in the context of the proxy advisory industry is even more compelling than that for credit rating agencies.

**b. Designated Conflicts Managers**

CCMC applauds CSA's recognition of the need for proxy advisory firms to designate "appropriately qualified" persons ("Conflicts Managers") to monitor and assess compliance, the appropriateness of internal safeguards and controls, and periodically to report to the CEO or board of directors (or equivalent body) of the proxy advisory firm. To insure their effectiveness, Conflicts Managers should be independent, and required to report any concerns they may have up the ladder of each proxy firm's chain of command.[20] Specifically, Conflicts Managers should be required

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[17] ISS indicates on the back page of its research reports that it may have conflicts of interest not disclosed in the report, and that its clients may request further information concerning potential conflicts resulting from its issuer consulting business. *See*, *e.g.*, ISS, Research Report on The Western Union Company, at p. 26 (May 13, 2013), available at http://www.issgovernance.com/file/2013/02/western_union.pdf. ISS does not disclose whether the proponent of a shareholder proposal, competing director slate, or "vote no" campaign is a client, nor does it consistently disclose whether any other party has attempted to influence the outcome of its vote recommendations. Glass Lewis provides limited disclosure in its research reports, and the guidelines it applies to disclosure of actual and potential conflicts are vague, and made available only upon request to Glass Lewis. *See* Glass Lewis, *Conflict of Interest Statement*, available at http://www.glasslewis.com/about-glass-lewis/disclosure-of-conflict/.

[18] *See* SEC Rule 17g-5, 17 CFR §240.17g-5 (2014), available at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=fcb0046d2c225b4e99b3eaf364eb8469&r=PART&n=17y4.0.1.1.1#17:4.0.1.1.1.2.105.446.

[19] *See* Adopting Release, Amendments to Rules for Nationally Recognized Statistical Rating Organizations, at p. 74 (Feb. 2, 2010), available at http://www.sec.gov/rules/final/2009/34-61050.pdf.

[20] This approach is required of corporate attorneys who practice before the SEC. *See* SEC, Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer, 17 C.F.R.

to report unmitigated/undisclosed material conflicts by proxy advisory firms (or their agents) to the firm's CEO or chief legal officer and, thereafter, to the highest authority within the firm, if initial reports do not yield appropriate responses.[21]

As suggested by question #4 of the CSA's Proposed Guidance,[22] Conflict Managers should also maintain, review and implement policies and procedures for determining vote recommendations (and disputes related thereto), developing proxy voting guidelines and proxy advisory firms' communications with clients,[23] issuers[24] and the public,[25] as well as the firms' owners and affiliates,[26] with respect to all situations that present proxy advisory firms and their personnel with significant

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§§205.1-7 (2014), available at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=fcb0046d2c225b4e99b3eaf364eb8469&r=PART&n=17y3.0.1.1.6. The CSA has endorsed similar reporting and independence requirements for Compliance Officers of credit rating agencies, *see* CSA Credit Rating Release, *supra* n. 14, at Part 5, "Compliance Officer."

[21] *See generally*, Implementation of Standards of Professional Conduct for Attorneys, (Aug. 5, 2003), available at http://www.sec.gov/rules/final/33-8185.htm.

[22] Proposed Guidance, *supra* n. 2, at p. 4343.

[23] SEC Roundtable, *supra* n. 6, Remarks of Anne Sheehan, at p. 108 ("So our issue is put it out there that we're the proponent and we are clients of both of them, and let people take that information and sort of digest it as they will."); Remarks of Damon Silvers, at pp. 127-28 ("[W] here a proponent is a client of a resolution, that ought to be disclosed. . . .The reason for it, frankly, is that, you know, funds that are in one way or another that AFL-CIO members participate in and are offering proponents, *and we want a level playing field*") (emphasis supplied).

[24] In response to the suggestion that ISS' consulting business presents a conflict of interest because its business model is predicated upon offering access to non-public information concerning the vote recommendations of ISS' shareholder advisory business, ISS President Gary Retelny remarked, "They are, in fact, trying to drum up business, I believe. They are in the consulting business, after all . . . ." *See* SEC Roundtable, *supra* n. 6, at pp. 123-24.

[25] While SEC Rule 14a-2(b)(3), 17 C.F.R. §240.14a-2(b)(3) (2014), available at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=fcb0046d2c225b4e99b3eaf364eb8469&r=PART&n=17y4.0.1.1.1#17:4.0.1.1.1.2.87.220, provides an exemption—from the SEC's general requirement that those who participate in the solicitation of proxies pre-file soliciting materials with the SEC before distributing them—for proxy voting advice furnished to clients by financial advisors, the rationale underlying the exemption should be revisited, given CSA's accurate observation that the public has a legitimate interest in corporate governance and proxy voting, *see* Proposed Guidance, *supra* n. 2 at p. 4342, the collective nature of proxy voting, and the fact that proxy advisory firms have increasingly taken aggressive stances on public policy issues with broad public policy ramifications. *See generally*, CCMC letter to Gary Retelny, ISS President, regarding "ISS Benchmark Policy Consultation—Auditor Rotation," as transmitted to SEC Chair White (Feb. 24, 2014), available at http://www.sec.gov/comments/4-670/4670-12.pdf (discussing ISS' proposal to impose *de facto* audit firm rotation on public companies, despite numerous and extensive reviews by U.S. regulators and policymakers concluding that mandatory rotation would not produce net benefits).

[26] Glass Lewis' majority owner, the Ontario Teachers' Public Pension, communicates activist stances with regard to companies held in its portfolio, in some cases prior to the release of Glass Lewis vote recommendations concerning the same companies. *See* Letter from Tom Quaadman to Assistant Secretary of Labor Phyllis Borzi (June 25, 2012), available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2012-6.25-DOL-Letter-re-Glss-Lewis-Canadian-Pacific.pdf.

potential conflicts. Moreover, Conflicts Managers' determinations concerning complaints or inquiries made by issuers or others should be timely communicated, in writing, to the inquirer or complainant, as well as to the company that is the subject of the proxy advisory firm report for which an inquiry or complaint was made.

**c. <u>Engagement</u>**

CCMC agrees with CSA's expectation that proxy advisory firms should disclose detailed policies regarding dialogues or contacts with issuers when they prepare vote recommendations.[27] Engagement with issuers is critical to the production of informed proxy voting reports and vote recommendations, and we recommend that CSA, at a minimum, adopt the approach to proxy advisory firm engagement proposed by France's AMF—specifically, that proxy advisory firms:

- Submit pre-publication draft reports to relevant companies for review at least 24 hours prior to finalizing those reports;
- Include companies' reasonable comments on the voting recommendations in its report;
- Correct any substantive errors in their reports and reported by the companies, and ensure that corrections are submitted to investors as quickly as possible;
- Publish on their websites their rules on communications with companies, particularly policies regarding submitting draft reports; and
- Send concerned companies their final reports as soon as possible, at the same time as reports are distributed to clients.[28]

[27] Proposed Guidance, *supra* n. 2, Part 2.4, "Communications with clients, market participants, the media and the public."
[28] AMF Recommendation, *supra* n. 11.

In order to provide clients, issuers, and the public with a full understanding of the outside influences that may have an impact on the contents of reports and vote recommendations, dialogues and contacts with shareholders, clients or others with whom proxy advisors (or their employees or agents) discuss the proposed content or disposition of a prospective vote recommendation must be disclosed. Disclosures should be uniform, detailed, prominently displayed, and subject to the review and approval of the proxy advisory firms' Conflicts Managers.

**d. Delegated Voting Authority**

As CSA's Proposed Guidance observes,[29] proxy advisory firms may provide automatic voting services to clients, based on the clients' proxy voting guidelines. In the U.S., this practice is rooted in two no-action letters issued by the SEC Staff—not the SEC itself—in 2004, which effectively amended Rule 206(4)-6 of the Investment Advisers Act, relating to portfolio managers' responsibility to vote the securities in their portfolios in the best interests of the investors whose money they manage.[30] One year after the Rule's adoption, the SEC's Staff effectively amended Rule 206(4)-6, and embraced a one-size-fits-all approach, by issuing no-action letters to two proxy advisory firms, Egan-Jones and ISS.[31] These Letters, issued by the SEC Staff without Commission review, effectively enabled portfolio managers to ameliorate their own conflicts by outsourcing voting decisions to proxy advisory firms, irrespective of whether or not the proxy advisory firm has its *own* conflict with respect to any company or issue.

Thus, in the Egan-Jones Letter, the Commission's Staff opined that conflicted portfolio managers could avoid the consequences of their own conflicts by delegating voting authority to a proxy advisory firm that is independent of the portfolio manager.

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[29] Proposed Guidance, *supra* n. 2, at p. 4343.

[30] SEC Investment Advisers Act Rule 206(4)-6, 17 C.F.R. §275.206(4)-6 (2014), available at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=fcb0046d2c225b4e99b3eaf364eb8469&r=PART&n=17y4.0.1.1.21#17:4.0.1.1.21.0.142.39. The Rule affirmed the existing obligation of institutional portfolio managers to apply fiduciary standards in voting proxies with respect to portfolio securities.

[31] *See* Egan-Jones Proxy Services, SEC Staff No-Action Letter (May 27, 2004) ("Egan-Jones Letter"), available at http://www.sec.gov/divisions/investment/noaction/egan052704.htm; *see* Inst'l Sh. Services, Inc., SEC Staff No-Action Letter (Sep. 15, 2004) ("2004 ISS Letter"), available at http://www.sec.gov/divisions/investment/noaction/iss091504.htm.

Giving legitimacy to a proxy advisory firm's conflicts, the Staff embraced, as a general rule, that "the mere fact that the proxy voting firm provides advice on corporate governance issues and receives compensation from the Issuer [that is the subject of a proxy advisory firm's recommendations] for these services generally would not affect the [proxy voting] firm's independence *from an investment adviser*."[32] Subsequent to the Egan-Jones Letter, ISS sought and received Staff assurances that "a case-by-case evaluation [by institutional portfolio managers] of a proxy advisory firm's potential conflicts" is *not* necessary; instead, portfolio managers could *assume* a proxy advisory firm's lack of specific conflicts solely "based on the firm's general conflict *procedures*."[33]

These no-action letters enable proxy advisory firms to avoid case-by-case scrutiny of their potential conflicts of interest, negating the Commission's imposition of effective standards for the disclosure and avoidance of conflicts by institutional portfolio managers. As a result, fund advisers are encouraged to utilize, rely upon and predicate voting decisions on advice they obtain from, proxy advisory firms that may be conflicted, and whose agendas may be inconsistent with fund managers' duty to vote portfolio shares to further the *economic* interests of their investors.[34]

The incidence of proxy advisory firms' provision of automatic vote services to clients based on the proxy advisory firm's proxy voting guidelines is a direct consequence of these no-action letters. CCMC believes that these no-action letters, and the automated voting they have spawned, have had a deleterious effect on corporate governance. Given CSA's recognition that proxy advisory firms' policy guidelines and vote recommendations impact investors, issuers and the public, and the collective nature of proxy voting results in each shareholder's vote having an impact on every other shareholder, investors, issuers and the public must be able to access, by company and voting item, the number and percentage of shares that are voted automatically in accordance with proxy advisory firms' guidelines.

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[32] *See* Egan-Jones Letter, *supra* n. 31 (emphasis supplied).
[33] *See* 2004 ISS Letter, *supra* n. 31 (emphasis supplied).
[34] *See* OIG Department of Labor Report, *Proxy-Voting May Not Be Solely for the Economic Benefit of Retirement Plans,* Rpt. No. 09-11-001-12-121, (Mar. 31, 2011), available at http://www.oig.dol.gov/public/reports/oa/2011/09-11-001-12-121.pdf.

**Conclusion**

CCMC again thanks CSA for its initiative reflected in the Proposed Guidance. It is an important step toward bringing transparency and accountability to the proxy advisory industry, without the necessity of imposing further regulations. CCMC's suggestions, each already formulated in other contexts, can readily be adapted to CSA's already impressive and thorough Proposed Guidance. Doing so would enable CSA to avoid some of the pitfalls that have already been experienced by other voluntary codes of conduct for proxy advisory firms. We would be happy to discuss any issues with appropriate CSA Staff.

Sincerely,

Tom Quaadman

CI Financial

Sheila A. Murray
*Executive Vice-President,*
*General Counsel and Secretary*
2 Queen Street East, Twentieth Floor
Toronto, Ontario M5C 3G7
T: 416-681-1731
F: 416-365-0501
E: smurray@ci.com

***Delivered by Email***

July 23, 2014

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

**Attention:** Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, (Québec) H4Z 1G3
Fax: 514-864-6381
Email: consultation-en-cours@lautorite.qc.ca

-And-

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Dear Sirs and Mesdames:

**RE: CSA Notice and Request for Comment – Proposed National Policy 25-201**
***Guidance for Proxy Advisory Firms***

Thank you for the opportunity to provide comments on the CSA's Proposed National Policy 25-201: *Guidance for Proxy Advisory Firms* (the "**Proposed National Policy**").

CI is a diversified wealth management firm and one of Canada's largest independent investment fund companies. The principal business of CI is the management, marketing, distribution and administration of mutual funds, segregated funds, structured products and other fee-earning investment products for Canadian investors.

CI is expressing comments on the Proposed National Policy both as an issuer and as an institutional investor. As a public company, voting recommendations have been issued by Proxy Advisory Firms in respect of meetings of CI Financial Corp. shareholders. In addition, CI is an institutional investor through its management of over 200 mutual funds. At June 30, 2014, CI had assets under management of $ 99.9 billion. CI's portfolio managers have voted at more than 1,200 shareholder meetings during the past twelve months.

On September 21, 2012, I submitted a letter on behalf of CI Financial Corp. and its subsidiaries (**"CI"**) in response to the CSA Consultation Paper concerning this matter. In that letter we expressed our strong recommendation that Proxy Advisory Firms be subject to securities regulatory oversight in light of their substantial influence on the capital markets and corporate governance matters. We do not believe that the Proposed National Policy's guidance-based approach for Proxy Advisory Firms addresses the serious concerns which we raised in that letter and do not expect that they will result in any meaningful improvement in either transparency or accountability.

**Response**

The CSA determined in the Proposed National Policy that a guidance-based approach to Proxy Advisory Firms constitutes a "sufficient and meaningful response" to the initial consultation process. In making its determination, the CSA stated that it preferred a guidance-based approach for Proxy Advisory Firms to: 1) protect the private contractual relationship between Proxy Advisory Firms and their clients; 2) establish a Canadian approach consistent with international initiatives; and 3) protect proprietary and commercially sensitive information belonging to Proxy Advisory Firms.

CI appreciates the CSA's concerns outlined above. However, we strongly believe that prescriptive regulatory oversight is required to maintain the integrity of the Canadian capital markets and the proxy voting process, despite any potential impact that may result from the regulation of Proxy Advisory Firms.

CI believes that in trying to strike a balance among market participants, the Proposed National Policy disproportionately safeguards the interests of Proxy Advisory Firms at the expense of providing adequate protection to both issuers and institutional investors. We submit that the CSA must give greater priority to the interests of issuers and institutional investors when determining how to regulate Proxy Advisory Firms. Since Proxy Advisory Firms provide services that can fundamentally impact the capital markets, these Firms should be subject to regulatory oversight like other major market participants.

We have detailed below four specific securities regulatory measures that we believe will better protect issuers and institutional investors.

1. **Providing a Draft Report**

CI strongly believes that Proxy Advisory Firms should be required to provide their draft report to issuers at least five business days prior to the scheduled publication of the report and include any issuer comments or responses received from the issuer in the final report. A timeframe of five business days gives issuers an opportunity to review the draft report and respond

accordingly. Including an issuer's response to Proxy Advisory Firm recommendations will give context to reports and ensure that all parties involved are in a better position to assess the veracity of the voting recommendations. This measure will also improve issuer engagement and the credibility of Proxy Advisory Firm recommendations, while ensuring that final reports are accurate and consistent.

**2. Disclosing the Basis for Recommendations**

CI feels that Proxy Advisory Firms should be required to clearly explain the basis for their recommendations. In our experience, Proxy Advisory Firms follow unwritten rules and it is difficult for issuers to fully comprehend the basis for the recommendations. In addition, requiring Proxy Advisory Firms to disclose the basis for their recommendations, including any standards that have been applied, will improve the transparency and accountability of reports. This measure may limit, or at a minimum reveal, instances where a Proxy Advisory Firm is not fully informed or has failed to consider whether the long term implications of a recommendation are truly in the best interests of shareholders.

**3. Disclosing Any Applied Standards**

CI is concerned that Proxy Advisory Firms operating in Canada are applying a rigid set of guidelines many of which have been developed for the American market. Standards adopted by Proxy Advisory Firms must be clearly articulated and publicly disclosed. This requirement will discourage Firms from applying guidelines that are not properly tailored to the unique Canadian legal, securities regulatory and capital market environment. At a minimum, this measure will provide issuers and institutional investors with greater certainty regarding the basis for recommendations. We share the concern expressed by many other commentators that rigid application of standards assumes a "one size fits all" approach that is not appropriate, particularly in the Canadian context.

**4. Disclosing Conflicts of Interest**

Lastly, CI feels that Proxy Advisory Firms should be required to disclose any actual or potential conflict of interest, in their voting recommendations to their client. This disclosure will increase the transparency and accountability of recommendations. Further, issuers and their shareholders will be in a better position to identify conflicts of interest and evaluate recommendations accordingly. This requirement is especially important given the concentration of Proxy Advisory Firms and the inherent conflict of interest that exists when Firms advise both an issuer and its institutional investors.

* * * * *

Thank you for providing the opportunity to discuss the issues raised in the Proposed National Policy regarding the services provided by Proxy Advisory Firms. If you have any questions or wish for us to clarify any comments, please do not hesitate to contact me.

Yours very truly,

Sheila A. Murray
Executive Vice President, General Counsel and Secretary
CI Financial Corp.

From: Len Racioppo <lracioppo@coerente.ca>
To: "comments@osc.gov.on.ca" <comments@osc.gov.on.ca>,
Date: 29/05/2014 02:58 PM
Subject: RE: Guidance for Proxy Advisory Firms

To: The Secretary
Ontario Securities Commission

I have been a user of proxy advisory firm products for over a decade both currently at Coerente Capital Management* and at Jarislowsky Fraser Limited where I was President and Chair of the Investment Committee. At neither firm did we ever vote exclusively as recommended by the advisory firm. Advisory firm reports on corporate governance issues and in particular on compensation save us significant time and effort when conducting our own analysis in the voting of proxies. Their work in recommending deals, takeovers, mergers etc. however has been less than exemplary. I have often quizzed the proxy firm's individuals in charge of valuation work and found them mostly uninformed as they have little long term experience in analysing the companies being evaluated, their assets or managements. Beyond the quality of some work, what remains of significant concern is the conflict of interest faced by the proxy advisory firms as many not only take fees from subscribers such as ourselves, but also from the same corporations they are providing proxy analysis about or in some cases the companies involved in a transaction.

I would suggest the best solution is to not allow proxy advisory firms to receive fees from the same corporations they are analyzing but this would be unrealistic as I believe it is up to them to develop their own business models. **It should however be fully disclosed if a proxy advisory firm has received a fee from the company being analyzed in the most recent five year period, or if they currently receive fees or if they expect to solicit the subject firm as client over the next five years.** This type of disclosure should be clearly attached to each analysis and therefore the reader can judge for themselves any potential conflict. I would suggest a high level of disclosure for transaction analyses as well. The skill set of the individuals, any history and the factors analyzed should be outlined. This would not be dissimilar from what is provided in some "valuation" work conducted by firms when trying to justify their expertise and thoroughness of any analysis.

You should note that this level of disclosure is greater than what the regulators currently require of other participants in our industry and in particular the brokerage and advisory firms involved in transactions and takeovers**. I believe a higher level of "conflict" and "competency " disclosure should be wide spread in our industry.** Conflicts are rampant in the investment business and simple "small print" type disclosure is inadequate. My thirty five years of industry experience suggests that you should "follow the money" when judging any recommendation be it on governance or transaction related items. I have been particularly critical and have written various security commissions in the past about the inherent conflict of interest apparent in "fairness of opinion" work when it is conducted by a brokerage firm that, while not involved in the subject deal, has most likely dealt with the principals of the deal in the past and/or hope to in the future.

You outlined in your proposals the problems with regard to conflicts and competency. They are real and they exist within the proxy advisory business but also elsewhere in our industry. "Small

print" disclosure, which appears to be recommended in your proposed policy, is not adequate. Disclosure that is up front for readers to see will provide the ultimate client (the shareholder) with a clearer view of any potential conflicts and perhaps lead them to question how decisions are made and maybe even change a few business models within the investment industry.

Sincerely,

Len Racioppo, Managing Director
COERENTE Capital Management Inc.
65 Queen St. West, Suite 405
Toronto, Ontario, M5H 2M5
T: (416) 548-7940 ext. 101
F: (647) 477-1516
http://coerente.ca
*Coerente Capital Management Inc. manages approximatley $750 million of assets for high net worth and foundation clients in Canada. Portfolios are managed on a segregated basis through the direct purchase of stocks, bonds and money market instruments.

**De :** Barnholden, Dan [redacted]
**Envoyé :** 17 juin 2014 19:05
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

Dear Me Beaudoin and the Secretary of the OSC;

I have read Mr. Budreski's letter and am supportive of his proposal. I am an investment banker with 16 years of experience and am currently a Managing Director and Office Head – Vancouver for National Bank Financial. I share John's concerns regarding the role of proxy advisory firms in the market and think that his proposal provides an elegant solution.

Best,

Dan Barnholden

Dan Barnholden
Managing Director, Global Mining & Metals
Investment Banking
**National Bank Financial Inc.**
Vancouver Office: 604.443.4010
Mobile: [redacted]

INCLUDES COMMENT LETTERS

**De :** Laidley, David (CA - Montreal) [redacted]
**Envoyé :** 8 juillet 2014 10:41
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

To whom it may concern

I am currently on four public company boards (three Canadian, one US) and based upon various related experiences I support the comments of John Budreski to the OSC and the AMF in response to the CSA request for comment related to proxy advisory firms.

David H. Laidley FCPA, FCA

**De :** David Regan [mailto:David.Regan@dhxmedia.com]
**Envoyé :** 30 juin 2014 11:49
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Cc :** Mark Gosine
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

Dear Sirs – I wholeheartedly endorse the attached commentary regarding proxy advisory firms from John Budreski.

Many thanks.

**David Regan**
**EVP, Corporate Development & IR** | DHX Media Ltd.
e: **david.regan@dhxmedia.com**
p:902-425-3814| m:902-448-1416
**1478 Queen Street, 2nd Floor**
**Halifax, NS B3J 2H7**
**CANADA**

The Secretary
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email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marches financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
email: consultation-en-cours@lautorite.qc.ca

Dear Secretary and Me Beaudoin:

**Re: Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms***

I am writing in support of the submission made by the Canadian Investor Relations Institute (CIRI) with regard to proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*.

Endeavour Silver Corp. is a Vancouver-based mineral company with 100% interests in three silver-gold mines in Mexico as well as a number of exploration properties in Mexico and Chile. The company's shares trade on the TSX under the symbol EDR and the NYSE under the symbol EXK.

We commend the CSA for reviewing proxy advisory firms, particularly in light of the impactful and growing role they play in our capital markets. However, we are disappointed the CSA has decided to pursue a guidance-based approach rather than adopting regulations, which was the intent of the suggestions previously recommended by CIRI, issuers and other organizations representing the interests of the issuer community. We support the following recommendations submitted by CIRI on July 22, 2014:

- The proposed policy is not sufficiently forceful and a regulatory approach would be more effective;
- Proxy advisory firms should prominently identify in the research reports and voting recommendations provided to their institutional investor clients any specific potential conflicts of interest with regard to the issuer and analyst/reviewer ownership interests;
- Proxy advisory firms should be required to provide to all issuers draft research reports and voting recommendations for review for factual accuracy allowing 48 to 72 business hours for issuers to respond prior to the report being distributed to the proxy advisory firms' clients;

- Proxy advisory firms should obtain confirmation that their clients have reviewed and agree with the proxy advisory firms' proxy voting guidelines leading to vote recommendations;
- Proxy advisory firm analysts should be required to meet minimum standards of training, education, certification or experience; and
- Should the CSA proceed with voluntary guidelines, they should conduct a comprehensive review of the guideline adoption by proxy advisory firms one year after promulgation of final guidelines to determine if the objectives of improved transparency, accuracy and engagement have been achieved.

Thank you for the opportunity to comment on this important topic.

Sincerely,

Bradford Cooke
CEO

301-700 West Pender St.
Vancouver, BC V6C 1G8
Canada

Endeavour Silver Corp.
www.edrsilver.com

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TF: 877 685 9775

enerPLUS

July 22, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Me Anne-Marie Beaudoin
Corporate Security
Autorité des marchés financiers
800, square Victoria, 22e étage
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Montréal, Québec H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment – Proposed National Policy 25-201 – *Guidance for Proxy Advisory Firms***

---

This letter is submitted in response to the Canadian Securities Administrators ("**CSA**") Notice and Request for Comment on Proposed National Policy 25-201 – *Guidance for Proxy Advisory Firms* (the "**Proposed Policy**").

Enerplus Corporation ("**Enerplus**") appreciates the opportunity to provide comments on the Proposed Policy. Enerplus is traded on the Toronto Stock Exchange (the "**TSX**") under the symbol "**ERF**", and has a current market capitalization of approximately $5 billion.

ENERPLUS CORPORATION
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333 - 7th Avenue SW
Calgary, Alberta T2P 2Z1

T. 403-298-2200 F. 403-298-2211
www.enerplus.com

We feel compelled to comment as a result of our recent experience with Institutional Shareholder Services Inc. ("**ISS**") during the 2014 proxy season. During our interactions, we noticed both a lack of accountability and transparency in ISS' process. This was concerning to us and we believe that proxy advisory firms should be subject to some form of binding regulation. Below is a brief summary of our recent dealings both with ISS and Glass Lewis and evidences how the lack of regulation allows proxy advisory firms to act without any accountability which, we would submit, acts as a detriment to both issuers and shareholders, alike.

***Summary of Recent Experience with ISS***

On Monday, April 21, 2014 at 9:19 am (MST), Enerplus received an email from ISS which was entitled "Preliminary Review of ISS' Proxy Analysis – Enerplus Corporation". In the email, Enerplus was requested to review and provide comments on the attached draft ISS proxy analysis on the Corporation's 2014 proxy circular. The email went on to request that such commentary be submitted to ISS by 4 pm (EST), Tuesday, April 22, 2014, or 29 hours from receipt of the email.

The ISS proxy analysis provided that ISS was recommending a vote "FOR" all matters coming before the shareholders, save for the vote on the proposed amendment of the Corporation's bylaws related to the addition of an advance notice provision wherein they recommended a vote "AGAINST".

In an email to ISS, Enerplus outlined the relative positions of the parties and issues of concern. Below is an excerpt of that email:

> *"Enerplus and its advisors engaged ISS representative Anna Wong extensively with respect to the ISS Proxy Analysis on Enerplus' upcoming annual meeting of shareholders. In particular, we have had significant discussions regarding the ISS recommendation regarding the meeting vote related to the Advance Notice Provision addition to the Corporation's bylaws. Currently, ISS is* ***in favor*** *of the by-law amendment and has even stated in the Proxy Analysis that:*
>
> ***"the requested advance notice policy is not objectionable as it will help ensure that all shareholders, regardless of whether they are voting by proxy or in person at the meeting, will have adequate time to evaluate the potential nominees to the board of directors, with sufficient information to determine their suitability for that position."***
>
> *However, despite admitting to be in favor of the amendment to the by-laws as proposed in the meeting circular, ISS has issued a recommendation that their clients vote* ***AGAINST*** *the by-law amendment. Obviously, we were both concerned, and frankly, confused with regard to the ISS recommendation. As such, we reached out to Ms. Wong on two separate occasions in an effort to better understand why ISS would not recommend their clients vote in favor of something that ISS admits is beneficial to their clients.*
>
> *After much discussion, it became very apparent that ISS was manipulating this vote recommendation to open up a dialogue on matters which are wholly and completely unrelated to the subject matter of the vote at the meeting. For the record, the issue that Ms. Wong expressed concern about was with regard to the quorum requirement in the*

*current by-laws. To be clear, the current quorum requirement in the Enerplus by-laws has never been amended. Further, it is not the subject of any vote at the upcoming meeting of shareholders on May 9, 2014, nor any previous meeting of shareholders of Enerplus.*

*As such, it appears that ISS is willing to counsel their clients to vote against something that is actually, and admittedly, beneficial for their clients in a colourable attempt to gain leverage against an issuer and force the issuer to address other corporate governance practices of that issuer that doesn't reflect ISS' agenda. I can only hope that ISS discloses to its clientele that it engages in these sorts of activities and that they provide full disclosure to those same clients that ISS vote recommendations may not necessarily be made with the client's best interests in mind."*

As evidenced by the email text above, Enerplus believes that ISS was improperly using their position as a proxy advisor as leverage to force the issuer into addressing other matters that are completely unrelated to the shareholder vote.

We would offer that this is inappropriate in the circumstances and could lead to more serious future abuses of influence by ISS if allowed to continue unchecked.

***Summary of Recent Experience with Glass Lewis***

Incidentally, we also have similar concerns respecting the process followed by Glass Lewis. Unlike ISS, who provided us with a copy of their recommendation, Glass Lewis required Enerplus to pay $5,000 prior to gaining access to their analysis report on the Corporation. Further, they did not consult with the Corporation to ensure the accuracy of their analysis report, which contained significant errors. Our experience with both Glass Lewis and ISS in this regard has been similar. Both firms have produced reports with material errors.

Our comments below are provided with the above as context.

***Comments***

1. *Do you agree with the recommended practices for proxy advisory firms? Please explain.*

We have significant concerns regarding the lack of regulatory oversight of proxy advisory firms. Enerplus is of the view that the Proposed Policy and recommended practices therein do not appropriately address many of the concerns voiced by public issuers and the investing market. A policy-based approach is an insufficient regulatory response to govern the practices of proxy advisory firms and will not ensure the necessary transparency in their practices. In particular, the Proposed Policy does not adequately address our concerns (or the concerns of various market participants and their advisers) regarding the following issues: (a) inappropriate influence on corporate governance practices; (b) factual inaccuracies and untimely engagement with issuers; and (c) lack of transparency and conflicts of interest.

As such, Enerplus would favour a more prescriptive, rules-based regulatory response that includes some type of mandatory compliance, not unlike the compliance required of the entities proxy advisors freely comment on.

(a) Inappropriate influence on corporate governance practice

Proxy advisory firms wield significant influence over the shareholder voting process. Given the relatively low turnout at shareholder meetings in Canada, the votes held by institutional investors can have a meaningful impact on a shareholder vote. As such, any recommendations made to institutional investors by proxy advisory firms can have a profound effect on an issuer and its business. As corporate governance standards evolve (due in large part as a direct result of the increasingly complex best governance practices developed and recommended by the proxy advisory firms themselves), clients of proxy advisory firms have become increasingly reliant on the expertise and advice of proxy advisory firms. In fact, many institutional investors have signed up for automatic vote services provided by proxy advisory firms. However, even where such services are not provided, clients of proxy advisory firms tend to rely heavily on their assessments and recommendations.

Given their significant influence over the proxy voting process, proxy advisory firms have become "quasi regulators" and standard-setters of corporate governance practices and yet they are not held to any discernible compliance standards in this regard.

(b) Factual inaccuracies and untimely engagement with issuers

In our experience, proxy advisory reports often contain factually incorrect information, upon which vote recommendations are based. Such errors can create significant problems for issuers. It appears they do not have enough qualified staff nor the controls in place to ensure quality control. Furthermore, because of the lack of any repercussions regarding the publishing of inaccurate reports, nor the requirement to re-issue amended reports, these firms are allowed to act with impunity. Incorrect information and analysis may lead to inappropriate advice on an important vote and, potentially, have negative reputational implications for issuers. In turn, these errors affect all shareholders of an issuer, not just those which engage the services of proxy advisory firms.

Often, these factual inaccuracies are detected only after a proxy advisory report has been published. Currently, there are no requirements to ensure that proxy advisory firms retract or correct such incomplete or inaccurate information. Inaccuracies can be detected if a draft is provided to the issuer in advance (which we note is often not the practice of proxy advisory firms), but when drafts are provided in advance, issuers are typically not provided with adequate time to review and respond. Furthermore, proxy advisory firms do not have a duty to engage with issuers and therefore there is no obligation on proxy advisory firms to respond to any requests to correct misinformation, to review any response submitted by an issuer, or to allow the issuer any opportunity to address its concerns. This one-way consultative approach compromises the ability of shareholders to make informed decisions and weakens the integrity of capital markets in Canada.

We understand that proxy advisory firms are under pressure to produce many reports in a short timeframe; however, this does not negate the need for thorough, accurate reports. Prior issuer review of draft proxy advisory reports and mandated engagement by proxy advisory firms with issuers would lead to fewer inaccuracies in published reports and help to preserve the integrity of the proxy voting system.

(c) Lack of transparency and conflicts of interest

Proxy advisory firms should be required to disclose their methodologies, sources of information, assumptions used to prepare reports and rationales for their voting recommendations. The adoption and application by proxy advisory firms of internal and unpublished policies creates an unpredictable regime in which policies are misunderstood and inconsistently applied. As such, voting recommendations from year to year and from issuer to issuer need not be consistent. This lack of transparency increases the risk of confusion in the public markets.

Additionally, this lack of transparency creates an environment in which issuers feel compelled to engage proxy advisory firms to assist them in the preparation of proxy materials to ensure a favourable proxy advisory recommendation. This business model of both advisory services coupled with fee-based proxy review services benefits from a lack of transparency and creates an inherent conflict of interest.

The issues identified above need to be addressed by a regulatory regime that consists of more than merely 'recommended' practices. It requires a rule-based standard that compels mandatory compliance in order to ensure transparency and one that appropriately addresses conflicts of interest. Proxy advisory firms play an ever-increasing role in the voting process and in shareholder communications. While issuers are held to strict, prescribed disclosure requirements so as to best assist shareholders in assessing an issuer's governance practices, a policy-based approach for proxy advisory firms will do little to address some of the long standing issues related to proxy advisory firms that market participants have been concerned about.

2. *Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.*

The Proposed Policy does not include specific guidance regarding engagement with issuers or the provision of draft proxy advisory reports to issuers in advance of issuing vote recommendations.

3. *Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?*

We do not feel that the Proposed Policy, which by its nature is guidance only and does not mandate compliance by proxy advisory firms, is a sufficient regulatory response to this matter. Given our experience with proxy advisory firms and their reluctance to correct errors or participate in an open exchange of information and dialogue, we do not believe a policy-based regulatory response will promote meaningful change. Please see our response to question 1 for further details.

4. *We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?*

Yes, in our view, proxy advisory firms should designate a specific person to be responsible for these matters. This person's contact information should be made available to the public to

promote greater transparency and engagement with issuers. This should be a requirement rather than a recommended practice.

5. *We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?*

In our view, proxy advisory firms should be required to engage with issuers during the process to ensure that inaccuracies are not included in proxy advisory reports and to give issuers an opportunity to explain their rationale for certain practices or decisions. This should be a requirement rather than a recommended practice.

There are many reasons why such engagement with issuers is beneficial to the proxy voting process. The one-size-fits-all approach adopted by proxy advisory firms in their analysis can be inappropriate in certain circumstances. Issuers may be able to provide insight without which proxy advisory firms are ill-equipped to make recommendations. In other situations, issuers may be prepared to make revisions or otherwise address the recommendations of proxy advisory firms in order to satisfy their concerns.

6. *A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?*

In our view, automatic vote services do not promote responsible voting and we do not believe such services should be offered. To the extent these services continue to be permitted, not only should proxy advisory firms be required to obtain confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines, but they should be required to do so both on an annual basis and following any amendments to the proxy advisors report. In addition, proxy advisory firms should be required to annually publish all proxy voting guidelines and notify the marketplace when amending such guidelines.

We thank you for the opportunity to submit these comments and would welcome an opportunity to discuss them with you.

Yours very truly,

**ENERPLUS CORPORATION**

David A. McCoy
Vice-President, General Counsel & Corporate Secretary

**De :** Gary Patterson [redacted]
**Envoyé :** 16 juin 2014 13:20
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** Re: Request for Comment Regarding Proxy Advisory Firms.

I am writing in support of the views expressed by Mr. John Budreski in his letter to you concerning Proxy Advisory firms.I urge you to take positive action on the issues he has raised.

I have been involved in the capital markets for over 20 years as an employee, shareholder and on the Board of Directors of public companies. I have served as chairman of various committees of public company Boards including corporate governance and audit.

Gary Patterson, FCA

GLASS LEWIS & Co.

San Francisco
New York
Washington, D.C.
Australia
Ireland

Me. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3

Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario
M5H 3S8

July 18, 2014

**RE: Canadian Securities Administrators Notice and Request for Comment – Proposed National Policy 25-201: Guidance for Proxy Advisory Firms, Dated April 24, 2014**

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on the Proposed National Policy 25-201 ("NP 25-201") issued by the Canadian Securities Administrators ("CSA") regarding the proposed guidance for the proxy advisor ("PA") industry.

Founded in 2003, Glass Lewis is a leading, independent governance services firm that provides proxy research and vote management services to more than 1,000 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis' Web-based vote management system, ViewPoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record-keep, audit, report and disclose their proxy votes.

From its offices in North America, Europe and Australia, Glass Lewis' 300+-person team provides research and voting services to institutional investors globally that collectively manage more than US $30 trillion.

Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

## Glass Lewis Views on Practices Recommended in NP 25-501

Glass Lewis commends the CSA for its thorough and balanced approach in preparing NP 25-501, which takes into consideration a wide variety of perspectives and concerns relating to the PA industry. Glass Lewis generally agrees with the proposed framework laid out in NP 25-501, most particularly with the goals of the National Policy to "promote transparency" and "foster understanding." The response provided below includes a summary of the CSA's recommended practices paired with Glass Lewis' view about the recommendations.

**Conflicts of Interest**

Under section 2.1 (3) of the proposed NP 25-201 the CSA has suggested a variety of steps to address actual or potential conflicts of interests as follows:

- Establishing, maintaining and applying written policies and procedures to identify, manage and mitigate actual or potential conflicts.
- Designing and implementing internal safeguards and controls to monitor the effectiveness of policies and procedures to mitigate conflicts of interest.
- Establishing, maintaining and complying with an internal code of conduct ("COC") that establishes standards of behavior and practices for the PA, including individuals acting on its behalf.
- Obtaining affirmation of the COC from all individuals acting on their behalf upon hiring.
- Evaluating the effectiveness of policies and procedures, internal safeguards and the COC on a regular basis.

Glass Lewis prides itself on eliminating and avoiding conflicts of interest to the maximum extent possible, and concurs with the steps laid out by the CSA to mitigate potential conflicts of interests. Glass Lewis believes the proposed measures will promote transparency by PAs, thus enhancing the utility of PA research for institutional investor clients.

Glass Lewis has always implemented robust conflict avoidance and management policies and discloses such policies publicly on its website. As detailed on the company website (http://www.glasslewis.com/about-glass-lewis/disclosure-of-conflict/), Glass Lewis has a formal Conflict of Interest Statement, Conflict Avoidance Procedures, Code of Ethics and several additional safeguards in place to mitigate potential conflicts. Glass Lewis employees must annually review and affirm their commitment to the Code of Ethics, which details the internal practices utilized to avoid conflicts of interest. Glass Lewis' Compliance Department regularly reviews the company's internal safeguards and Code of Ethics, along with employees' compliance with the company's codes and policies.

Glass Lewis does not enter into business relationships that conflict with its mission: To serve institutional participants in the capital markets with objective advice and services. However, Glass Lewis recognizes it is not possible to be completely conflict-free. Where potential or actual conflicts exist, Glass Lewis believes PAs should proactively and explicitly disclose those conflicts in a manner that is transparent and readily accessible for clients.

Three factors are key to Glass Lewis' management of potential conflicts: (i) Glass Lewis does not offer consulting services to public corporations or directors; (ii) Glass Lewis maintains its independence from OTPP and AIMCo by excluding OTPP and AIMCo from any involvement in the making of Glass Lewis' proxy voting policies and vote recommendations; and (iii) Glass Lewis relies exclusively on publicly-available information for the purpose of developing its recommendations. Glass Lewis avoids off-the-record discussions with companies during the proxy solicitation period to ensure the independence of its research and advice – something that is highly valued by clients – and to avoid receiving information, including material non-public information, not otherwise available to shareholders.

Furthermore, Glass Lewis maintains additional conflict disclosure and avoidance safeguards to mitigate potential conflicts. These apply when: (i) a Glass Lewis employee, or relative of an employee of Glass Lewis, or any of its subsidiaries, a member of the Glass Lewis Research Advisory Council, or a member of Glass Lewis' Strategic Committee serves as an executive or director of a public company; (ii) an investment manager customer is a public company or a division of a public company; (iii) a Glass Lewis customer submits a shareholder proposal or is a dissident shareholder in a proxy contest; or (iv) if one or both of Glass Lewis' parent companies, OTPP and AIMCo, has a significant, reportable stake in a company or Glass Lewis becomes aware through public disclosure of OTPP's or AIMCo's ownership stake in a company.

In each of the instances described above, Glass Lewis makes specific and prominent disclosure to its customers on the cover of the relevant research report. Just as companies bear the burden to disclose potential conflicts, Glass Lewis recognizes that the onus should be on the conflicted party to disclose any potential conflicts. In addition, where any employee or relative of an employee is an executive or director of a public company, that relationship is not only disclosed but that employee plays no role in the analysis or formulation of voting recommendations of that company.

**Transparency and Accuracy of Vote Recommendations**

Under section 2.2 (3) of the proposed NP 25-201 the CSA has suggested that PA firms take the following steps when determining voting recommendations:

- Establishing, maintaining and applying written policies and procedures describing the approach or methodologies used to prepare vote recommendations.
- Designing and implementing internal safeguards and controls to increase the accuracy and reliability of the information and data used in the preparation of vote recommendations.
- Evaluating the effectiveness of their policies and procedures as well as internal safeguards and controls on a regular basis to ensure that they remain appropriate and effective.
- We encourage proxy advisory firms to have the resources, knowledge and expertise required to prepare rigorous and credible vote recommendations.
- Where possible and without compromising the proprietary or commercially sensitive nature of information, we expect proxy advisory firms to post or describe on their website their policies and procedures as well as internal safeguards and controls leading to vote recommendations, including any related amendments.

Glass Lewis agrees with the proposals made by the CSA governing the development and internal oversight of PA policies, research and vote recommendations; indeed, as detailed below, the firm already substantially implements what has been proposed.

*Guidelines*

Glass Lewis posts its complete proxy voting policies on its public website, as well as extensive information about research methodologies and approach to analyzing various issues including compensation at http://www.glasslewis.com/resource/guidelines/ (Please refer to the "Development of Proxy Voting Guidelines" section below for details regarding Glass Lewis' guideline development and maintenance processes.)

*Safeguards for Accuracy*

Implementing proper safeguards and internal structure to maximize accuracy should be a core policy of PA firms. Accuracy and consistency are perhaps the most essential components of Glass Lewis' research. Prior to the publication of Proxy Paper research reports to clients, all draft reports are reviewed and edited by at least two additional senior analysts and managers up to and including a Director of Research, a Vice President of Research, the Managing Director of Mergers & Acquisition Analysis and/or the Chief Policy Officer.

Glass Lewis leverages technology and data providers (such as Capital IQ and Equilar) to ensure the highest level of accuracy possible, while enabling the delivery of research and recommendations in a

timely fashion. This is particularly important given the short timeframe in which most investors have to analyze and vote thousands of proxies during the proxy season.

*Knowledge and Expertise*

PAs should employ sufficiently knowledgeable staff with expertise and experience in the areas relevant to the research they conduct, including corporate governance, finance, accounting, law, business management, public policy and international relations.

Glass Lewis' annual general meeting research team is led by Chief Policy Officer Robert McCormick, an attorney, and Chief Operating Officer John Wieck, an MBA graduate, who combined have more than 30 years experience working in corporate governance and proxy voting. Other members of the research management team include Managing Director of M&A and Quantitative Research Warren Chen, who holds an MBA and, prior to joining Glass Lewis in 2004, worked as an investment banking analyst for a global investment bank; Vice President of Research David Eaton, who also holds an MBA and has worked for several governance research firms in his career, including, most recently, a large compensation consultancy; and Associate Vice President of European and Emerging Markets Policy Carla Topino, an Italian attorney who was in-house corporate counsel for two Italian companies and whose law degree thesis was on takeover bids.

The Glass Lewis team leverages the firm's sophisticated, proprietary research database that enables it to track company and director performance and governance over the past 11 years at thousands of companies across the globe.

Regardless of education or experience, Glass Lewis research analysts go through the Glass Lewis Research Associate Training Program, which provides a comprehensive overview of the industry in general and the Glass Lewis research process. After completing the initial training program, new hires are placed into relevant teams and practice areas based on their experience, education, language proficiency, profession and interest to enable further specialization. Furthermore, Glass Lewis employees engage in continuing education relevant to their specific job responsibilities both inside and outside the firm.

**Development of Proxy Voting Guidelines**

Under section 2.3 (2-5) of the proposed NP 25-201 the CSA has suggested that PA firms take the following steps when determining voting recommendations:

- Establishing, maintaining and applying written policies and procedures describing the process followed in developing and updating proxy voting guidelines.
- Regularly consulting with and considering the preferences and views of their clients, market participants and the public on corporate governance issues and on their proxy voting guidelines.

- Taking into account local market or regulatory conditions.
- We encourage proxy advisory firms to ensure that they have the resources, knowledge and expertise required to develop and update appropriate proxy voting guidelines.
- Without compromising the proprietary or commercially sensitive nature of information, we expect proxy advisory firms to post on their website their proxy voting guidelines and any updates to them.
- We expect proxy advisory firms to post or describe on their website their policies and procedures and consultations leading to the development of proxy voting guidelines, including any related amendments.

Glass Lewis believes PAs that provide research based on a proprietary "house" policy should have detailed and thoughtful policies governing the provision of proxy voting research, analysis and voting recommendations. In addition, the policies should both reflect global principles and local-market laws, listing rules, codes and best practices, as well as allow for consideration of specific aspects of each company.

Policies should not be drafted in a vacuum but should be based on discussions with clients, companies and other stakeholders. In maintaining these policies, PAs should take into consideration any relevant developments, such as changes to laws and regulations, and incorporate input from industry groups and associations. Although Glass Lewis believes PAs should publicly disclose significant information about their policies, including how the policies are developed, they should not be compelled to disclose proprietary methodologies and analytical models for which clients have paid. And, as PAs are not public utilities or regulators, they should not be obligated to put their policies up for public consultation, nor should PAs necessarily attempt to address public policy issues that do not otherwise affect shareholders.

Glass Lewis recognizes its obligation to provide high quality, timely research to its institutional investor clients, based on the analysis of accurate information culled from public disclosure. Glass Lewis was founded on the principle that each company should be evaluated based on its own unique facts and circumstances, including performance, size, maturity, governance structure, responsiveness to shareholders and, last but not least, country of origin and listing. Therefore, Glass Lewis has policy approaches for each of the 100 countries where it provides research on public companies. These policies are based in large part on the regulatory and market practices of each country, which are monitored and reviewed throughout the year by Glass Lewis' Chief Policy Officer, Associate Vice President of European and Emerging Markets Policy, Vice President of Proxy Research and each of the various research directors that oversee a specific region or subject matter practice, such as compensation and Environmental, Social and Governance ("ESG") issues.

Glass Lewis applies general principles -- including promoting director accountability, fostering close alignment of compensation and performance, and protecting shareholder rights -- across all of these

policies, while also closely tailoring them to recognize national and supranational regulations, codes of practice and governance trends, and size and development stage of companies, etc.

In most countries, including Canada, Glass Lewis applies stricter corporate governance standards for large, multinational companies than it does for smaller companies. For example, Glass Lewis believes companies in the S&P/TSX Composite Index should have a higher level of board independence than smaller companies outside the Composite, as well as controlled companies and those listed on the TSX Venture Exchange.

As part of Glass Lewis' continued commitment to its customers, Glass Lewis has an independent Research Advisory Council ("Council") that provides guidance with regard to the development and updating of Glass Lewis' proxy voting guidelines. The Council ensures that Glass Lewis' research consistently meets the quality standards, objectivity and independence criteria set by Glass Lewis' research team leaders.

The Council, chaired by Charles A. Bowsher, former Comptroller General of the United States, and supported by Robert McCormick, Glass Lewis' Chief Policy Officer, includes the following experts in the fields of corporate governance, finance, law, management and accounting: Kevin J. Cameron, co-founder and former President of Glass, Lewis & Co.; Jesse Fried, Professor of Law at Harvard Law School; Bengt Hallqvist, Founder of the Brazilian Institute for Corporate Governance; Stephanie LaChance, Vice President, Responsible Investment and Corporate Secretary, PSP Investments; and David Nierenberg, President of Nierenberg Investment Management Co.

**Communications with Clients, Market Participants, the Media and the Public**

Under section 2.4 (2-7) of the proposed NP 25-201 the CSA has suggested that PA firms communicate all of the following information to their clients in their reports:

- Any actual or potential conflicts of interest arising from the vote recommendations.
- The approach or methodologies used, the factors considered and the weight of these factors in determining the vote recommendations.
- The identification of the information that is factual and the information that comes from analytical models and assumptions, and their reasons for the vote recommendations.
- A description of the extent to which proxy voting guidelines are used or applied when preparing vote recommendations and the reasons for any deviation from the proxy voting guidelines.
- Where applicable, the nature and outcome of any dialogue or contact with an issuer in the preparation of the vote recommendations.
- Any known or potential limitations or conditions in the research and analysis used to prepare the vote recommendations.

- A statement that the vote recommendations and the underlying research and analysis are intended solely as guidance to assist the clients in their decision making process.

*Conflict Disclosure*

Research providers should proactively provide robust and specific disclosure about their potential conflicts. Only in this way can the users of the research make a determination if the research is tainted by the conflict. As detailed in the "Conflicts of Interest" section above, Glass Lewis makes specific and prominent disclosure of any conflicts of interest to its customers on the cover of the relevant research report. Just as companies bear the burden to disclose potential conflicts, Glass Lewis believes PAs should disclose any known potential conflicts.

*Research Rationales*

The approach and methodologies used in reaching voting recommendations are laid out in Glass Lewis' proxy voting guidelines and included in the narrative of each Proxy Paper research report. This ensures that clients can understand the rationale for each voting recommendation when making voting decisions. Any report that includes analysis from an analytical model includes a description of such model and information as to what degree the model's valuations and output are utilized in the analysis and voting recommendation. Since Glass Lewis employs a case-by-case approach in evaluating nearly all issues, there are occasions where the firm places less reliance on the standard output of a given model, usually to account for issues specific to a company or industry. In those instances, Glass Lewis explains this more limited reliance on its model in the narrative of the analysis. There also are instances where companies provide limited or no information about a particular proposal. In such cases, Glass Lewis notes the lack of sufficient information in the report and recommends shareholders abstain from voting.

*Purported Errors or Omissions*

In order to better facilitate engagement with issuers and other interested parties, Glass Lewis created a public Issuer portal ("Portal") to allow companies to more easily contact Glass Lewis to request meetings, arrange calls and propose ideas for Proxy Talk conference calls. The Portal also provides a means for companies to comment and provide feedback on reports and to notify Glass Lewis of subsequent proxy circulars and press releases, as well as perceived errors or omissions in Glass Lewis reports. All requests and notifications entered via the Portal are logged and tracked by Glass Lewis. In cases where new information results in the republication of a report, such as when Glass Lewis corrects an error that is brought to its attention, Glass Lewis provides a detailed disclosure note explaining the rationale for the change(s) made to the report. (For more information, go to: http://www.glasslewis.com/issuer/)

*Appropriate Use of Glass Lewis Reports*

Glass Lewis recognizes that its clients use proxy research, analysis and recommendations to significantly varying degrees and notes in each report that Glass, Lewis & Co., LLC is not a registered investment advisor and therefore its research and vote recommendations should not be construed as investment advice. In addition, each report notes that Glass Lewis makes no representations or warranties, expressed or implied, as to the accuracy, completeness, or usefulness of the research and that Glass Lewis is not responsible for any actions taken or not taken on the basis of the research.

## Monitoring Implementation of Policies, Procedures and Controls

Glass Lewis believes the proposed NP will provide stakeholders (including institutional investors, public company issuers, issuer advisors and the public) with meaningful assurances that the information and analysis used by institutional investors to make proxy voting decisions is based on reasonably accurate data; is free from conflict or is subject to robust conflict disclosure; and is developed based on transparent policies and methodologies.

While Glass Lewis believes it is important monitor the implementation of policies governing conflict management, vote guideline and vote recommendation development, and communications with stakeholders, it is unlikely that a single individual could provide sufficient management in each of the aforementioned areas, given the diverse and complicated nature of each of these components. Rather, multiple dedicated resources should be appointed for each of these integral aspects of a PA's business. For example, Glass Lewis' General Counsel and Chief Policy Officer oversee the firm's approach to managing and disclosing conflicts of interest, while the Chief Policy Officer oversees the guideline development and implementation at the firm. In addition, Glass Lewis has a newly-appointed dedicated senior analyst to manage the firm's engagement with issuers, issuer advisors and shareholder proposal proponents.

## Engagement With Issuers and Shareholder Proponents

Glass Lewis has appointed a dedicated resource to oversee engagement with issuers, proxy solicitors, other issuer advisors and shareholder proponents, among other stakeholders. In order to better facilitate engagement with issuers, Glass Lewis also established the Issuer portal, as described in the "Communications with Clients, Market Participants, the Media and the Public" section above.

Glass Lewis welcomes engagement with executives and directors of the public companies whose proxy materials and annual reports Glass Lewis analyzes. In such meetings, companies can share relevant information about the company for consideration by Glass Lewis when conducting its analysis and making its voting recommendations. Information gained in meetings with directors and executives informs the subsequent Glass Lewis analysis on the subject company and its industry and, on occasion, may be pertinent to all companies, potentially leading to refinements to the Glass Lewis Proxy Paper

guidelines. Public information gained in such meetings about each company and its specific circumstances can increase the utility of the Proxy Paper on that company, benefiting Glass Lewis clients.

However, while Glass Lewis is open to discussions with companies on all relevant topics, only publicly available information is relied upon in conducting analysis and ultimately making voting recommendations. This approach ensures that shareholders have access to all relevant information and are thus fully empowered to make informed voting decisions, while minimizing potential conflicts of interest. Therefore, Glass Lewis encourages companies to provide comprehensive and clear disclosure on relevant matters, including directors and executive compensation structures, policies and practices, risk controls and management of environmental, social and governance practices.

When Glass Lewis analysts require clarification on a particular issue, they will reach out to companies but otherwise generally refrain from meeting with companies during the solicitation period, which is marked by the date a notice of meeting is released to the meeting date itself. Throughout the year and very frequently during the proxy season, Glass Lewis hosts "Proxy Talk" conference calls to discuss a meeting, proposal or issue in depth. Glass Lewis' clients and other shareholders are invited to listen to the calls and submit questions to the speakers, with representatives from Glass Lewis serving as moderators. Proxy Talks are held prior to the publishing of research in order to glean additional information for Glass Lewis' analysis and to provide more information for clients.

Glass Lewis encourages corporate issuers to contact Glass Lewis, via the Issuer Engagement Portal, if they file additional information in amended proxies or on their websites or if they perceive a factual discrepancy with Glass Lewis' analysis. Additionally, issuer engagement is welcome and encouraged during any time outside of the proxy solicitation period, as Glass Lewis finds significant value in receiving constructive critiques and other relevant information for shareholder consideration.

## Client Use of Research and Vote Management Services

In addition to providing proxy voting research, PAs may also provide Web-based vote management systems for clients to receive, reconcile and vote ballots according to voting guidelines (both house and custom) and record-keep, audit, report and disclose their proxy votes.

An institutional investor hires a PA only after careful evaluation of the PA's policy approach, research methodologies, staffing, controls, systems and research examples. Clients that adopt some or all of Glass Lewis' policies as their own generally do so after determining that the Glass Lewis approach closely reflects their own view. Clients will review the policy at least annually and, over time, often choose to customize some of the analysis as their views on issues change.

In addition to monitoring votes throughout the year, investors generally conduct annual due-diligence visits to review issues and go over any questions or concerns that have arisen since prior visits. Issues

typically covered by investors during their initial and annual diligence include: voting policies, models used in the analysis of compensation, market-by-market regulatory reviews, research oversight, quality control, research personnel, conflict-management procedures and error management, among others.

The due diligence by investors typically is conducted by people from various parts of the organization, including investment management, compliance and/or risk management departments, as well as proxy committees and fund trustees, among other groups.

Based on Glass Lewis' experience, its clients take very seriously their fiduciary responsibility with respect to proxy voting. PAs have a duty to deliver services in accordance with the requirements of their clients. It is neither necessary, nor appropriate, for a PA to be tasked with monitoring how a client elects to use those services.

## Best Practice Principles

As the proposed NP 25-201 indicates, there are several other initiatives regarding PAs including the ESMA recommendation for the PA industry to develop a code of conduct to address many of the same issues raised in NP 25-201 such as conflicts, accuracy and transparency. Glass Lewis is a charter signatory to the code, officially known as the Best Practice Principles for Providers of Shareholder Voting Research & Analysis ("Principles"), and participated in the drafting of the Principles. (They are available at http://bppgrp.info/ and are a good source of additional information about PAs and how investors use them.) While the Principles were designed in response to a European Securities and Markets Authority Consultation, Glass Lewis and other signatories have announced they intend to apply the Principles to their activities globally.

Glass Lewis welcomes this opportunity to comment on the proposed NP 25-201 and is available to answer any questions the CSA may have regarding the comments provided above.

Respectfully submitted,

Katherine H. Rabin
Chief Executive Officer

/s/

Robert McCormick
Chief Policy Officer

GOLDCORP

**BY EMAIL**

July 23, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
*comments@osc.gov.on.ca*

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
*consultation-en-cours@lautorite.qc.ca*

Dear Sirs and Mesdames:

**Re: Request for Comments - Proposed *National Policy 25-201 Guidance for Proxy Advisory Firms*, dated April 24, 2014 ("Request for Comments")**

This letter is provided by Goldcorp Inc. ("**Goldcorp**") to the Canadian Securities Regulatory Authorities (the "**CSA**") in response to the Request for Comments.

Goldcorp is a senior gold producer with its common shares listed and posted for trading on both the Toronto Stock Exchange and the New York Stock Exchange. It is a reporting issuer in all of the provinces and territories of Canada. Goldcorp is committed to maintaining the highest standards of corporate governance and shareholder accountability.

Goldcorp's Board of Directors has reviewed the proposed *National Policy 25-201 Guidance for Proxy Advisory Firms* (the "**Proposed Policy**") and have material concerns regarding its effect on shareholder engagement. Proxy advisory firms have significant influence on the outcome of shareholder meetings in Canada and, for this reason, we believe stricter and more explicit regulation of proxy advisory firms is necessary.

The following sets out our comments and recommendations in connection with the Request for Comments to further improve the Proposed Policy.

***Overview***

Proxy advisory firms have the ability to process and analyze large volumes of information which can serve as a valuable resource to shareholders if used correctly. Shareholders are uncritically relying on the summaries and recommendations of proxy advisory firms instead of developing their own.

Widespread reliance on proxy advisory firms creates a risk that errors or flaws in the creation of recommendations may materially misinform shareholders and market participants. Any proposed guidelines or regulations must allow issuers to adequately analyze the basis of recommendations and effectively communicate concerns to shareholders.

***Recommendations***

*CSA's Proposed Policy Should be Strengthened*

The CSA is currently proposing "guidelines" to address: (i) actual or potential conflicts of interest of proxy advisory firms; (ii) a perceived lack of transparency; (iii) potential inaccuracies and limited dialogue between proxy advisory firms and issuers; (iv) potential corporate governance implications; and (v) the extent of reliance by institutional investors on the recommendations provided by such firms. We agree generally with the Proposed Policy, however, we are concerned that the proposed guidelines use overly permissive language. Proxy advisory firms play a key role in the capital markets and should be held to as high a standard as those imposed on other influential market participants. It is our position that the measures and language be strengthened and implemented through regulation.

Avoiding Conflicts of Interest

One significant area of concern is the inevitability for conflicts of interest where a proxy advisory firm provides vote recommendations to institutional investors on corporate governance matters relating to a particular issuer, an issuer to which the proxy advisory firm has provided consulting services. These conflicts compromise the independence of vote recommendations, which negatively impacts market integrity.

The Proposed Policy suggests certain steps that proxy advisory firms may consider taking to address conflicts of interest and we are of the view that a stricter approach is necessary. At a minimum, the CSA proposal regarding the management of potential conflicts of interest, as well as disclosure obligations, should be regulated rather than prescriptive. In addition, where a proxy advisory firm provides advisory or consulting services to a client, it should be precluded from making voting recommendations in respect of that issuer or on that specific proposal.

Strengthening Transparency and Disclosure of Proxy Advisor Recommendations

Proxy advisory firms should be required to disclose the criteria they apply in producing their recommendations. Currently, these firms apply predefined methodologies which often fail to consider an issuer's unique circumstances and often appear subjective or arbitrary. As a result

there is a high likelihood of misleading information and investor misinterpretation. We recommend that the CSA require that firms disclose to the issuer all relevant considerations in reaching their recommendations.

Given the high potential for errors or inaccuracies to affect proxy voting recommendations, proxy advisory firms should provide early disclosure to issuers when they intend to make negative vote recommendations. Early disclosure should allow the issuer enough time to adequately analyze the recommendations and provide comments to shareholders. To enhance process transparency, proxy advisory firms should be required to include any comments from affected issuers along with the firm's circulated recommendations.

Disclosure of Analyst Qualifications

Proxy advisor reports frequently contain inaccuracies which may lead to misinformed decision-making, especially in the context of complex voting matters. While the Proposed Policy encourages proxy advisory firms to have the resources, knowledge and expertise required to prepare rigorous and credible vote recommendations, there is no guideline requiring disclosure of the experience and qualifications of the individuals who have participated in the development of a voting recommendation. Adequate disclosure would allow issuers to identify deficiencies in the analysis applied and to communicate those concerns to shareholders.

***Conclusion***

In drafting the Proposed Policy, the CSA has taken a strong initial step to address the concerns posed by proxy advisory firms. While these firms have a material impact on the proxy voting process in Canada, they face none of the regulatory oversight experienced by other market participants. Under the proposed guidelines, issuers and shareholders will remain vulnerable to errors and misstatements made by proxy advisory firms. We strongly encourage the CSA to impose prescriptive regulations that: (i) eliminate the potential for conflicts of interest; (ii) require early disclosure to issuers subject to negative vote recommendations, provide sufficient time for issuers to generate a response to recommendations, and require the issuer response to be included in communications to shareholders; and (iii) require disclosure of the qualifications of those involved in the proxy analysis. Regulations that ensure transparency of proxy advisory firms and their recommendations will strengthen the quality of the information relied upon by shareholders in exercising their voting rights.

We trust you will find the foregoing helpful, and we would be pleased to discuss or provide any additional information or explanation as you may require.

Yours truly,

Peter Dey
Chair of the Governance and Nominating Committee
Goldcorp Inc.

# HANSELL

**July 23, 2014**

Frédéric Duguay
416.649.8492
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**VIA EMAIL**

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Me Anne-Marie Beaudoin
Corporate Secretary
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The Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8

Dear Sirs/Madams:

**Proposed National Policy 25-201 Guidance for Proxy Advisory Firms**

We appreciate the opportunity to comment on the Canadian Securities Administrators' ("CSA") proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (the "Proposed Policy").

Hansell LLP provides expert, independent legal and governance counsel to both shareholders and boards of directors. We advise both issuers and investors and deal regularly with the policies and recommendations of proxy advisory firms in a variety of contexts.

The CSA has clearly devoted a great deal of time and thought to the proxy advisory issue. We note that regulatory resources are finite. In our view, issuers and investors would derive greater benefit from regulatory focus on the mechanics of the proxy voting system. We urge the CSA to focus its efforts on reviewing the proxy voting infrastructure to ensure that voting entitlements are properly reconciled and votes are accurately counted at the meeting.[1]

We have set out our responses and suggested improvements to the Proposed Policy under the following headings: issues and appropriate response; conflicts of interest; dialogue between proxy advisory firms and issuers; and automatic vote services.

## 1. Issues and Appropriate Response

In order to provide some context to our response, it is important to note that proxy advisory firms provide services and vote recommendations to their clients pursuant to private contractual agreements. Those clients, generally institutional investors, have not expressed concerns publicly with the quality of the services they receive and are not seeking the intervention of the CSA. Proxy advisory firms are not market participants and members of the CSA accordingly have no authority to regulate them in any event.

Issuers have consistently expressed concerns about the impact of proxy advisory firms on the outcome of shareholder votes. Accordingly, a regulatory response is appropriate in this context to reinforce confidence in the capital markets. This response, however, must be calibrated to the nature of a demonstrable problem. Issuers express concern with the degree of influence exerted by proxy advisors, but there is still no clear evidence of that influence. Investors who have engaged in the public debate over the role of proxy advisory firms state that they exercise their own judgement in casting their votes, even if they subscribe to the services of a proxy advisory firm. We do understand that some investors adopt and follow the guidelines of the proxy advisory firms. It is not clear how often those investors adopt the recommendations of the proxy advisors because they agree with them, because they don't have sufficient shares to warrant spending more time analyzing the issues, or because they are indifferent to the issue. It is at least clear that there is no compelling evidence that proxy advisors determine the outcome of shareholder votes. It is as likely in many cases that the proxy advisors recommendations align with the views of their clients and that is the reason that many of the votes follow those recommendations.

Issuers are also concerned with the errors made by the proxy advisors. We have addressed this concern in more detail in our comments below. In addition, some are concerned that proxy advisory firms have become *de facto* corporate governance standard setters. The evidence suggests that proxy voting guidelines are largely developed through market engagement and incorporate generally accepted investor expectations for appropriate corporate governance that respond to the interests and concerns of institutional investors.

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[1] See our comment letter on the CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure* from November 13, 2013, available at <http://hanselladvisory.com/includes/CSA_Commentary.pdf>.

We agree that any action taken by the CSA with respect to the activities of proxy advisor firms should be limited to providing guidance on best practices that will promote transparency and foster understanding among market participants about the activities of those firms. The Proposed Policy allows flexibility and strikes the proper balance between the concerns of issuers to understand the role of proxy advisory firms and the interests of shareholders using the services of proxy advisory firms. Such transparency, dialogue and understanding will contribute to preserving the integrity of the proxy voting process, which will promote confidence in our capital markets.

We also agree that the approach taken by the CSA is consistent with the recommendations arising from other international initiatives and can be implemented by proxy advisory firms operating in other jurisdictions. We note in particular that the Proposed Policy corresponds with the recent regulatory approaches taken in the US and Europe. On June 30, 2014, staff of the US Securities and Exchange Commission issued guidance (in the form of 13 Q&As) concerning the proxy voting responsibilities of investment advisors, the use of proxy advisory firms and the applicability of proxy solicitation rules to such firms (the "SEC Staff Guidance").[2] The March 2014 publication of the Best Practice Principles for Governance Research Providers Group[3] formed as a result of the recommendations from the European Securities and Markets Authority (the "EU Best Practice Principles") also follows this non-prescriptive regulatory approach.

In light of this increased attention by regulators, we agree with other commenters who have acknowledged that proxy advisory firms have considered the concerns raised and are reviewing their practices, including managing potential conflicts of interests and adopting practices to promote more responsible use of proxy voting advice through increased transparency and disclosure. We believe the Proposed Policy endorses many of the best practices adopted in the marketplace and represents a step in the right direction towards addressing the concerns raised by market participants. In response to concerns that the Proposed Policy may not compel proxy advisory firms to follow the proposed best practices, we suggest that the CSA monitor market developments and seek feedback from market participants within a reasonable period of time after the Proposed Policy is implemented to determine whether any further regulatory action is necessary.

## 2. Conflicts of interest

The Proposed Policy identifies examples of circumstances where an actual or potential conflict of interest may exist. These circumstances include: (i) where a proxy advisory firm provides vote recommendations to an investor client on corporate governance matters of an issuer to which the proxy advisor provided consulting services; (ii) where an investor client of the proxy advisory

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2 Securities and Exchange Commission Staff Legal Bulletin No. 20 (IM/CF) (June 30, 2014), available at <http://www.sec.gov/interps/legal/cfslb20.htm>.

3 The Best Practice Principles for Governance Providers Group, *Best Practice Principles for Providers of Shareholding Voting Research & Analysis* (March 2014), available at <http://bppgrp.info/wp-content/uploads/2014/03/BPP-ShareholderVoting-Research-2014.pdf>.

firm submits a shareholder proposal that could be the subject of a favourable vote recommendation by the proxy advisor; and (iii) where a proxy advisory firm is owned by an investor client who invests in issuers in which the proxy advisory firm makes vote recommendations. We agree with the statement in the Proposed Policy that effective management and mitigation of these conflicts fosters independent and objective proxy advisory services to a client.

The Proposed Policy includes examples of practices that proxy advisory firms may consider to address actual or potential conflicts of interests. To achieve the intent of the Proposed Policy, we believe as a minimum standard that proxy advisory firms should adopt a code of conduct that sets standards of behaviour and practices of the organization and expectations for individuals acting on its behalf. Annual affirmation of compliance from all individuals acting on behalf of the proxy advisory firm and regularly reviewing the effectiveness of the code should also be expected as a minimum standard. We believe adopting a code of conduct demonstrates the organization's commitment to offering independent and objective services, fosters understanding across the organization and sets a tone of compliance at the top of the organization. To achieve the purpose of the Proposed Policy, the code of conduct, along with a description of other policies and practices to address conflicts of interest, should be disclosed and made available on the proxy advisory firm's website.

To minimize concerns about conflicts of interest and to maintain the independence of voting recommendations, we agree that proxy advisory firms are also expected to disclose any actual or potential conflict of interest. We also agree that the use of boilerplate language is insufficient and expect, as set out in the Proposed Policy, that the disclosure be specific and provide sufficient information to enable the client to understand the nature and substance of the conflict. We suggest revising the proposed language in paragraph 2.1(6) of the Proposed Policy to clarify that the nature of relationship or interest and the steps taken by the proxy advisory firm to mitigate the conflict should also be disclosed. This expectation is included in the SEC Staff Guidance.[4] Any disclosure must also be accessible and prominent – we suggest further revising the Proposed Policy to clarify that any actual or potential conflict of interest should be disclosed in the vote recommendation report (or provided another accessible way in connection with the report) to allow the client the opportunity to assess the reliability or objectivity of the voting recommendation. By way of example, the SEC Staff Guidance notes that the disclosure of conflicts "may be made publicly or between only the proxy advisory firm and the client."[5]

The Proposed Policy also encourages proxy advisory firms to consider designating a person to assist with monitoring compliance and assessing the appropriateness of the internal safeguards and controls to address conflicts of interest. We agree in principle with this concept and note that

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4 The SEC Staff Guidance states that, in that context, the disclosure should "enable the recipient to understand the nature and scope of the relationship or interest, including the steps taken, if any, to mitigate the conflict, and provide sufficient information to allow the recipient to make an assessment about the reliability or objectivity of the recommendation."

5 SEC Staff Guidance, *supra* note 2, Q&A ##11-13.

it is important for the compliance function (or the person responsible for compliance) has a role, authority and reporting relationship that is clearly defined. The best practice is for a compliance officer to have a direct reporting authority to the CEO and the board of directors (or equivalent body) so that the flow of information regarding compliance is not filtered or supressed before reaching the authority expected to be responsible for setting and preserving the culture of compliance. In order to properly monitor and assess compliance with conflicts of interest controls, we believe that the compliance function should be independent of the proxy advisory firm's research and advisory services. The compliance function should therefore not assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters. We note that a similar protocol exists in National Instrument 25-101 *Designated Rating Organizations* ("NI 25-101"). While NI 25-101 deals with credit rating organizations, the policy rationale regarding the compliance officer's independent function is instructive.[6] The compliance officer should be free to perform their duties objectively and without consideration to the company's operational functions and business prospects.

### 3. Dialogue between proxy advisory firms and issuers

We recognize that proxy advisors play a meaningful role in proxy voting process by assisting institutional investors in exercising their voting rights at shareholder meetings. Institutional investors use their reports as a resource in formulating their voting decisions. Smaller institutional investors who lack the internal resources to review several sources of research and analysis may rely heavily on the voting recommendations of proxy advisors. Retail investors may also be influenced by the voting recommendations that are subsequently published in the media. Further, a proxy advisory firm's voting recommendations can shift momentum for or against management or dissident shareholders in the context of contested meetings. As a matter of integrity and confidence in the capital markets, vote recommendation reports must be informed and contain accurate information.

Corporate governance cannot be properly evaluated without in-depth knowledge and understanding of the issuer, its board and management and the environment in which it operates. One opportunity for dialogue between proxy advisory firms and issuers occurs outside the proxy solicitation period while proxy advisory firms conduct research and engage with stakeholders to develop policy and voting guidelines. Such dialogue should be expected as a minimum standard as it provides context and clarification to matters of relevance to proxy advisory firms and on unique governance characteristics of certain issuers, which can improve proxy voting advice. We have taken note of the complaints from issuers and their advisors that companies are facing increasing pressure from proxy advisory firms to conform their governance practices to the "best" practice benchmarks established by those firms. In response, we believe that increased dialogue and engagement with issuers during the consultation phase will help issuers understand the proxy advisory firm's governance benchmarks and how these benchmarks are developed. We

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6 In particular, subsection 12(4) of NI 25-101 provides that a compliance officer must not, while serving in such capacity, participate in the development of credit ratings, methodologies or models.

therefore support the CSA's statement reminding issuers to engage constructively with their shareholders in respect of their corporate governance practices and proxy voting matters.

Executive compensation is an example of an approach that benefits from this type of dialogue. The board of directors (with the compensation committee) is responsible for determining compensation programs for executive officers that reflect the issuer's compensation philosophy and risk profile. Structuring long-term compensation plans that address individual motivational needs and company specific performance metrics is a complex process. As such, crafting a compensation package that conforms to a general standard or "best practice" on executive compensation may not be in the best interests of the issuer.[7] Increased dialogue with proxy advisory firms and investors and disclosure of the relevant factors that informed the executive compensation plan in the issuer's information circular can prevent the application of a "one-size fits all" voting guideline and lead to more informed proxy voting advice.

In respect of the preparation to vote recommendation reports for specific issuers, we would not suggest a minimum standard and agree with the guidance in the Proposed Policy allowing proxy advisory firms determine how they wish to engage with issuers in preparing vote recommendations. We believe that any engagement procedure during the vote recommendation process should balance the risk of undue influence by issuers lobbying for favourable recommendations, the additional costs imposed on proxy advisory firms, and the importance of disclosing accurate information for the integrity of the capital markets. If the proxy advisory firms has engaged with the issuer, we believe that they should disclose the nature and outcome of any dialogue or contact with an issuer in the preparation of the vote recommendations. A similar disclosure expectation is outlined in the EU Best Practice Principles.[8] We would also expect that proxy advisory firms identify the sources of any factual information contained in the report that is not contained in the issuer's public filings.

To manage the risk that a vote recommendation report may contain inaccurate issuer data, we believe there must be a process to correct the error before the report is disseminated to investors. One way to prevent factual errors or omissions in a proxy advisory firm's vote recommendation report is to encourage proxy advisors to provide issuers with an opportunity to review the draft report. We understand that Institutional Shareholder Services ("ISS") generally provides draft proxy analyses to companies in the S&P/TSX Composite Index for a fact checking review. This practice demonstrates that ISS recognizes the value in providing issuers with an opportunity to review draft proxy analyses. ISS does not, however, allow issuers to review drafts of any controversial or contentious agenda items covered by its reports. We believe that factual

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7 To illustrate this concern, we note that a 2012 study conducted in the U.S. found that 54.9% of respondents were influenced by the proxy advisory firms' public policies and vote recommendations on executive compensation. See *The Influence of Proxy Advisory Firm Voting Recommendations on Say-on-Pay Votes and Executive Compensation Decisions*, David F. Larcker, Allan L. McCall and Brian Tayan, *The Conference Board: Director Notes* (March 2012).

8 EU Best Practice Principles, *supra* note 3, at p. 18.

inaccuracies in proxy reports is most detrimental at meetings where there is a vote on a contentious issue. For example, the choice between a dissident's slate of directors and the incumbent directors has an enormous impact on the direction of the company. It is therefore imperative that the vote recommendations in these context not contain errors or inaccurate information.

Given that the integrity of the capital markets rests on providing investors with accurate information, we would expect that proxy advisory firms make a draft report available to issuers (and dissidents, where dissidents have prepared and mailed a circular to all shareholders) in advance of issuing the final report for the purpose of verifying the facts underlying the vote recommendation and correcting any substantive factual inaccuracies. We note that a similar "fact checking" procedure is already recommended in France.[9] As stated above, we agree with the CSA's expectation that proxy advisory firms publish on their website their policies and procedures regarding communications with issuers, which would include disclosing their policies on submitting draft reports for review.

**4. Automatic vote services**

The ability to vote is a fundamental part of a shareholder's ownership rights. Shareholder voting is an important way for shareholders to impact corporate governance, communicate preferences and signal confidence or lack of confidence in management. Our institutional investor clients devote considerable resources to engaging with boards, management and other stakeholders, reviewing information circulars and other continuous disclosure documents and voting their shares on an informed basis.

The introduction of majority voting for all TSX-listed issuers, in addition to the increasing number of shareholder proposals and governance matters put forward at a meeting of shareholders, including those with respect to special transactions and executive compensation, has resulted in large volumes of materials for investors to review. Smaller institutional investors may not have the resources to review and analyze several sources of proxy related material for every matter put forward to a vote at a shareholder meeting. These investors may therefore rely on a proxy advisory firm's automatic vote execution services based on the proxy advisory firm's proxy voting guidelines or a customized voting policy designed by the investor.

Although these services are a cost-effective way for investors to exercise their voting rights, an overreliance on a proxy advisor's vote recommendations has been identified as an area of concern. While we understand this concern, we do not accept the proposition from some commenters that some investors have blindly outsourced their voting discretion to proxy advisory firms. Institutional investors, such as pension funds, mutual funds and insurance companies, have stewardship responsibilities to their clients and beneficiaries and therefore have the ultimate responsibility for voting in the best interests of their clients. As such, we do not

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[9] Autorité des Marchés Financiers, AMF *Recommendation No. 2011-06 on Proxy Voting Advisory Firms* (March 18, 2011).

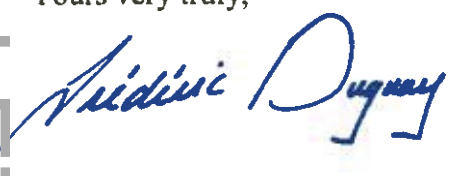
agree with the suggestion that automatic voting services be eliminated, confined to routine matters, or exclude issues where the proxy advisory firm issues a negative recommendation.

The SEC Staff Guidance outlines SEC Staff's view on this topic. In particular, SEC Staff confirm that investment advisers (such as fund managers) have an ongoing responsibility to "adopt and implement policies and procedures that are reasonably designed to provide sufficient ongoing oversight" and ensure that proxy votes are cast in accordance with their client's best interests. The SEC Staff Guidance provides examples of such policies and procedures, including measures requiring the proxy advisory firm to provide to the investment adviser updates about business changes that affect the proxy advisory firm's "capacity and competency to provide proxy voting advice," as well as changes in its conflict policies and procedures. [10]

In the Canadian context, to discourage rote outsourcing of voting discretion to proxy advisory firms, we agree with a policy, as suggested in the CSA Notice, that encourages proxy advisory firms to obtain confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines. We believe this type policy can promote active responsible voting and ensure that investors' views are in alignment with the proxy advisory firm's proxy voting guidelines. Whether proxy advisory firms should obtain such confirmation annually and/or following any amendments to the proxy voting guidelines should be determined by the client on a case-by-case basis. For example, to the extent that institutional investors have developed their own customised proxy voting guidelines, which are implemented by the proxy advisory firm, such a confirmation would not be necessary.

Thank you for this opportunity to comment on the Proposed Policy. If you would like to discuss this comment letter in further detail, please contact any of us.

Yours very truly,



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[10] SEC Staff Guidance, *supra* note 2, Q&A ##3-4.

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July 23, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
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Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Dear Secretary and Me Beaudoin:

We are writing to provide comment on proposed National Policy 25-201 (the "Proposed Policy").

Our own experience with the impact of proxy advisory firms on shareholder meetings indicates that the approach by Canadian Securities Administrators ("CSA") as contained in the Proposed Policy is inadequate. Specifically, by providing only 'recommendations' and 'guidance' to proxy advisory firms, the CSA appears to be relegating oversight of these firms to 'market forces', which is an anomalous result bearing in mind the CSA's regulatory mandate and the significant impact these firms now have on Canadian capital markets.

It is our experience that factual inaccuracies in proxy advisory reports are not uncommon. Inaccuracies are currently only (belatedly) addressed by proxy firms on an ad hoc basis, if at all and after proxies may be executed. Requiring proxy advisors to seek comment on draft reports from issuers prior to publication, and to include such comments in the proxy report, is a modest prescriptive step that would address the bulk of these inaccuracies going forward.

In addition, the standards adopted by proxy advisory firms are subjective, shifting, and frequently different between firms. Moreover, such standards are often adopted from jurisdictions outside Canada with

different capital market dynamics, and applicable provincial laws ignored by the advisory firms. Proxy reports do not disclose to subscribers the subjective or shifting standards applied by such firms, leading to confusion to shareholders as to the applicable standard and the extent to which it deviates from applicable law. By way of example, independence standards have been applied differently between advisory firms, leading to inconsistent recommendations between firms, and leaving issuers to guess how standards would be applied in their particular circumstances.

The CSA appears to be suggesting that issuers should provide greater commentary in their circulars to address *potential* or *perceived* issues raised by proxy advisory firms, but this does not address the problem when institutional shareholders do not fully read the circular and/or simply follow the recommendations contained in a report (which is an understandable result given the breadth and number of circulars such shareholders would need to review, particularly in the spring 'meeting season').

Of course, shareholder engagement is a remedy for many of the issues caused by the current dynamic with proxy advisory firms, however as the CSA well knows, it is not always possible for issuers to identify particular shareholders with whom it can engage. A mismatch therefore arises, where objecting beneficial owners ('OBOs') (who have not exceeded early warning report ('EWR') thresholds) receive 'information' regarding an issuer without providing an opportunity for the issuer to respond. Issuers are forced to hire firms to assist in shareholder identification in furtherance of shareholder engagement, an expensive undertaking for often imprecise results.

In summary, we suggest that prescriptive standards are necessary for this currently unregulated sector in the Canadian capital markets. Mere guidance or recommendations for proxy advisory firms leads to uncertainty and problematic results for issuers and shareholders alike.

At a minimum, requiring proxy advisors to seek comment on their reports prior to issuance, and to include such comments in their reports, should be mandated. Additionally, steps should be taken to permit fulsome engagement with shareholders receiving reports from proxy advisory firms, for instance by requiring OBOs who receive reports from proxy advisory firms to 'self-identify' with issuers, or reducing the EWR threshold to 5% from 10%.

We thank the CSA for the opportunity to comment on this draft policy and would be pleased to discuss in detail issues encountered in our most recent annual shareholder meeting that support our recommendations.

Sincerely,

[redacted]

Timothy Rorabeck
Vice President, Corporate Affairs
and General Counsel

Imperial Oil

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May 14, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Prince Edward Island
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

**Attention:**
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Corporate Secretary
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Dear Sirs/Madams:

**Re: Request for Comment on Proposed National Policy 25-201 Guidance for Proxy Advisory Firms**

Thank you for the opportunity to provide comments on proposed National Policy 25-201Guidance for Proxy Advisory Firms (the "Proposed Policy").

The Proposed Policy provides that "the guidance in this Policy is not intended to be prescriptive or exhaustive." In light of the significant role of the two dominant proxy advisory firms in establishing corporate governance guidelines, we believe that fairness requires that the guidelines either be prescriptive or, alternatively, that the firms must comply with the guidelines or explain on their website why they have chosen not to comply.

We support requiring the proxy advisory firms to make their voting recommendations in a consistent manner with respect to different issuers in accordance with published guidelines that are publicly available. The

guidelines should take into account issuers' differing circumstances, including whether they have a controlling shareholder.

We also support requiring the firms to publish proposed proxy voting guidelines and to offer market participants, including issuers, a reasonable opportunity to comment on those guidelines before they are put into effect.

Proxy advisory firms need to provide issuers with their voting recommendations and corporate governance analysis in advance to afford issuers a reasonable opportunity to correct factual errors or errors in the analysis under the firm's published voting guidelines before the recommendations and analysis are disseminated to the firms' clients.

Yours very truly,

Lara Pella
Assistant General Counsel and Corporate Secretary
Imperial Oil Limited

From: Doug Emsley
To: John Budreski, "consultation-en-cours@lautorite.qc.ca" <consultation-en-cours@lautorite.qc.ca>, "Comments@osc.gov.on.ca" <Comments@osc.gov.on.ca>,
Date: 22/06/2014 03:21 PM
Subject: RE: Request for Comment Regarding Proxy Advisory Firms.

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Please be advised that I support Mr Budreski's comment regarding the new policy document on Proxy Advisory Firms.

Regards

**Doug Emsley**
Chairman, CEO & President
Input Capital Corp.
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INCLUDES COMMENT LETTERS

Institut sur la gouvernance
d'organisations privées et publiques

# Avis de consultation des ACVM :

# Projet d'Avis 25-201 relatif aux indications à l'intention des agences de conseil en vote

**Présentation de l'IGOPP aux Autorités canadiennes en valeurs mobilières et à l'Autorité des marchés financiers en réponse à l'appel de commentaires sur le projet d'avis relatif aux indications à l'intention des agences de conseil en vote.**

**Le 16 juillet 2014**

Pour une gouvernance créatrice de valeurs MD

**Professeur Yvan Allaire**, Ph.D. (MIT), MSRC
Président exécutif du conseil
Institut sur la gouvernance (IGOPP)

yallaire@igopp.org

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Commission des valeurs mobilières du Manitoba
Commission des valeurs mobilières de l'Ontario
Autorité des marchés financiers
Commission des services financiers et des services aux consommateurs (Nouveau-Brunswick)
Superintendent of securities, Île-du-Prince-Édouard
Nova Scotia Securities Commission
Superintendent of Securities, Terre-Neuve-et-Labrador
Surintendant des valeurs mobilières, Yukon
Surintendant des valeurs mobilières, Territoires du Nord-Ouest
Surintendant des valeurs mobilières, Nunavut

**À l'attention de :** ***PAR COURRIEL***
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**À l'attention de :** ***PAR COURRIEL***
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## Avant-propos

Le conseil d'administration de l'Institut sur la gouvernance (IGOPP) a approuvé ce commentaire sur le projet d'avis relatif aux indications à l'intention des agences de conseil en vote.

M. Louis Morisset, président et directeur général de l'Autorité des marchés financiers s'est abstenu, conformément à la politique de son organisme.



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## INTRODUCION

Notre Institut a publié en 2013 une prise de position portant précisément sur le sujet des agences de conseil en vote. Cette prise de position, intitulée *Le rôle préoccupant des agences de conseil en vote ("proxy advisors"): quelques recommandations de politiques*, explique les fondements de notre réflexion. Plusieurs éléments de réponse aux questions soulevées dans l'Avis de consultation proviennent intégralement de cette prise de position. Aussi, nous la joignons en annexe au présent document pour que le lecteur puisse s'y référer facilement.

De façon générale, nous croyons qu'encourager les agences de conseil en vote à prendre des indications en considération lors de l'élaboration et la mise en œuvre de leurs pratiques est en soi louable, mais nettement insuffisant. En effet, des mesures **normatives sont requises** pour assurer un encadrement approprié des activités de ces agences qui bénéficient désormais d'une influence notable auprès de nombreux acteurs des marchés financiers.

Plusieurs sujets sont traités dans le cadre du Projet d'Avis 25-201. Nous les aborderons en répondant aux questions spécifiques formulées dans le cadre de l'avis de consultation.



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**QUESTION #1**

***Approuvez-vous les pratiques recommandées aux agences de conseil en vote? Veuillez fournir des explications.***

Afin de répondre adéquatement à cette question, il convient d'observer le projet selon les thèmes proposés.

*CONFLITS D'INTÉRÊTS*

Les mesures proposées aux sections 2.1.3 à 2.1.7 nous apparaissent insuffisantes pour éliminer les conflits d'intérêts, réels ou potentiels, qui pourraient résulter d'une situation décrite en 2.1.2. Ainsi, l'assertion proposée à la section 2.1.1 de l'Avis, qui se lit comme suit :

« *Il est essentiel de repérer, de gérer et d'atténuer efficacement les conflits d'intérêts réels ou potentiels afin de donner à l'agence de conseil en vote la capacité d'offrir des services indépendants et objectifs à un client*. »

devrait plutôt être libellée ainsi :

« *Il est essentiel de* ***prévenir*** *les conflits d'intérêts réels ou potentiels afin que l'agence de conseil puisse offrir des services indépendants et objectifs à ses clients* ».

Malgré la mise en place de cloisonnements, de «murailles de Chine», pour assurer qu'aucune communication ne filtre d'une unité à l'autre, des expériences concrètes, parfois très pénibles, vécues dans d'autres secteurs soulèvent des doutes quant à la sagesse d'une organisation comptant deux unités : l'une vendant des services à des sociétés qui peuvent bénéficier des « conseils indépendants » vendus aux investisseurs par l'autre, ou en souffrir.

La mobilité du personnel entre les deux unités, un phénomène normal dans toutes les entreprises, devient un problème dans le cas présent.



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Bien que l'on puisse souhaiter « établir et conserver une culture de conformité en matière de conflits d'intérêts », la réalité peut s'avérer fort différente. L'établissement de politiques et procédures, de contrôles internes ou d'un code de conduite formel, ne peut garantir l'étanchéité entre les unités d'affaires en cause. Idéalement, les agences de conseil en vote devraient fonctionner avec une structure de propriété typique des organisations professionnelles, comme les cabinets d'audit, qui, désormais, ne peuvent offrir de services de conseil en gestion aux sociétés pour lesquelles elles assument un mandat d'audit.

Qui plus est, une interdiction similaire a été imposée dans le cas des agences de notation.

L'article 17g-5 de la partie 240 des règlements généraux de la loi intitulée *Securities Exchange Act of 1934* énonce ce qui suit :

> *« (c) Interdiction de conflits.* ***Il est interdit*** *à un organisme de notation statistique reconnu au niveau national* ***de se trouver dans l'une des situations de conflit d'intérêts suivantes relativement à l'émission ou au maintien d'une note en tant qu'agence de notation*** *:….*
>
> > *(5) L'organisme de notation statistique reconnu au niveau national attribue ou maintient une note à l'égard d'un débiteur obligataire ou d'une valeur mobilière lorsque l'organisme de notation statistique reconnu au niveau national ou une personne associée à l'organisme de notation statistique reconnu au niveau national* ***a fait des recommandations*** *au débiteur obligataire ou à l'émetteur, au preneur ferme ou au commanditaire de la valeur mobilière* ***à propos de la structure juridique ou organisationnelle, des actifs, des éléments de passif ou des activités du débiteur obligataire ou de l'émetteur de la valeur mobilière.*** *» (nous soulignons)*



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Aussi, nous formulons la recommandation suivante :

- ***Les autorités de règlementation canadiennes devraient interdire aux agences de conseil en vote d'offrir des services aux sociétés à propos desquelles elle formule des recommandations de vote par procuration à ses clients institutionnels***

*TRANSPARENCE ET EXACTITUDE DES RECOMMANDATIONS DE VOTE*

Dans la section 2.2.1, il est mentionné qu'il « est important pour les participants au marché de comprendre la démarche de l'agence de conseil en vote pour arriver à formuler une recommandation de vote précise et d'évaluer la qualité de la recherche et de l'analyse qui la sous-tend. »

En effet, comme nous l'écrivions dans notre prise de position antérieure[1], il nous semble que le système des conseillers en vote présente des problèmes fondamentaux auxquels il faut apporter des réponses de manière urgente, notamment au niveau de leur modèle d'affaires.

Les conseillers en vote doivent relever un défi énorme. Puisque leurs clients, les investisseurs institutionnels, détiennent collectivement des actions dans toutes les sociétés cotées en bourse, les conseillers en vote doivent fournir des « conseils » pour toutes ces sociétés.

Selon le formulaire 10K de MSCI (société mère d'ISS), ISS fournit des résultats de recherche sur plus de 6 000 sociétés établies aux États Unis, et sur plus de 20 000 sociétés non américaines. Glass Lewis a fait de même pour quelque 16 000 sociétés! (Latham & Watkins LLP, mars 2011)

En 2009, on a compté plus de 20 000 propositions soumises au vote par les actionnaires pour les sociétés de l'indice Russell 3000; et cela, avant que les votes

[1] Allaire, Y. (2013) *Le rôle préoccupant des agences de conseil en vote ("proxy advisors"): quelques recommandations de politiques*. 7ième Prise de position de l'IGOPP – texte en annexe au présent document.



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consultatifs sur la rémunération des dirigeants deviennent obligatoires! (Source : Investment Company Institute, Research Perspective 16, no.1, novembre 2010)

Plus de 54 % des assemblées annuelles des actionnaires aux États-Unis ont eu lieu en avril, en mai ou en juin. (Council of Institutional Investors, 2010)

Au Canada, près de 1 570 sociétés sont inscrites à la cote de la TSX et 2 200 de plus sont inscrites à la Bourse de croissance TSX. L'exercice d'environ 84 % des sociétés inscrites à la cote de la TSX se termine le 31 décembre. Pour près de 80 % des sociétés inscrites à la cote de la TSX, il y a moins de 50 jours entre la date où les actionnaires reçoivent la circulaire d'information de la direction et la date de tombée pour les votes par procuration. (Recherche IGOPP, 2012)

Les agences de conseil en vote utilisent ces statistiques pour justifier leur utilité et promouvoir leurs services. Mais ces mêmes statistiques créent un problème fondamental pour ces fournisseurs de services et soulèvent des questions essentielles à propos de leur modèle d'affaires. Comment sont-ils capables de gérer toute cette masse d'information et de formuler des recommandations réfléchies et équitables sur des milliers de sociétés en quelques semaines au printemps de chaque année ?

Pour accomplir cet exploit, ils doivent recourir à l'une des deux mesures suivantes, ou à une combinaison des deux, lesquelles ne peuvent donner de bons résultats en toute circonstance :

1. Une grille standardisée, une sorte d'algorithme simplifié (souvent qualifiée d'approche « «one size fits all») au moyen de laquelle on évalue les sociétés à la fois pour leur gouvernance, leur conseil d'administration, leurs régimes de rémunération, et les propositions de leurs actionnaires.

2. L'embauche de personnel temporaire, de même que possiblement la sous-traitance du volet analytique du processus à des pays à faible coût, pour gérer l'avalanche de données du printemps; ce mécanisme de gestion de la surcharge de travail soulève le problème de la compétence et de la formation de ces employés à temps partiel.



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Cette situation, indéniable et incontournable, rend éminemment suspect tout le modèle d'affaires des conseillers en vote. Si seulement un dixième des sociétés traitées par les conseillers en vote exigeaient que des erreurs et des inexactitudes constatées dans les rapports les concernant soient corrigées, les conseillers en vote seraient incapables d'y donner suite, comme ils l'ont admis en toute franchise :

> *« Les demandes auxquelles ISS doit répondre durant la période des procurations peuvent se traduire par une absence de réponse directe de la part de l'agence, mais [le président d'ISS] a assuré les participants qu'il est tenu compte des commentaires reçus dans la mesure où l'information mise en cause a été publiquement divulguée. »*
>
> (Source: Audit Committee Leadership Network in North America View Points: ***A dialogue with Institutional Shareholder Services***, Issue 39 : 7 novembre 2012).

**Les clients des conseillers en vote devraient insister sur la divulgation de tous les détails pertinents des modèles d'affaires utilisés par les conseillers en vote** : employés à temps plein contre employés à temps partiel, situation géographique des employés, proportion du travail accompli dans des pays étrangers, formation des employés, etc.

De plus, les ACVM devraient exiger que les conseillers en vote **fassent rapport sur leurs politiques et pratiques en ce qui concerne la formation et l'expérience de leurs analystes**, un peu comme doivent le faire les agences de notation américaines :

La SEC a proposé les normes et les règles suivantes pour les agences de notation (autrefois connues sous le vocable Nationally Recognized Statistical Rating Organizations – NRSRO / Organismes de notation statistique reconnus au niveau national) :

> *« Conformément à l'article 936 de la Loi Dodd-Frank, la règle proposée exigerait des NRSRO qu'ils établissent des normes de formation, d'expérience et de compétence pour les analystes de crédit et qu'ils :*



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- *prennent en considération certains facteurs dans l'établissement de ces normes, par exemple la complexité des valeurs mobilières qui seront notées par les analystes ;*
- *procèdent à des examens périodiques des procédures et des méthodologies de notation que les analystes de crédit utilisent ;*
- *exigent qu'au moins une personne* ***avec au moins trois ans d'expérience*** *dans les analyses de crédit participe à la détermination de la note. » (nous soulignons)*

Il serait important que les conseillers en vote démontrent que les personnes chargées de produire des recommandations de vote à leurs clients institutionnels possèdent une expérience pratique du fonctionnement des conseils d'administration.

*COMMUNICATIONS AVEC LES CLIENTS, LES PARTICIPANTS AU MARCHÉ, LES MÉDIAS ET LE PUBLIC*

Les conseillers en vote donnent leur opinion sur presque tous les enjeux contentieux ou litigieux. Comme ces enjeux sont souvent soulevés en conséquence des actions de certains fonds spéculatifs activistes, l'opinion favorable d'un conseiller en vote, et d'ISS en particulier, constitue un atout hautement convoité dans l'argumentation des fonds activistes.

Les conseillers en vote formulent dans les faits des recommandations quant au prix offert dans le cadre d'une prise de contrôle ou quant au bien-fondé des arguments du fonds «activiste» qui propose des changements de gouvernance, de direction ou de stratégie. Ils en viennent ainsi à conseiller leurs clients institutionnels (et à tous les actionnaires, puisque leur opinion est largement répercutée dans les médias) de céder ou non leurs actions au prix proposé ou d'appuyer ou non les propositions du fonds «activiste».

Dans ces circonstances, nous recommandons que :

- ***Chaque fois que des conseillers en vote interviennent dans des situations de prise de contrôle ou de course aux procurations, leur avis devrait être accompagné d'une déclaration informant toutes les parties concernées, s'il***



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> ***y a lieu, que le conseiller en vote a agi comme consultant pour l'une des parties qui intervient dans l'opération au cours des deux dernières années.***
>
> En fait les autorités de réglementation canadiennes devraient adopter la suggestion formulée par Wachtell, Lipton, Rosen et Katz dans leur mémoire présenté à la SEC : « *On devrait exiger des agences de conseil en vote qu'elles dévoilent dans leurs recommandations si le conseiller a été dans un passé récent ou est actuellement engagé par l'un des participants à la course aux procurations visée, ou si l'une des parties intéressées dans une course aux procurations est abonnée aux services de l'agence de conseil en vote, de même que le total des honoraires versés par les parties intéressées à l'agence de conseil en vote ».*

Évidemment, si notre recommandation présentée dans la section portant sur les conflits d'intérêts était appliquée, celle-ci deviendrait sans portée pratique puisque les conseillers en vote seraient soumis à une interdiction générale d'agir en cette qualité.

**QUESTION #2**

***Y a-t-il des préoccupations qui ne trouvent pas de réponse dans le projet d'avis relativement aux agences de conseil en vote? Veuillez fournir des explications*.**

Le projet d'avis apporte peu ou pas de réponses à la problématique particulière soulevée par les questions de prises de contrôle ou de course aux procuration ou encore quant à la définition de ce qui constitue (aux yeux des agences de conseil en vote) une «bonne» gouvernance ou un système de rémunération adéquat.

Les conseillers en vote se sont construits une tribune du haut de laquelle ils font la leçon aux dirigeants d'entreprise et aux conseils d'administration sur tous les aspects de la gouvernance et de la rémunération ; ni investisseurs, ni conseillers en placement, ils détiennent néanmoins une licence pour formuler des recommandations à leurs clients, les investisseurs et gestionnaires de fonds sur tout ce qui touche à la gouvernance des sociétés par actions.



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Le principal acteur de ce marché, ISS, conseille aussi les entreprises sur comment celles-ci devraient s'ajuster aux avis qu'elle donne aux investisseurs institutionnels et comment elles devraient les mettre en œuvre.

Une question pertinente à cet effet a été formulée par un des intervenants lors de la Table ronde organisée par la SEC le 5 décembre dernier[2] :

> "The question really is whether, frankly, ISS which owns no stock should have the power of a $4 trillion voter, and I think that really is sort of the question that these regulatory quirks that we've been talking about have sort of led to. The policies that ISS adopts become de facto standards that everybody has to meet. […] The voting recommendations are the tip of the iceberg. What happens in the boardroom when everybody says, "Oh, ISS is not going to accept this so we're not going to do it," is the iceberg itself."
>
> TREVOR NORWITZ, Partner, Wachtell, Lipton, Rosen & Katz

**Il faut encadrer les activités et l'influence de ces conseillers en vote**. Leur rôle dans la définition de ce qui constitue une bonne gouvernance, un conseil d'administration efficace et une saine rémunération pour les dirigeants est hautement contestable. Ils publient des affirmations sur la gouvernance qui ne sont pas vraiment validées par de la recherche empirique. Ils ont à faire face à la logistique implacable du processus annuel des procurations à laquelle ils ne peuvent se soumettre que par des mesures insatisfaisantes, parfois carrément nocives.

Lors de situations où des agences de conseil en vote se prononcent dans le cadre d'une prise de contrôle, de courses aux procurations ou d'autres contextes litigieux, nous réitérons l'importance de la recommandation formulée à la question #1, sous le thème « *Communications avec les clients, les participants au marché, les médias et le public* ».

[2] U.S. Securities and Exchange Commission, Proxy Advisory Firms Roundtable, Thursday, December 5, 2013



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**QUESTION #3**

***Le projet d'avis favorise-t-il la communication d'information utile aux clients des agences de conseil en vote, aux participants au marché et au public? Dans la négative, quels autres éléments d'information devraient être ajoutés?***

À la section 2.4.2 e) de l'Avis, il est proposé que « [n]ous nous attendons à ce que l'agence de conseil en vote qui formule ses recommandations de vote à ses clients leur communique également l'information suivante dans ses rapports : [...] le cas échéant, la nature et l'issue du dialogue ou des échanges avec l'émetteur dans l'élaboration des recommandations ».

À notre avis, il serait important de connaître le délai de réponse accordé à l'émetteur, le temps requis pour formuler une réponse, le cas échéant, et l'explication de l'agence de conseil en vote si elle choisit de ne pas changer son avis (conseil) à la suite de l'échange avec l'émetteur (dans le cas où l'émetteur souhaitait qu'une modification soit apportée).

De façon générale, la nature et l'issue du dialogue ou des échanges avec l'émetteur dans l'élaboration des recommandations devraient être divulgués explicitement dans les rapports de l'agence de conseil en vote.

*En tout état de cause, les délais dont disposent les conseillers en procuration pour livrer leurs milliers d'avis en temps opportun à leurs clients font en sorte que ce type de dialogue est virtuellement impossible. C'est bien là une grande partie du problème.*



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**QUESTION #4**

***Nous encourageons les agences de conseil en vote à envisager de désigner une personne qui l'aidera à traiter les conflits d'intérêts. Devrions-nous aussi les encourager à faire en sorte que cette personne les aide dans la formulation de leurs recommandations de vote, l'élaboration des lignes directrices en matière de vote par procuration et les questions relatives aux communications?***

Tel que mentionné lors de la réponse à la Question #1, les agences de conseil en vote devraient avoir l'obligation de rendre publique toute situation de conflits d'intérêts réels ou potentiels, du moins si la réglementation ne permet pas de les éliminer formellement.

Pour ce faire, les agences de conseil en vote devraient être dans l'obligation de divulguer à leurs clients la liste de tous les clients des autres services de l'agence qui sont directement ou indirectement impliqués auprès de l'émetteur qui est le sujet des recommandations fournies par l'agence.

Dans le cas d'une prise de position lors d'un sujet litigieux ou particulier (prise de contrôle, course aux procurations, etc.), l'agence de conseil en vote devrait fournir la liste de ses clients parmi les fonds de couverture impliqués (et autres investisseurs institutionnels), en plus de tous les clients des autres services de l'agence qui sont directement ou indirectement impliqués dans la situation en question.

La proposition formulée par les ACVM représente un arrangement organisationnel qui ne règle rien.

**QUESTION #5**

***Nous nous attendons à ce que les agences de conseil en vote communiquent leur manière d'aborder le dialogue et les échanges avec les émetteurs dans l'élaboration de leurs recommandations de vote. Devrions-nous aussi les encourager à communiquer avec les émetteurs durant ce processus? Dans l'affirmative, quels devraient être les objectifs et la forme de ces communications?***



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Nous croyons qu'il est dans l'intérêt de toutes les parties qu'une communication ouverte existe entre les agences de conseil en vote et les émetteurs, ne serait-ce que pour réduire les risques d'inexactitudes potentielles. De façon générale, tel que mentionné en réponse à la Question #3, la nature et l'issue du dialogue ou des échanges avec l'émetteur dans l'élaboration des recommandations devraient être divulgués explicitement dans les rapports de l'agence de conseil en vote.

Enfin, il serait approprié que les agences de conseil en vote engagent le dialogue avec des émetteurs et autres parties ***avant d'adopter quelque mesure de gou*vernance devant leur servir d'étalon pour mesurer la qualité de la gouvernance des sociétés.** *Ces agences devraient également se montrer plus sensibles aux différences de contexte de la gouvernance d'un pays à l'autre.* Le Canada, par exemple, diffère des États-Unis sur certains aspects critiques. Ainsi, la notion du droit de suivi («coattail») qui caractérise presque toutes les sociétés canadiennes dont le contrôle est exercé par une classe d'actions à vote multiple n'a pas son équivalent aux États-Unis.

**QUESTION #6**

***Les agences de conseil en vote peuvent fournir aux clients des services de vote automatique reposant sur des lignes directrices en matière de vote par procuration. Devrions-nous les encourager à envisager d'obtenir la confirmation que le client a lu et accepté ces lignes directrices?***

Oui.

*Dans l'affirmative, devrions-nous les encourager à obtenir cette confirmation annuellement et après toute modification de ces lignes directrices?*

Oui. Nous sommes favorables à cette proposition. Elle nous semble s'inspirer du respect élémentaire dont tout gestionnaire de fonds devrait manifester envers ses clients.



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## À propos l'IGOPP

Créé en 2005 par deux établissements universitaires (HEC Montréal et l'Université Concordia-École de gestion John-Molson) ainsi que par la Fondation Stephen Jarislowsky, l'Institut sur la gouvernance (IGOPP) est devenu un centre d'excellence en matière de gouvernance. Par ses activités de recherche, ses programmes de formation, ses prises de position et ses interventions dans les débats publics, l'IGOPP s'est affirmé comme référence incontournable pour tout sujet de gouvernance tant dans le secteur privé que dans le secteur public.

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- Renforcer la gouvernance fiduciaire dans le secteur public et privé;
- Faire évoluer les sociétés d'une gouvernance strictement fiduciaire **vers une gouvernance créatrice de valeurs**[MD] ;
- Contribuer aux débats et à la solution de problèmes de gouvernance par des prises de position sur des enjeux importants ainsi que par une large diffusion des connaissances en gouvernance.

### Nos activités

Les activités de l'Institut portent sur les quatre domaines suivants:

- Prises de position
- Formation
- Recherche
- Diffusion des connaissances



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Institute of Corporate Directors
Institut des administrateurs de sociétés

June 23, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o M$^{e}$ Anne-Marie Beaudoin
Corporate Secretary
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800, square Victoria, 22e étage
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and

Mr. John Stevenson
Secretary
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**CANADIAN SECURITIES ADMINISTRATORS NOTICE AND REQUEST FOR COMMENT – PROPOSED NATIONAL POLICY 25-201 GUIDANCE FOR PROXY ADVISORY FIRMS DATED APRIL 24, 2014**

This letter is submitted on behalf of the Institute of Corporate Directors ("ICD") in response to the invitation to comment on the CSA's Proposed National Policy 25-201, Guidance for Proxy Advisory Firms.

The ICD is a not-for-profit, member based association with more than 8,700 members and eleven chapters across Canada. We are the pre-eminent organization in Canada for directors in the for-profit, not-for-profit and Crown Corporation sectors. Our mission is to foster excellence in directors to strengthen the governance and performance of Canadian corporations and organizations. This mission is achieved through education, certification and advocacy of best practices in governance.

This letter reflects the views of our Chapters across the country and has been approved by the National Board of the ICD.

**Summary of ICD Position**

While the ICD believes that the guidance provided by the CSA targets the appropriate issues, our letter focuses on three recommendations in areas where we feel guidance alone will not address the concerns held by many capital market participants regarding proxy advisory firms. First, a proxy advisory firm should be precluded from issuing a voting recommendation on a particular matter where that firm has provided consulting services to the issuer or the firm's investor-client or owner has a material interest. Second, the industry should be committed to a minimum-level of training for analysts and be required to disclose this training. Finally, proxy advisory firms should be required to discuss contrary recommendations with the issuer in advance of a report's completion and provide sufficient time for the issuer to include a response in the materials that are provided to the proxy advisory firm's clients.

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The ICD believes that the proxy advisory industry should be given one year to adopt these recommendations and failure to do so should result in regulatory intervention by the CSA.

**Context**

In August 2012, the ICD submitted a comment letter to the CSA in response to Consultation Paper 25-401[1]. In that letter, we made a series of recommendations we believe would help address the current disconnect between the influence of proxy advisory firms and a critical component of corporate governance, which is the exercising of voting rights by shareholders based on accurate and proper disclosure. We continue to believe that the pragmatic approach outlined in our earlier letter would help alleviate some of the tensions we are currently experiencing in our capital markets regarding the roles and responsibilities of proxy advisory firms.

In our opinion, the CSA's Proposed National Policy 25-201 targets the right concerns regarding proxy advisory firms and the ICD wishes to see the proxy advisory industry embrace the direction provided by the CSA. However, in three specific areas, we believe that guidance is insufficient.

Conflicts

The ICD is of the view that the guidance provided by the CSA and the internal procedures outlined by proxy advisory firms will be adequate in addressing many possible conflicts of interest. Indeed, one of the expectations imposed by the CSA - to disclose to clients any actual or potential conflict of interest - was also proposed by the ICD in our earlier letter.

However, we believe that in instances where the proxy advisory firm has provided consulting services to an issuer subject to a vote recommendation, disclosure is insufficient. As we did in our letter regarding CSA Paper 25-401, the ICD recommends that proxy advisory firms be precluded from issuing a voting recommendation on a

[1] https://www.osc.gov.on.ca/documents/en/Securities-Category2-Comments/com_20120820_25-401_magidsons.pdf

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particular matter where they have provided consulting services to the issuer or the firm's investor-client or owner has a material interest.

Standards of Training and Experience

A significant source of tension between issuers and proxy advisory firms is the quality of analysis informing vote recommendations. Concerns have been raised about the inexperience of proxy advisory firm staff who are required to analyze complex subject matter. Given the very high volume of vote recommendations prepared every proxy season by advisory firms, the risk for error is great. The impact of error can be even greater. Indeed, we are aware of many circumstances where voting recommendations of proxy advisory firms contained mistakes and inaccuracies.

Given the influence of proxy advisory firms' vote recommendations, it is important that capital market participants feel these firms are hiring qualified people with the skill-set required to engage with complicated analysis. The ICD believes the proxy advisory industry should be committed to a minimum-level of training for analysts whose work informs vote recommendations. Further, the proxy advisory firms should be required to disclose the extent of this training.

We would further recommend that proxy advisory firms reconsider their practice of issuing vote recommendations on intricate M&A transactions. These transactions require significant training and experience to properly analyze and we believe tensions could be reduced if proxy advisory firms vacated this space or, at minimum, invested the resources necessary to ensure competent people are conducting this type of analysis.

Dialogue with Issuer

At present, opportunities for issuer-proxy advisor engagement are severely limited. Proxy advisory firms point to their need to be independent and the risk of being influenced as reasons for not engaging with issuers during proxy season. This is counterintuitive: if a proxy advisory firm is truly independent, it should be able to conduct its due diligence, ask the right questions of issuers and engage in dialogue to ensure accuracy. Furthermore, the argument that increased issuer engagement would

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be too costly for proxy advisory firms is not convincing. In our view, accurate analysis is something for which clients should be willing to pay.

Still, we recognize that it would be very difficult to engage with issuers on every vote recommendation given the very high number of reports regularly produced by proxy advisory firms. In our response to CSA Paper 25-401, we advocated a pragmatic approach:

1. Where the proxy advisory firm intends to issue a contrary recommendation, it be required to discuss this with the issuer and share its report with the issuer before its completion and publication to voters; and

2. If the outcome of this process is still an intended contrary recommendation, the issuer be provided with sufficient time[2] if it wishes to do so, to include a response in the materials that are ultimately provided to the proxy advisory firm's clients.

We take the point made by the CSA in Proposed National Policy 25-201 that, despite contrary proxy advisory firm recommendations, issuers can engage directly with shareholders. However, even if it is later corrected, the damage of a contrary report – particularly one based on inaccurate analysis - is done as soon as it is issued. We believe the best course of action is to minimize the risk of mistake in the first place. This can be done through greater engagement in cases of contrary recommendations. We believe that a proxy advisory firm and an issuer can disagree on a vote recommendation but should never have to disagree on the facts.

Other

Our recommendations are an effort to achieve an accommodation between proxy advisory firms and issuers and to address tensions between the two parties. It is important to stress, however, that regardless of any changes or improvements to the practices of proxy advisory firms, they should not be viewed as a substitute for investors making their own decisions, doing their own due diligence and voting their proxies.

[2] The current 24 hour practice is insufficient.

It is also important to note that proxy advisory firms are part of a broader proxy voting system, which is also under review. We encourage the regulators to continue evaluating the integrity of the proxy voting infrastructure as outlined in CSA Consultation Paper 54-401, and to ensure guidance to proxy advisory firms align with the objectives detailed in that concurrent process.

Request for Comment

In respect of the specific questions in the Proposed National Policy, we believe they are addressed directly or indirectly in our letter above.

Conclusion

The proxy advisory industry has matured to a point where the sector is now a part of our capital markets. Considering the impact their recommendations can have on the financial and governance outcomes of public companies and, indeed, on our capital markets, the ICD believes there are significant opportunities to increase transparency and accuracy for the benefit of all market participants. The pragmatic approach we provide above will help to accomplish this.

In our view, the CSA should give the proxy advisory industry one year to adopt the approach detailed in this letter. If, after this time, the industry has not adequately adopted these recommendations, the CSA should intervene with formal regulation. We also recommend that the CSA adopt an electronic mechanism for receiving comments and concerns from market participants to track proxy advisory practice and market participant experience.

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The ICD commends the CSA for the quality of its paper and is pleased to have had an opportunity to provide you with our comments. If you have any questions, please contact the undersigned.

Yours truly,

Stan Magidson, LL.M., ICD.D
President and CEO

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**Superintendent of Securities, Prince Edward Island**
**Nova Scotia Securities Commission**
**Superintendent of Securities, Newfoundland and Labrador**
**Superintendent of Securities, Yukon Territory**
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Email submissions: consultation-en-cours@lautorite.qc.ca
comments@osc.gov.on.ca

Toronto, June 21, 2014

**Subject: CSA Notice and Request for Comment**
**Proposed National Policy 25-201 Guidance for Proxy Advisory Firms**

Dear Sir/ Madam,

ISS is a leading provider of corporate governance solutions to the global financial community, including corporate governance analysis and voting recommendations for institutional investors. More than 1,300 clients rely on ISS' expertise to help them make more informed voting decisions.

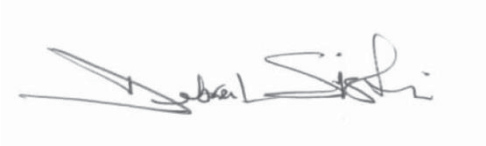
We have almost 30 years' experience in this field and our team of more than 600 research, technology and client service professionals are located in financial centers worldwide, including across Canada and North America. ISS has been a long-standing member of the corporate governance community in Canada since 1985 through Fairvest Securities which ISS acquired in 2002 (and which is now known as Institutional Shareholder Services Canada Corp.).

We welcome the opportunity to respond to the CSA Proposed National Policy on Proxy Advisory Firms and to further provide CSA and all interested market participants with our views on transparency, disclosure, communication, and our practices, as they relate to the questions posed within the Proposed Policy.

We hope that you will find our comments and suggestions useful, and we are available if you would like to discuss anything in further detail.

Sincerely,

Martha Carter,
Managing Director, Head of Global Research, ISS
Martha.Carter@issgovernance.com



Debra Sisti,
Vice President, Head of Canadian Research, ISS
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**ISS Responses to CSA Proposed Policy**
**Proposed National Policy 25-201 Guidance for Proxy Advisory Firms**

In response to the CSA's request for feedback on the Proposed Policy generally, as well as responses to specific questions, ISS is providing the below comments. We offer general feedback on the Proposed Policy, and subsequently, our feedback on the six questions highlighted therein. The structure of our responses follows the same order of questions as posed by the CSA Request for Comment.

***General Comments on Proposed Policy***

The stated purpose of the Proposed Policy is to set out recommended practices for proxy advisory firms in relation to the services they provide to their clients, and to provide guidance designed to promote transparency and foster understanding among market participants.

As a provider of governance research, voting recommendations and voting services with close to 30 years of experience, ISS has served its clients and the corporate governance community through its robust and transparent development and application of global proxy voting guidelines, its broad range of choices for clients' services, along with its participation in the corporate governance engagement process that has increased significantly in recent years.

ISS provides services to its institutional investor clients that assist them in making more informed voting decisions, in managing the complex operational process of voting their shares (proxy voting) and in tracking and reporting their voting activities as they may require (or desire).

As a client–first organization, our global team is dedicated to serving our clients. As part of its services providing governance research and voting recommendations, ISS provides and implements on behalf of its clients a variety of voting policies, providing choice and different options reflecting both regional and market differences, and the differing views and requirements of institutional investors.

Globally, ISS manages and applies over 400 custom policies for clients. These customised voting policies reflect each investor's unique governance philosophies and approaches to proxy voting. Over 75 percent of our top 200 clients subscribe to at least one custom research policy service from ISS.

ISS has a large integrated global research team of more than 250 research and data professionals located in Europe, North America, Asia, and Australia, in total speaking more than 25 different languages and with wide expertise across the markets they cover.

In Canada, our team, which is based in Toronto, provides services to approximately 67 Canadian institutional clients and covers approximately 2,500 Canadian

companies annually. We are involved in roundtables and working groups with other market participants, including institutional investors and member organizations, corporate issuers and their advisors, regulators, academics, and experts from the legal and accounting communities.

Our aspiration and goal is to serve our clients with their full trust and confidence. We earn and retain this trust by providing high quality services, which are understood by our clients to rest upon high degrees of transparency, objectivity, and independence. Through our services, ISS also helps institutional investors understand corporate governance practices and requirements in many different markets worldwide.

Thus, ISS' goal of providing transparency and in engaging with market participants is consistent with the stated purpose of the Proposed Policy.

1. ***Do you agree with the recommended practices for proxy advisory firms? Please explain.***

ISS agrees in principle with the fundamental tenets of the Proposed Policy. ISS has developed and utilizes a robust approach to manage potential conflicts of interest in specific areas, highlighted below. Additionally, we practice the general provisions of transparency, disclosure, and communications as outlined in the proposal.

Conflicts of Interest

With respect to the management of potential conflicts of interest, ISS has adopted and publicly discloses its conflict of interest policies, which detail ISS' procedures for addressing potential or actual conflicts of interest that may arise in connection with the provision of services.

ISS provides its clients with an extensive array of information to ensure that they are fully informed of potential conflicts and the steps ISS has taken to address them. Among other things, ISS supplies a comprehensive due diligence compliance package on its website[1] to assist clients and prospective clients in fulfilling their own obligations regarding the use of independent, third-party providers of proxy voting research and voting services. This package includes a copy of ISS' Regulatory Code of Ethics, a description of other policies, procedures and practices regarding potential conflicts of interest and a description of the business of its corporate affiliates, including ISS Corporate Solutions ("ICS"), the ISS subsidiary which provides products and services to corporate issuers.
ISS has implemented a "firewall" structure, consisting of physical and technological separations designed to mitigate potential conflicts of interest between its

[1] See : http://www.issgovernance.com/compliance/due-diligence-materials/; see also Appendices I and II hereto

institutional proxy research and voting business and the separate work of ICS. Each proxy voting analysis and research report ISS issues contains a legend indicating that the subject of the analysis or report may be a client of, or affiliated with, a client of ICS. Institutional clients who wish to learn more about the relationship, if any, between ICS and the subject of an analysis or report are invited to contact ISS' compliance department for relevant details. ISS believes that these extensive measures combining for segregation, while also giving transparency to our institutional clients, gives those clients a high degree of comfort that ISS has eliminated or is effectively managing potential conflicts of interest.

Transparency and accuracy of vote recommendations

ISS implements practices to promote transparency and accuracy of vote recommendations.

A hallmark of the process that ISS follows to develop its proxy voting guidelines is the significant outreach it performs on an annual basis. ISS is transparent and inclusive during its annual review and update of ISS' voting policies. We invite many participants in the capital markets, including investor clients, issuers, advisers, and regulatory agencies to provide feedback and insight on the previous voting season and to help formulate policy for the coming season. We also provide a public comment period to capture final input prior to finalizing policy changes. Once finalized, we place our updated policy set on ISS' public website making it transparent and available to everyone.

ISS' quality controls are designed to ensure high levels of accuracy, quality and timeliness in the research and voting process. ISS has dedicated internal employees who provide periodic reviews and assessments on the processes and procedures across the firm's business units.

In addition to internal controls, we further rely on the reviews conducted by an outside auditor during the SSAE 16 process (previously SAS70 type II). ISS' most recent SSAE 16 audit report includes a comprehensive accounting of all control objectives and the activities that are executed in order to support each assertion. The processes of both the ISS Research and Operations teams are subject to the SSAE 16 review.

ISS has in place robust systems and controls designed to ensure the quality of our proxy research and analysis, including that it is relevant, accurate and reviewed by appropriate personnel prior to publication. These include:

- Comprehensive information procurement processes for company-published information and meeting documentation;
- Data consistency checks;

- Voting research reports and recommendations are prepared by appropriately trained analysts;
- Research reports and recommendations are reviewed by one or more separate analysts with relevant expertise;
- In some markets, ISS at its discretion may also provide companies with an opportunity to review a draft analysis to further check factual accuracy (see Principle 3).
- In instances where new material information becomes available after an ISS report has been published and before investor voting deadlines, or where any factual inaccuracy that warrants correction is drawn to our attention, ISS promptly issues an alert and an updated report to its clients.

Development of proxy voting guidelines

ISS does not rely on a "one-size-fits-all" approach to serve its clients. Rather, our policies are often set up as a framework within which an issue is analyzed , with an articulation of factors used in the analysis of each situation on a case-by-case basis. In addition, most of the ballots that are processed through our voting system reflect client-instructed or customized approaches to voting decisions.

ISS' benchmark policies (or "house" view) are based on generally accepted principles of good corporate governance, taking into account national and international corporate governance codes and practices, and investor and other stakeholder views. ISS relies on its regional and local market expertise to develop market-specific policies that reflect the varying regulatory standards and differing market-based practices. Specifically, the approach in Canada is to build on our lengthy history of developing voting policies within the context of Canadian regulation and based on Canadian corporate governance standards formulated or broadly accepted by investors and investor industry organizations such as the Pension Investment Association of Canada and the Canadian Coalition for Good Governance. By means of individual institutional client meetings and larger roundtable discussions, some of which include corporate directors, ISS obtains issue specific input from its Canadian institutional client base as well as the views expressed by company board members. ISS also engages with a number of other Canadian market participants, including academics and other subject matter experts, to obtain feedback with respect to specific policy issues.

ISS implements a variety of proxy voting policies reflecting the differing views of our varied client base. In addition to our benchmark policy guidelines, ISS offers "specialty" guidelines such as our "Socially Responsible Investment" and "faith based" policies. More significantly, for clients representing over 60 percent of the aggregate assets held by all of our clients, ISS manages and applies over 400 custom policies. These customized voting policies reflect clients' unique governance and proxy voting philosophies. As a result, the vote recommendations issued under

these policies may well differ from those issued under our benchmark policies. We estimate that a significant majority of shares that are voted by ISS clients fall under custom or specialty policies provided to ISS by our institutional clients.

Regardless of whether our client subscribes to a benchmark or custom policy-based service, the ultimate voting decision for each resolution at a company meeting remains the responsibility of the client, as we believe it should, in keeping with their fiduciary responsibilities.

Communications with clients, market participants, the media and the public

ISS is committed to dialogue with issuers, shareholder proponents and other stakeholders to gain the greatest possible insight for our institutional clients.

In addition to its extensive outreach during the policy process, ISS' research teams interact regularly with company representatives, institutional shareholders, shareholder proponents and other parties in order to gain deeper insight into many issues and to check material facts relevant to our research. Topics discussed can range from general policy perspectives to specific voting items. As a research organization, we welcome constructive dialogue on critical issues that helps to ensure a full understanding of the facts and circumstances, which will in turn inform our research analyses and voting recommendations.

ISS is pleased to assist accredited journalists covering stories of interest to our clients, financial market participants, and the broader public, through the provision of general corporate governance data and, where appropriate, shareholder voting research providing ISS' benchmark policy recommendations. Select governance, compensation, and proxy voting data, including that drawn from ISS' Governance QuickScore, ExecComp Analytics, and Voting Analytics, can be made available to accredited journalists via ISS' Data Desk.

ISS' research reports and voting recommendations are for the benefit of our institutional clients. Accordingly, ISS will only make available research reports to the media on a limited basis, only upon request and only in situations where ISS believes that the release of the report will help clarify confusion in the market as to the contents of a particular report. When provided, research reports will never be made available to the media prior to their dissemination to our clients, and ISS staff will generally not comment on company specific situations in advance of a shareholder meeting. Further, ISS does not issue press releases with respect to its voting recommendations.

Corporate Governance Practices

For our benchmark policies, the majority of policies are set up as a framework within which an issue is analyzed, with an articulation of factors that will be addressed in the evaluation of each situation on a case-by-case basis. In addition to our benchmark policies, as has been previously stated, ISS implements a variety of proxy voting policies reflecting the differing views of our varied client base. Many clients who subscribe to our benchmark policy recommendations review and analyze our research but ultimately decide to vote differently from our recommendations – instead voting in line with their own investment and governance philosophy and their own company engagement activities in any particular situation.

It is also important to recognize that ISS' clients use our proxy research and vote recommendations in a variety of ways. ISS' research and vote recommendations are just one of many resources that investor clients use in arriving at their voting decisions. Many institutional investors have internal research teams that conduct proprietary research and use ISS research to supplement their own work. Some clients use ISS research as a screening tool to identify non-routine meetings or proposals. A number of our clients use the services of two or more proxy advisory firms.

ISS supports the CSA's guidance to issuers to remind issuers that they may engage with their shareholders, who have the ultimate responsibility of determining how to exercise their right to vote. In addition, ISS is pleased that the CSA has recognized proxy advisory firms' willingness to respond to concerns and to change some of their practices. ISS has engaged with regulators and working groups on a global basis. In 2014, the Financial Services Agency (FSA) in Japan released its newly created investor stewardship code. ISS was a part of the committee that oversaw the drafting of the code. In Europe, ISS was a participant in the industry initiative recommended by the European Securities Market Authority (ESMA) to develop its own Code of Conduct. The Best Practices Principles for Providers of Shareholder Voting Research & Analysis[2] were published in March 2014 and ISS released its Statement of full compliance to the principles and their related guidance on 10 June 2014[3].

ISS will continue to act as a responsible participant in the market, as we carry on with our decades-long mission of providing our clients with high quality independent research and corporate governance services.

[2] See: http://bppgrp.info/?page_id=200

[3] See: http://www.issgovernance.com/compliance/due-diligence-materials/

**2. *Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.***

ISS does not add any concerns not covered in the Proposed Policy. However, we would like to reiterate our support for the CSA's point that issuers should reach out in a constructive and meaningful way to their shareholders, not just to solicit a vote for their proposals, but to engage with their owners about all facets of their investment in the company. The spirit in which the CSA promotes transparency and communication depends on an active ownership base and the willingness of companies and their boards to engage with shareholders.

ISS also emphasizes that the use of proxy advisors positively assists institutional investors in carrying out their fiduciary obligations and stewardship responsibilities to vote in an informed manner across what may be highly diversified portfolios. ISS' clients differ in terms of investment strategy (active vs. passive), horizon (long- vs. short-term) risk tolerance, and other factors. Accordingly, our clients use our governance research and vote recommendations in a variety of ways to arrive at their own final voting decisions. ISS' research, data, and vote recommendations may be just one of many resources that clients draw upon. Many firms have internal research teams that conduct proprietary research and use ISS research to supplement their own work. Some clients use ISS research as a screening tool to identify non-routine meetings or proposals. A number of our clients use the services of multiple proxy advisory firms.

Below is a summary of some of the key ways in which institutional investors are assisted by ISS' proxy advisory services:

- First, ISS closely follows key developments in company law and corporate governance in over 100 developed and emerging markets worldwide. It keeps its clients up-to-date with corporate governance developments, offering specialist insight.

- Second, it is not always easy for global investors to have a complete understanding of all local market practices across what may be highly diversified global investment portfolios. While ISS' research is based on widely accepted standards in international corporate governance, we make sure local market practices are highlighted and taken into account, and our clients therefore receive informed analyses and recommendations taking into account local as well as global good practice principles.

- Third, most investors do not have the necessary resources to follow and closely analyze all shareholder meeting announcements or have access to all materials on shareholder meetings, often published in local languages. To service these needs of our clients, we have a dedicated team of global procurement professionals and governance analysts with experience in the

process of acquiring, processing and analyzing meeting information in over 100 developed and emerging markets worldwide. Each year we cover more than 40,000 meetings globally for our clients.

Without proxy advisors providing specialized expertise, efficiency and scale, we believe that many investors would be severely hampered in carrying out their responsibilities and undertaking informed voting across their portfolios.

It should also be reiterated that the ultimate voting decision for each resolution at a company meeting remains the responsibility of the investor, as we believe it should, in keeping with their fiduciary responsibilities. It is common among our clients who subscribe to our benchmark policy recommendations to focus their attention on ISS' research analysis but ultimately decide to vote differently from ISS' recommendations, in line with their own investment and governance philosophy and company engagement activities in any particular situation.

**3. Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?**

ISS has a long and significant history in providing robust disclosures in the market. These disclosures include our policy process and policy guidelines, as well as information to clients to allow them to conduct their due diligence on potential conflicts of interest. We believe that the information provided to our clients and to the market is broad in scope and detailed in content.

In the Canadian market, our disclosures to clients and the public are consistent with our global framework. Specifically, we provide the market with disclosed policy guidelines applicable to TSX company meetings and a separate set of policy guidelines applicable to TSXV company meetings. These Canadian voting guidelines are supplemented with FAQs on specific topics such as executive compensation and engagement. The front page of each Canadian Proxy Advisory Service (PAS) research report includes the email contact address for ISS Canada Research and the name of the primary contact(s). Every PAS research report contains a statement that the subject issuer may have purchased self-assessment tools and publications from ICS and a link is provided for the client subscriber to make further enquiry related to any issuer's use of products and services provided by ICS. In addition, every Canadian PAS research report contains a link to the appropriate Engagement FAQ, as well as a link to the ISS Feedback Review Board where comments, concerns and feedback may be submitted by any interested party.

In addition, ISS was a member of the Drafting Committee on best practices for proxy advisors recommended by ESMA. The annual compliance statement, submitted on June 10, 2014, provides significant disclosure to the market on our policies, processes, and procedures. The statement clearly articulates how ISS fully complies with all three principles and their related guidance on service quality, conflicts-of-interest management and communication policy with issuers, shareholder proponents, other stakeholders, media and the public. As such, we do not believe that additional disclosures beyond our current practices are needed at this time.

***4. We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?***

ISS believes that no one person could or should be responsible for a firm's conflicts of interest processes, vote recommendations, development of guidelines, and communication matters. In order to maintain its role as an independent overseer, the compliance function should be separated from the operational functions and decision making on policies and vote recommendations.

ISS recognizes the importance of addressing potential conflicts of interest that may arise during the course of business for any advisory firm. ISS has robust policies and procedures to ensure the integrity of our research process. ISS is registered with the U.S. Securities and Exchange Commission as an Investment Adviser under the Investment Advisers Act of 1940 (the "Act"). We have a comprehensive global compliance program, which resides in the Compliance function, headed by our General Counsel and Chief Compliance Officer. ISS also undertakes and is subject to periodic SSAE-16 audits (see Quality of Research section above for further details).

As a Registered Investment Adviser in the United States, ISS is required to make certain public disclosures, such as information regarding the types of governance research and other services provided, its methods of analysis, and its internal compliance program, including how potential conflicts of interest are addressed. ISS has adopted a Regulatory Code of Ethics to address requirements under the Act.

All ISS employees are bound by and are required to adhere to the Regulatory Code of Ethics. On an annual basis all employees are required to review and acknowledge their understanding of and adherence to the Code. Among other things, the Code describes the standards of conduct that the company's employees must follow, including treatment of confidential information, recordkeeping, and other matters. With regard to the standards of conduct, the Code affirms ISS' relationship of trust with its clients and obligates ISS to carry out its duties solely in the best interest of clients and free from all compromising influences and loyalties. The Code also

contains provisions designed to prevent ISS' employees from improperly trading on inside information.

The Code devotes special attention to preventing and disclosing conflicts of interest. In this regard, the Code addresses the potential conflicts between the company's proxy advisory services and other services provided by subsidiaries or affiliates, conflicts within the institutional advisory business, conflicts arising from an analyst's stock ownership, conflicts in connection with an issuer's review of a draft ISS shareholder voting research and analysis, and conflicts generally. In each case, the goal of the Code is to prevent conflicts wherever possible, and more generally to manage and disclose potential or actual conflicts.

In addition to its Regulatory Code of Ethics, ISS has developed a General Code of Conduct. The General Code of Conduct is a broad-based "good practices" code that provides a framework to address general corporate policies and practices that apply to ISS as a global business. The areas covered in the General Code include:

- Acting in the best interests of clients, the firm and the public;
- Advancing and protecting the firm's interests;
- Protecting and preventing the misuse of confidential and inside information;
- Responses to and cooperation when dealing with investigations, inquiries and complaints;
- Disclosure of Outside Activities;
- Reporting Misconduct; and
- Consequences of Violating the Code.

Employees are trained on the content of the General Code of Conduct, and are required to certify their adherence.

The development of policy guidelines and determination of vote recommendations resides with the Global Research team.

ISS' research team consists of more than 250 data collection experts and research analysts worldwide, fluent in 25 languages, and many with advanced degrees in finance, business, and law. Much like the structure in the financial institutions we serve, our research group includes market-based and sector-based analysts as well as teams that focus on custom research and custom policy development.

The research team includes experience in investment banking, mergers and acquisitions, remuneration consulting, corporate actions, corporate responsibility and regulatory compliance. The majority of analysts are nationals or fluent in the language of the country they cover, with relevant expertise. In major markets, research teams may be segmented into sector and issue teams to provide the best possible coverage of complex meeting items, particularly as best practices can vary across markets and sectors. ISS analysts also possess in-depth knowledge of country

codes of best practice, remuneration practices and the role of government and industry associations in setting global governance standards.
Through our services, ISS also helps institutional investors understand corporate governance practices and requirements in many different markets worldwide. In 2013, ISS covered more than 40,000 shareholder meetings in over 115 developed and emerging markets worldwide for our clients. ISS global coverage includes all meetings for which our clients hold a ballot[4]. ISS also provides research and other market information on corporate governance practices and trends, portfolio screening and corporate governance assessment tools and other services, all of which may assist clients in their wider ownership activities and responsibilities.

Communication matters are under the function of the Marketing and Communications team. They are responsible for the interaction with the public and the media, along with the dissemination of materials and information out to the marketplace. ISS views the current organizational structure as optimal to serve our clients and provide information to the public.

***5. We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?***

For ISS, the sole purpose of the dialogue with companies is to improve the quality and substance of ISS' meeting analyses, research and vote recommendations. ISS does not aim to influence companies' corporate governance arrangements (other than through improved understanding of good corporate governance practices) through engagement activities. Participants in the dialogue can expect an informed dialogue with experienced ISS representatives on matters of relevance to our research and recommendations, and which may also include information about ISS' policies and procedures. Further, participants can expect that ISS wishes to have the most complete and accurate information upon which to base our research and recommendations to our clients.

In order to ensure consistency, transparency and quality in our interactions with issuers, industry groups, shareholder proponents and other financial market stakeholders, ISS has a set of principles that guide our engagement. We make our approach to such engagement public[5]. Our goal is to facilitate productive and informative dialogue, and to help all stakeholders understand what they can expect from engaging with us.

[4] For the vast majority of meetings, ISS produces research while for some other meetings, ISS is only tasked to procure the meeting materials and to codify the meetings' resolutions.
[5] See: http://www.issgovernance.com/contact/faqs-engagement-on-proxy-research/

**6. A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?**

ISS has a contractual relationship with all of its clients, which specifies the details of the products and services to be provided. In that agreement and throughout the on-going relationship between ISS and its clients, the clients make the determination on which proxy voting guidelines to use, how often to review them, and how they want to confirm their guidelines, in order to ensure that they meet their fiduciary obligations.

Our clients select the voting policy (or policies) that best support their investments or that of their clients – whether benchmark, specialty or client custom policies – and choose how they would like to refresh and update their guidelines. Through the significant outreach that ISS performs in the policy setting process, clients have ample opportunity to express their views and decide on their own voting guidelines. ISS annually updates its clients on any benchmark policy changes, by announcing its changes in November for the coming year. At any time, clients can change their policies and make any modifications to the application of those policies.

Increasingly, institutional investors are under a legal, fiduciary and/or contractual obligation to publicly disclose their voting records. ISS provides a Voting Disclosure Service (VDS) to help institutional investors disclose their voting policy and voting records to all appropriate stakeholders. Stakeholders can easily search and view the voting records disclosed for each security in each portfolio[6].

<u>Conclusion</u>

While we firmly believe that the ultimate responsibility to monitor investments and make voting decisions lies with investors, we also believe that proxy advisors such as ISS play a valuable role in helping institutions make informed ownership and voting decisions. ISS strives to do so by providing high quality services, which are understood by our clients to rest upon high degrees of transparency, objectivity and independence.

ISS would again like to thank CSA for the opportunity to comment on the Proposed Policy. We hope that you will find our comments and suggestions useful, and we are available if you would like to discuss anything in further detail.

6 See : http://www.issgovernance.com/governance-solutions/proxy-voting-services/vote-disclosure-services/

**APPENDICES**

- **Appendix I** links to ISS' due diligence package and policies
- **Appendix II** ISS' Business Practices & Principles

**Appendix I**

For ISS' comprehensive due diligence package including on conflicts of interest available on our public website please see: http://www.issgovernance.com/files/ISSDueDiligenceCompliancePackage20110413.pdf; Please also see http://www.issgovernance.com/practices

For ISS Canadian Policy please see: http://www.issgovernance.com/file/2014_Policies/2014CanadianPolicyUpdates.pdf. Please also see: http://www.issgovernance.com/policy for further background on the ISS Policy Formulation Process. For further background on the ISS Policy Formulation Process please see: http://www.issgovernance.com/policy

**Appendix II**

**ISS' Business Practices & Principles**

ISS' aspiration and goal is to serve our clients with their full trust and confidence. We earn and retain this by providing high quality services which are understood by our clients to rest upon high degrees of transparency, objectivity, and independence.

We understand and take seriously the potential for real or perceived conflicts of interest which may result from our many business activities.

**And so we proudly live by the following fundamental tenets:**

- We place our clients' interests first and above our own.
- We never use, leverage, or favor a relationship with one client to the deliberate disadvantage of another.
- All aspects of our research, and all proxy voting policies and vote recommendations, are based on fair, thorough, independent, and objective analysis, without regard to any economic or other inappropriate pressure.
- We disclose and explain information about our internal processes, methodologies, and analytics used in the development of our services, our voting policies, and our voting recommendations.

- We take strong measures to safeguard client information.
- We believe transparency is an essential keystone of trust
- We disclose real or potential conflicts of interest.
- Ultimately, we are guided by this most basic tenet: Do the right thing.

These principles are embedded deeply in our culture and in the policies we develop, the procedures we follow, the decisions we make, and the actions we take every day. We do not and will not tolerate their breach, whether due to conscious action, complacency, indifference, or lapse of ethical judgment.

**De :** Jack C. Lee [redacted]
**Envoyé :** 19 juin 2014 13:27
**À :** John Budreski
**Cc :** Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** Re: Request for Comment Regarding Proxy Advisory Firms.

Further to the letter written to you by John Budreski regarding proxy advisory firms, I support the comments and recommendations made therein.
I am a past President and Chairman of Acclaim Energy Trust, Chairman of Canetic Energy Trust, Vice Chair of PennWest Energy Trust, current Chair of Alaris Royalty Corp., Ithaca Energy Inc
and Lead Director of Sprott Inc. I have had personal dealings with proxy advisory firms and am particularly concerned with the conflict of interest issue and their "one size fits all" method of
evaluation.

Regards,

Jack Lee

**De :** Jeff Kennedy [mailto:jkennedy@cormark.com]
**Envoyé :** 20 juin 2014 15:04
**À :** Consultation-en-cours; John Budreski; Comments@osc.gov.on.ca
**Objet :** Re: Request for Comment Regarding Proxy Advisory Firms.

OSC/AMF

I would like to add my name in support of the position articulated by John Budreski in the attached comment letter in response to CSA Notice 25-201. Like John I have been in the industry for over 25 years in capacities ranging from operations, Chief Financial Officer, Investment Banking, and Head of Equity Capital Markets.

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**John P. A. Budreski**

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Corporate Secretary
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The Secretary
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Email: Comments@osc.gov.on.ca

Dear Me Beaudoin and the Secretary of the OSC;

**RE: Proxy Advisory Firms**

I am writing in response to the CSA/AVCM Notice and Request for Comment regarding National Policy 25-201 *Guidance for Proxy Advisory Firms*. This submission is directed to all members of the CSA. I am writing this submission as an individual and as an active and experienced participant in Canada's capital markets.

I am vehemently opposed to your Proposed Policy. This policy as currently envisioned falls far short of what is required for the proper and healthy functioning of Canada's public corporations and publically traded markets. The system, as it currently functions, is creating serious problems and needs to be fixed. While there are simple and effective remedies for these problems, it will take more than a prescription for "guidance" from the securities regulators.

The Proposed Policy can be summarized as follows:

i) identify and disclose conflicts of interest; establish policies to deal with conflicts of interest;
ii) develop proxy voting guidelines and disclose these guidelines; and,
iii) communicate with the various stakeholders.

It is explicitly stated that the guidance in this Policy is not intended to be prescriptive or exhaustive.

It is abundantly clear to any capital markets participant that this Proposed Policy is about as light and unobtrusive as it could be. Much more is required.

**Overview**

It is apparent that there is a business opportunity for proxy advisory firms. The volume of proxy materials distributed to shareholders is overwhelming. Fund managers could disserve their beneficial investors if they devoted too much time to studying the wide array of proxy materials. Even if a fund manager chose to read all of the proxy circulars for the companies in

his/her portfolio, that fund manager would not have the benefit of all the materials published by all of the public corporations. Thus, the fund manager could miss out on specific trends, industry sector practices, comparisons of good governance amongst larger populations of corporations and the identification of misbehavior that could occur in a company not in the portfolio but having an effect on the particular portfolio. Proxy advisory firms, with their ability to analyze, compare and expeditiously process large volumes of proxy information, can serve a valuable role. Further, by using economies of scale, these firms can often conduct the task at a lower cost than a collection of fund managers, each of which is partially duplicating the efforts of others.

If the proxy advisory business is to play a role in the capital markets, it should follow that proxy advisory firms should meet the standards adhered to by the other capital markets participants.

**Challenges**

The challenges in the current environment are those of lack of alignment, industry regulation, professional certification, product quality, staff qualification, business concentration and conflicts of interest. These individual challenges are discussed separately in the paragraphs that follow.

Lack of Alignment

Investor clients of proxy advisory firms pay these firms for their analysis of the proxies issued by third parties – public corporations. This business model seems simple enough, except that the corporations have little role in the creation of the specific research but yet can suffer from any harmful effects emanating from that research. The proxy advisory firms have fewer clients in the corporate world and thus have little obligation or loyalty to the corporations. In other words, one can create the damage, but suffer no harm. The subject company can suffer the damage, but have no method to defend from, or prevent, the damage. Situations possessing this kind of non-alignment demand a higher level of oversight and regulation.

Industry Regulation

The securities markets in Canada are highly regulated with a comprehensive set of rules, regulations, prescriptive forms and procedures along with enforcement capabilities. All involved in the securities market are held to high standards by the various provincial securities commissions. When the oversight of the provincial securities does not apply, other regulatory organizations, such as IIROC or the TMX, take over. It is virtually impossible for a corporation to publish a document that has not been reviewed by an oversight body and signed / attested to by its primary author. There is no such standard for proxy advisory firms, yet the information they convey and the impact that it has can be every bit as powerful as a prospectus, financial statement or accredited research report.

Professional Certification and Governance

Most of the participants in Canada's capital markets have professional training and have professional associations that govern their profession. Much of the work that drives businesses forward, regulates industries and builds wealth in the capital markets is conducted by well trained and well established lawyers, accountants, engineers, chartered business valuators, chartered financial analysts, scientists and the like. They practice in their respective professions because

they are qualified and certified to practice their profession. Enforcement of standards is meted out by various Law Societies, Accounting Professions, Chartered Financial Analyst Associations and the like. There is no parallel system or professional certification for those working for proxy advisory firms. It is incongruent that the efforts and output of the former, structurally qualified group are judged and opined on by a group without any prescription for industry or professional qualifications.

Product Quality

Proxy advisory firms process a significant amount of information in a very short amount of time. It is my understanding that a number of temporary employees are hired to complete this task. Even at normal error rates, a significant number of errors will occur. Errors in proxy advice can be every bit as damaging as errors in other capital markets communications. The standards and regulation for proxy advisory errors should be no less than the standard for prospectuses, financial statement and research reports.

Staff Qualifications

Proxy advisory firms are asked to opine on a wide variety of proxies. While much of these are fairly standard annual meeting items such as Director nomination, auditor selection and compensation matters, there are still several very weighty issues such as votes for major acquisitions or take-overs, proxy battles for alternative management and change of business plans. The skills required to assess the annual meeting type of proxies are very different than the skills required to assess the larger corporate and business items. Corporations access the skills of both internal and external experts in the fields of valuation, law, accounting, engineering, and other professions when undertaking such ventures. If a second corporation is involved, it too will access pools of expertise, most often completely independent of those used by the primary corporation.

It would be a substantial challenge to a proxy advisory firm to have all the required expertise and experience to properly advise on the wide array of situations encountered.

Business Concentration

The CSA/AVCM in its request for comment have noted that the proxy advisory business in Canada is dominated by two firms. This level of concentration, and inherent lack of competition, can easily lead to a lower standard of care and diligence. Further, domination by two firms would not allow for the diversity necessary for properly founded self-regulation.

Conflicts of Interest

Proxy advisory firms effectively create the rules for proxy matters and then sell this product to institutional investors. These firms also make an effort to sell consulting services to the corporations to help them understand and navigate the “rules”. There is a very clear conflict of interest in that the establishment of more rules and complexity, as driven by the institutional investors and proxy advisory firms, creates a larger opportunity to increase consultancy billings to corporations.

**Current Effects and Consequences**

The current business environment for proxy advisory firms is yielding many unintended and negative consequences. Provided below are a number of examples where the capital markets are being poorly served.

Proxy advisory firms have established guidelines for senior management and Director compensation. These are mostly based on a comparative analysis using a peer group of companies. A problem arises here in that corporations and their executives construct compensation plans over many years, utilizing expert consultants and addressing individual motivational needs and specific performance metrics. These plans are typically ongoing discussions involving much effort and reason by all and evolving to adapt to changing circumstances. Recommending the alteration of components to these finely crafted plans based on a simple comparable company analysis is a major intrusion into corporate governance and the smooth operation of a corporation. There are many examples where their rules and direction are not comprehensive. Proxy advisory firms will place a limit on the number of options issued, but give no guidance on the allowable amount of cash compensation. Such an action forces the corporation to reduce the option incentive but then to increase the cash incentive to an executive to maintain the current rate of overall compensation!

Proxy advisory firms have a developed a concept of being "over-boarded". Over - boarding occurs when a Director is deemed to be serving on too many Boards and it is deemed that the particular Director does not have the capacity for the multiple roles. One determination is a limit of one CEO/Director role and two outside Board roles. Above this, one is over-boarded. The determination does not take into account the nature of the organization, the time requirements or the capacity of the Director. Thus, a CEO of a Canadian Schedule A Bank could be a Director of Google and General Motors and not be over-boarded whilst a CEO of a $5 million single asset mining company who is on the Boards of three similar entities in the same city would be over-boarded. These simple determination criteria do not make sense yet they are currently being applied.

Proxy advisory firms do not speak with, or build an understanding of, the individuals upon whom they recommend votes. Without direct knowledge of workload, individual contribution or travel, how can a recommendation be made on compensation or over-boarding? If a proxy advisory firm does not know that a particular Director spent two weeks in a developing country where an armed escort was required, how can it opine on compensation for that Director? Many Directors make extraordinary contributions that save, catapult or otherwise enhance their companies and none of this may be seen by outsiders.

On June 21, 2012, the CSA published for comment Consultation Paper 25-401 Potential Regulation of Proxy Advisory Firms (the Consultation Paper). Some issuers, issuer associations and law firms have raised concerns that proxy advisory firms may have become de facto corporate governance standard setters and that, as a result, issuers are compelled to adopt certain "one-size-fits-all" standards which may not be entirely suitable for their specific circumstances.

Unfortunately, the "one-size-fits-all" approach continues to be employed. Proxy advisory firms appear to be loath to change from this practice and do not appear to be willing to accept the need for a more rigorous methodology to understand a particular company's unique attributes and needs. Further, the CSA'a suggestion that companies can engage directly with institutional shareholders is not practical on a wide basis. Institutional shareholders hire proxy advisory firms

precisely to avoid these in-depth and prospectively mind numbing discussions; corporations will not access, or have the time to access, their wide array of institutional shareholders.

The Canadian securities industry has used a careful process when it comes to corporate governance. Say on pay and women on Boards have been carefully and effectively evolving with much input from all involved. It is wrong to allow for a single commercial interest to establish rules and guidelines on equally weighty matters.

**Recommended Action**

The actions and recommendations by proxy advisory firms can have effects on public companies that are no less meaningful than the materials issued by public companies. Inappropriately forcing the resignation of a Director could be much more material than the issuance of a quarterly financial statement. Voting to not conduct a takeover can be more much more significant than raising new issue equity. If proxy advisory firms can have this much power, then they should be subject to the same rules and regulatory oversight as the issuers, underwriters, advisors and other participants.

A four part regime is proposed.

The first part would have proxy advisory firms attest to their information to the same degree as other public information. This would amount to statute or certificate attesting that the published material meets the standard of "full, true and plain". It is not enough that proxy advisory firms can rely on "full true and plain" disclosure. These firms can cherry pick, manipulate or ignore parts of this information to reach an ill-founded conclusion. Deep conclusions cannot be drawn from shallow analysis. The test for these firms is that they have properly factored all relevant information in reaching their conclusions and recommendations. This is a much higher standard.

The second part of the regime would prescribe a much higher level of disclosure. There are two precedents for this: (i) form type requirements such as those used for valuations and fairness opinions where both the credentials of the author(s) and the methodology used must be disclosed, and (ii) certifications of the nature of the product, disclosure of conflicts and other relevant information as seen on the back pages of research reports.

As an example, knowing that the proxy advisory firm spoke to a particular Director before recommending a "withhold" vote would be very important to the shareholder. As discussed above, it is unconscionable that currently "withhold" recommendations are given according only to the number of Boards served on without any regard to the particular Director's individual capacity, expertise or the complexity and time requirements of the issuers.

The third part would be a requirement for the proxy advisory firm to provide the issuer with both draft and final copies of their reports. With this much higher level of disclosure, issuers could then better discuss and debate the conclusions. Further, provision of these more detailed reports would allow issuers to speak with their shareholders or use press releases (or other media) to provide balance to the items under review in the event that the proxy advisory firm holds a view different than the issuer.

The fourth element would be an outright prohibition on proxy advisory firms working for both institutional investors and issuers. There are clear conflicts that disclosure would not resolve.

It is my prediction that in absence of a higher standard and effective regulation, the differences between an issuer's objectives and the recommendations of proxy advisory firms will be aired in the public arena. One can envision proxy advisory firms issuing a recommendation, only to have their work challenged, errors exposed and animosity expressed by issuer produced press releases, newspaper advertisements and media interviews. This, in my view, would be harmful to Canada's capital markets.

**My qualifications**

These comments and recommendations come from extensive experience and expertise. Spending 25 years in the financial brokerage industry took me from as an associate Investment Banker to the position of CEO of an investment dealer. I have worked for both bank-owned and employee-owned firms. Working locations included Calgary, New York and Toronto. I have worked as an Investment Banker, managed and participated in institutional sales and trading, and have written company research reports. I wrote the very first 61-501 valuation report back when it was called OSC Draft policy 9.1. Historical assignments included hostile takeovers, takeover defense, restructuring and reorganizations, shareholder solicitations and fairness opinions – all areas where proxy advisory firms now have a role. I was the Ultimate Designated Person for Orion Securities and was a member of the Fairness Opinion and Valuation Committee for Scotia Capital Markets. I have previously served on the Boards of five public companies or partnerships and currently serve on the Boards of five public companies including the role of Chairman for one and CEO for another. This service includes roles on audit, compensation and governance committees.

Please contact me at your convenience for further clarification and discussion. My contact information is provided on the covering email to this submission.

This is an important component to the smooth function of Canada's capital markets and it certainly needs your attention and oversight. I would be pleased to travel, at my own expense, to meet with you and further review my views, experience and recommendations in this area.

Yours truly,

*"John P. A. Budreski"*

John P A Budreski

INCLUDES COMMENT LETTERS

**De :** Ken MacDonald [mailto:kmacdonald@erdene.com]
**Envoyé :** 18 juin 2014 13:18
**À :** 'John Budreski'; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

Me Beaudoin and the Secretary of the OSC,

I am writing you in connection with your request for comment regarding proxy advisory firms and to register my support for the attached comment letter from John Budreski. I am a chartered accountant that has acted in an executive and CFO role in public companies in the junior mining sector for most of the past 30 years. I fully support the comments and recommendations of Mr. Budreski. Do not hesitate to contact me should you deem appropriate to do so.

Sincerely,

Erdene Resource Development
Ken W. MacDonald
VP Business Strategy and CFO

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**VIA E-MAIL**

June 13, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut
Superintendent of Securities, Yukon

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Toronto, Ontario
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e-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment – Proposed National Policy 25-201 Guidance for Proxy Advisory Firms (the "Proposed Policy")**

Magna International Inc. ("Magna") appreciates the opportunity to offer input on the subject of proxy advisory firms and is submitting this letter in response to the CSA's Notice and Request for Comment related to the Proposed Policy.

**Background of Magna**

Magna is a leading global automotive supplier with 315 manufacturing operations and 82 product development, engineering and sales centres in 29 countries. We have over 128,000 employees focused on delivering superior value to our customers through innovative products and processes,

and World Class Manufacturing. Our product capabilities include producing body, chassis, interior, exterior, seating, powertrain, electronic, vision, closure and roof systems and modules, as well as complete vehicle engineering and contract manufacturing. Our Common Shares trade on the Toronto Stock Exchange (MG) and the New York Stock Exchange (MGA).

**Summary of Magna's Submission**

We commend the CSA for its initiative in addressing an issue which is of increasing importance in the public markets. However, we believe that the policy-based approach which underlies the Proposed Policy represents the mildest form of regulation possible in the circumstances and we have some concern that adoption of the Proposed Policy in its current form will not result in any incremental improvement with respect to those proxy advisor practices which are of greatest concern to issuers. Such an outcome would, in our view, represent a significant lost opportunity. To the extent that the CSA intends to retain the current approach, we believe that the Proposed Policy can be enhanced by supplementing its policy-based approach with a more prescriptive approach in a few specific areas discussed below.

**Detailed Submission**

**General - CSA's Policy-Based Approach**

As indicated above, we view the CSA's policy-based approach as being the mildest form of regulatory intervention on the issue of proxy advisory firms. This appears to be born out of the CSA's desire not to intervene in the workings of a commercial relationship between proxy advisors and their institutional investor clients – a relationship which both have told the CSA is not broken. However, unlike most commercial relationships, the impact of the proxy advisor/institutional investor relationship is felt most acutely by third parties – issuers and their directors – and there are matters of concern to issuers that are not likely to be sufficiently addressed absent a stronger form of regulatory intervention. Accordingly, we submit that the proposed policy-based approach needs to be supplemented with a more prescriptive approach targeted to address the following specific issues:

- **Accuracy of Voting Reports** – it is insufficient for proxy advisors to merely aim for factually accurate voting recommendations - they must ensure their clients of it. While we recognize that this can be difficult, both because of the high volume of proxies that need to be reviewed in a relatively condensed time frame and the informational asymmetry between issuers and proxy advisors (i.e. issuers necessarily have more direct knowledge of their governance, directors, disclosure, etc.), there are simple and effective ways to promote accuracy. We submit that the best way to do so is to afford issuers the advance opportunity to verify the facts on which the voting report is based. Alternatively, if a proxy advisor decides against issuer verification, we submit that it should assume full responsibility for the factual accuracy of the report through some form of certification similar to that provided by stock analysts in their research reports. Accordingly, we encourage the CSA to supplement the approach reflected in the Proposed Policy with a requirement that proxy advisors either: (i) provide a reasonable advance opportunity for issuers to verify the facts underlying the voting report; or (ii) certify the factual accuracy of the report.

- **Transparency of Voting Recommendations** – there is nothing in the Proposed Policy which would require proxy advisors to provide a copy of their final report to issuers. While this likely reflects the fact that the report represents the proprietary analysis prepared by a proxy advisor for its client, issuers and their directors are the ones that must deal with the most significant adverse consequences arising from such reports. Issuers are frequently told that they should focus on direct engagement with their institutional shareholders to present their views/analysis, including on items which may have been identified by a proxy advisor in its voting recommendation report. However, in order to do so most effectively, issuers should receive a copy of the final voting recommendation report relating to it,

promptly after issuance by the proxy advisor and at no cost to the issuer. Accordingly, we encourage the CSA to supplement the Proposed Policy with such a requirement.

**Responses to Specific Questions**

1. Subject to our comments above, we generally agree with the recommended practices in the Proposed Policy. We also offer the following specific comments:

   - **Conflicts of Interest** – While Subsection 2.1(6) of the Proposed Policy articulates the CSA's expectation that proxy advisory firms disclose actual or potential conflicts of interest to their clients in a timely manner, there are different types of conflicts which may require different forms of disclosure and/or disclosure to others outside the proxy advisor-client relationship. While we agree that conflicts of interest which are issuer-specific should be disclosed in the voting recommendation report relating to an issuer (as proposed in Subsection 2.4(2) of the Proposed Policy), we submit that conflicts which are more general in nature should be publicly disclosed on the website of the proxy advisor, together with a discussion of the ways in which the proxy advisor seeks to mitigate the conflict. For example, where the conflict arises from the ownership of the proxy advisor by an institutional investor, we believe that the proxy advisor's website disclosure should identify by name and position any directors, officers or employees of the institutional shareholder parent company who also serve in any capacity with the proxy advisor subsidiary, together with the ways in which conflicts arising from such service are managed. Accordingly, we encourage the CSA to revise Section 2.1 of the Proposed Policy to reflect the distinction between issuer-specific and general conflicts of interest and articulate expectations regarding publicly accessible disclosure of general conflicts of interest, as well as the ways in which such conflicts are mitigated.

   - **Transparency and Accuracy of Vote Recommendations** – We believe that the principles underlying Subsection 2.2(4) are fundamental to ensuring that institutional investors receive a high quality voting recommendation. For this reason, we submit that the language in Subsection 2.2(4) which merely "encourages" proxy advisors is insufficient and instead strongly recommend that the CSA articulate an "expectation" that proxy advisors "have the resources, knowledge and expertise required to prepare rigorous and credible vote recommendations". We further recommend that the CSA consider articulating expectations around disclosure by proxy advisors (in each voting recommendation report) of: the expertise and qualifications of the proxy analyst responsible for such report; as well as the extent to which any research or other work on that report was outsourced by the proxy advisor to third parties, including disclosure of the steps taken to ensure that such outsourced work meets the standards and expectations in the Proposed Policy.

   - **Development of Proxy Voting Guidelines** – Consistent with the foregoing comments, we recommend that the CSA consider revising Subsection 2.3(3) such that it reflects an "expectation" that proxy advisors "ensure that they have the resources, knowledge and expertise required to develop and update appropriate proxy voting guidelines." We further believe that Subsection 2.3(4) should be revised to reflect an "expectation" that proxy advisors explain the rationale for their proxy voting guidelines. In our view, any explanation of the rationale underlying any voting guideline should include a demonstrable link between the guideline and "good governance". Where a guideline represents an arbitrary determination by the proxy advisor (for example, in the case of age limits, term limits, maximum number of boards, etc.), this should be clearly stated in the guideline.

2. While the Proposed Policy generally addresses the material issues with respect to the day-to-day workings of proxy advisors, we submit that two fundamental issues have not been addressed – proxy advisor accountability and institutional shareholder responsibilities in the proxy voting context. The latter of these is dealt with in our response to question 6.

Since the relationship between proxy advisors and their clients is a commercial relationship, proxy advisors would ordinarily be expected to be held accountable by their clients. However, it is not apparent that this is being done – proxy advisory firms' clients appear to be satisfied with proxy advisors generally and (unlike issuers and their directors) do not appear to be experiencing adverse consequences from the services provided. Given the concerns expressed by a number of commentators to the effect that proxy advisors' guidelines have effectively superceded securities regulators' governance initiatives, we submit that there should be some accountability over both the process for arriving at their guidelines and the guidelines themselves. In our view, the Proposed Policy will likely not enhance such accountability as there are no defined mechanisms to monitor and address instances where proxy advisors fall short of the expectations articulated in the Proposed Policy, nor are there any consequences to proxy advisors when they do fall short.

3. We do not expect that the Proposed Policy will provide meaningful incremental disclosure or information to proxy advisory firms' clients, market participants (including issuers) or the public. There is a strong possibility that proxy advisors currently operating in the Canadian market will take the view that they already meet or exceed the expectations articulated in and/or underlying the Proposed Policy. Our view in this regard reflects the comments from proxy advisors and their clients to the CSA's Consultation Paper 25-401 *Potential Regulation of Proxy Advisory Firms* and is acknowledged in the Notice and Request for Comment accompanying the Proposed Policy which states, "*[p]roxy advisory firms indicated that they have appropriate policies and procedures in place to address the concerns identified in the Consultation Paper.*"

4. We have no comments in response to this question.

5. Engagement between proxy advisors and issuers can only help ensure that institutional investors receive voting recommendations which are based on the best available information. However, we recognize that it would likely not be feasible for proxy advisors to engage with each and every issuer during the period between the preparation of voting recommendations and issuance of their report. In order to promote the goals sought to be achieved by engagement, we recommend that the CSA articulate an expectation that proxy advisors provide issuers with a draft voting recommendation report for review purposes. This would allow issuers an opportunity to identify, and enable proxy advisors to correct, factual errors in a voting recommendation report prior to the dissemination of the report. Additionally, matters that go beyond factual inaccuracies can at least be identified by issuers and raised in writing with proxy advisors in advance of the issuance of the report. We further recommend that the CSA articulate an expectation that proxy advisors engage with issuers in situations where any non-factual issues raised by the issuer could reasonably be material to the proxy advisor client's voting decision.

   Separate from the CSA's specific question regarding engagement between proxy advisor and issuer, we recommend that the CSA consider encouraging proxy advisors to provide each issuer with a list of the institutions (including specific contacts at such institutions) to which the proxy advisor has issued its report. This would facilitate direct engagement between issuers and their institutional shareholders on any proxy voting report deficiencies which were not addressed by proxy advisors. While there currently is nothing preventing direct engagement between issuers and institutional shareholders, there is no direct way for issuers to determine which of their shareholders receive voting recommendation reports from each proxy advisor.

6. We are not convinced that the type of confirmation identified in the Notice and Request for Comment would make a material difference in situations where proxy advisor clients rely on the proxy advisor for automatic voting services. However, we submit that question 6 generally touches on a much more fundamental issue which is beyond the scope of the Proposed Policy – the responsibilities owed by institutional shareholders to their beneficiaries/clients, including the extent to which such institutions' share voting practices support or detract from realization of the best interests of such beneficiaries/clients.

There is a wide range of practice among institutions with respect to how they manage voting of their shares in investee companies, although we speculate that there (generally) is a correlation between size/resources of the institution and its location along this spectrum. We have met with representatives from a number of institutional shareholders that have dedicated significant resources to the proxy voting function and seek or encourage engagement with issuers. However, we have also observed a number of institutional shareholders which appear to have outsourced decision-making regarding proxy voting and appear to have little or no time or interest for engagement with issuers. (Needless to say, there are many institutions at various points in between these two extremes.)

Proxy advisors are ultimately no more than advisors, information agents and/or service providers to institutional shareholders, with the responsibility for voting decision-making resting with the institutions. To the extent that institutions have outsourced decision-making in respect of one of the fundamental rights represented by ownership of a company's shares, particularly where they have no easily identifiable mechanism by which issuers can facilitate engagement, we question whether such institutions have established appropriate structures to enable them to fulfil their fiduciary responsibilities to their beneficiaries/clients. While this issue may best be addressed outside of the securities regulatory context (e.g. an industry-led code of best/recommended practices), our point in raising it is to highlight our view that some of the issues underlying the Proposed Policy go well beyond proxy advisors.

* * *

We respectfully submit the comments in this letter for your consideration and would welcome an opportunity to discuss them with you should you wish to do so.

Regards,

Bassem A. Shakeel
Vice-President and Corporate Secretary

To:
British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

For delivery via:

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**Re: Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms***

Thank you for this opportunity to respond to your invitation to comment on your proposed policy relating to proxy "advisors".

By way of background, Manifest was formed in December 1995 to provide independent, objective and insightful corporate governance research and shareholder vote management services. We started with UK coverage and since then have extended our scope to cover global companies in our client portfolios. Manifest covers the Canadian securities market and has also under taken work with the Canadian Society of Corporate Secretaries and Carol Hansell to support proposals to reform the Canadian proxy plumbing system to create an open standards, open access system which works for the benefit of issuers and shareholder alike and which would facilitate closer dialogue and mutual understanding.

From the outset, our mission has been to be a faithful agent of our clients, to research the issues that they feel are important to them and warrant further investigation and to navigate the complexities of the broken proxy plumbing system world-wide. We do not, and never have, seen ourselves as an "Investment Fiduciary"; we are a research and investment administration services vendor which happens to have developed a particular expertise in a highly complex and technical area.

The issue of being a fiduciary, or not, is important yet rarely discussed. Our clients, asset managers and asset owners, acquire our services on the basis of contract law. We are not operating within a trust-law based relationship, we have no "control" over anything as would be expected from a fiduciary mandate such as that of asset owner to asset

manager. In this regard the issuer community has failed to do any due diligence on the nature of the commercial relationships that exist between service providers and clients.

Rather they focus on a nebulous term “Advisor” which implies elements of discretion as might be expected from an investment advisor. This is simply not correct. Advisors may advise, it is the principals who decide - they are the fiduciaries. Issuers and their lobbyists also assume that all proxy advisors “make recommendations”, they do not, nor should they in an openly competitive market for goods and services. Even if recommendations are made, and our competitors are entitled to provide services in whatever way they deem appropriate, they are not binding. As your April policy notice wisely stated:

> *We wish to remind issuers that they may engage with their shareholders, who have the ultimately responsibility of determining how to exercise their right to vote, to explain why they have adopted a given corporate governance practice. Where appropriate, issuers may discuss corporate governance and proxy voting matters with institutional investors to address their concerns. If issuers have practices that are different from the standards set out in the proxy advisory firms' proxy voting guidelines, these practices can be discussed with institutional investors. Source: http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140424_25-201_rfc-proxy-advisory-firms.htm*

Assertions of proxy advisor influence are typical of the political grandstanding we have come to expect on this important subject. So-called academic ‘evidence’ is cherry-picked while ignoring many alternative view points which contradict. We say ‘evidence’ because unless a paper has been subject to a vigorous peer review and all conflicts of interest declared, it is only an opinion piece. We highly doubt that the industry’s critics will have sent you some of the more recent papers on the role of proxy analysts and which present a different point of view:

Dent, George W.,
A Defense of Proxy Advisors (2014). Case Western Reserve University School of Law, Case Legal Studies Research Paper No. 2014-13. Available at SSRN: http://ssrn.com/abstract=2451240 or http://dx.doi.org/10.2139/ssrn.2451240

> **Abstract:**
> Proxy advisors have dramatically transformed shareholder voting. Traditionally, even large institutional investors tended to follow the Wall Street Rule — vote with management or sell your stock — because the economics did not justify incurring any expense in deciding how to vote. The emergence of proxy advisors who perform proxy research for a modest fee paid by each of thousands of institutions now enables these investors to vote intelligently. New laws and rules have also expanded the range of matters on which shareholders vote. Because of these developments, business managements can no ignore but must cater to shareholder interests.
>
> **However, corporate managers resent being dethroned. They are mounting a campaign to press the SEC to impose new regulations to hobble proxy advisors and, thereby, to neutralize institutional shareholders.**
>
> This article reviews the charges leveled against proxy advisors and the new regulations proposed by their critics. It finds the complaints mostly unwarranted. Institutional investors are sophisticated and market forces minimize any problems with proxy advisors. With a few minor exceptions, new regulations are not needed and would be counterproductive.

Aggarwal, Reena and Erel, Isil and Starks, Laura T., Influence of Public Opinion on Investor Voting and Proxy Advisors (June 6, 2014). Georgetown McDonough School of Business Research Paper. Available at SSRN: http://ssrn.com/abstract=2447012 or http://dx.doi.org/10.2139/ssrn.2447012

> **Abstract:**
> We examine the evolution in voting patterns across firms over time. We find that investors have become more independent in their voting decisions, voting less with the recommendations of management or proxy advisors. Even when the proxy advisor recommends voting against a proposal, we find that over time investors are more likely to ignore the recommendation. Moreover, we also find that proxy advisory recommendations have become more supportive of shareholder proposals. **Our main contribution is to examine the role of public opinion in influencing institutional voting. We show that public opinion on corporate governance issues, as reflected in media coverage and surveys, is strongly associated with investor voting, particularly mutual fund voting.**

Edelman, Sagiv, Proxy Advisory Firms: A Guide For Regulatory Reform (Vol 62, Issue 5 (2013))
Available: http://www.law.emory.edu/fileadmin/journals/elj/62/62.5/Edelman.pdf [Accessed 25 June 2014]

**Abstract (Abbreviated):**

> ….this Comment dispels the notion that proxy advisory firms wield too much influence over institutional investors and shareholder voting, and it explains that the fears of conflicts of interest are likely overstated. Utilizing Anthony Downs's research on the application of economic theory to democratic voting, this Comment demonstrates that **proxy advisory firms are vital in facilitating the rational, efficient exercise of the shareholder franchise.**

The CSA's intervention in this debate is therefore most welcome and timely. Shortly before the publication of the request for comment, Manifest and a number of other industry participants concluded the development and publication of a series of industry best practices for service providers to adopt. The Principles (available at http://bppgrp.info ) are designed to be global in their scope and application. The industry is global in scope and demands a global approach.

The Principles have evolved from a suggestion from ESMA, the European Securities & Markets Authority that stakeholders would benefit from greater understanding of the work we do. We agreed and hence the Principles were developed under the independent chairmanship of Dr Dirk Zetzsche of Heinrich Heine University Duesseldorf - Faculty of Law. His independent report of the proceedings of the Best Practice Principles Group can also be found on SSRN

Zetzsche, Dirk A., Report of the Chairman of the Best Practice Principles Group Developing the Best Practice Principles for Shareholder Voting Research & Analysis (May 12, 2014). Available at SSRN:http://ssrn.com/abstract=2436066 or http://dx.doi.org/10.2139/ssrn.2436066 Do you agree with the recommended practices for proxy advisory firms?

**1. Do you agree with the recommended practices for proxy advisory firms? Please explain**

We strongly support the best practice principles approach already elaborated above. This underpins understanding of the role of service providers in the shareholder research and voting space. In recent years we have witnessed the unwelcome unintended consequences of embedding service providers or intermediaries into financial regulation, be that custodian banks, auditors, credit rating agencies or even proxy advisors, as the US SEC has discovered.

The contractual relationship between a service provider and their principal does not remove the need for the principal to be in compliance with their own fiduciary responsibilities or relevant securities regulations. We question the ability of a service provider to regulate its clients when they are already regulated entities.

The Principles outlined in the proposals follow the themes that we proposed in the industry developed Principles. There are some challenges raised by the CSA's proposed practices as they stand. For example, they appear to embed particular business models such as "Voting Recommendations". Why recommendations? Recommendations are not a reflection of control over a voting process and there are many other ways of raising concern flags on issuer practices other than a For or Against recommendation – a red or green flag says just as much, so does a grading letter.

A recommendation or analysis is simply a subjective viewpoint, it cannot possibly be said to be an accurate recommendation. Yes, it can be based on accurate analysis or accurate data, but subjective matters will always remain subjective. Issuers may not like the separation of chair/CEO proposals from investors, however those are views that investors are not only entitled to, in other global jurisdictions they are an accepted norm by standards setters. Regrettably, suppression of diversity of view appears to be a constant theme running through the anti-proxy advisor rhetoric, which in reality is anti-corporate governance rhetoric.

**2. Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.**

We regret a missed opportunity in the proxy advisor debate more generally not to address the highly bunched nature of global AGM seasons. The artificial compression of workloads has a severely negative impact on shareholders' ability to engage with their companies. A typical well-diversified global investor may own over 3,000 securities. It simply isn't rational for companies to hold 200 meetings a week and expect a high level of quality dialogue, either from investors or proxy advisors

The entire proxy system is highly manual with minimal automation opportunities. XBRL is shown to contain significant errors. Corporate disclosures are extremely varied in terms of standard content and layout. They suffer from extreme bloat and legalese which can drive even the most educated and experience analyst to distraction. The UK has

embarked on a “Cutting Clutter” campaign, this is most welcome and should, in time, encourage meaningful disclosures rather than standard compliance boiler-plate.

**3. Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?**

Manifest and other BPP signatories have undertaken to monitor signatories’ disclosures and market feedback very closely. Our next planned meeting in September will set out a work plan for ongoing governance of the Principles and ESMA itself will be monitoring the outcomes within the next 24 months. We therefore urge CSA to give the Principles time to become established and better understood. For the smaller industry participants reacting to multiple regulatory approaches is a significantly constraining factor and reduces our ability to do what more market participants are asking us to do – provide effective competition to what has become widely regarded as a monopoly service provider market.

Many of the CSA’s proposed principles, and indeed in the industry’s own Principles and associated statements address matters that have been long-disclosed either to clients specifically (as they are the ones that are paying our invoices) or to stakeholders more generally. At this point we wish to stress that service providers, be they not for profit industry associations or commercial bodies, are not public utilities, we receive no government subsidies and so our lines of accountability are not to the issuer community. We agree that there are societal benefits deriving from well-governed, accountable and sustainable corporations, our role as analysts is akin to that of the media, reporting to our readers matters which are of concern to them at a point in time.

Again, it is highly regrettable that so much energy has been diverted from the real task at hand of removing unnecessary intermediation in the shareholder voting system. Had more issuers spoken directly with their owners they might have had a better understanding, much sooner, of what investors actually do rather than what their advisors infer they do. To that end we hope that securities regulators will be focusing their attention on the wide range of issuer advisors including headhunters, remuneration consultants, proxy solicitors, lawyers and investment banks to ensure that the advice they provide is subject to greater scrutiny on accuracy, relevance, knowledge etc.

**4. We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?**

This is addressed in the Best Practice Principles and associated guidance, which is integral to the disclosures expected.

**5. We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?**

This is addressed in the Best Practice Principles and associated guidance, which is integral to the disclosures expected.

**6. A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?**

This is a very welcome question and possibly unique in the regulatory debate so far.

In the first instance, it may be appropriate to note that clients will most probably have their own custom guidelines rather than vendor “house guidelines”. That aside, from Manifest’s perspective, the confirmation approach laid out in the question is the one that we already follow. At our inception, we took legal advice and were counseled to ensure that client confirmation of vote instructions was a built-in requirement otherwise we would stray from being a “voting agency” to a “voting principal”.

We are aware that vote confirmation before execution polarizes the market place. Despite that, and however uncomfortable it may be, there is an important, valid, indeed ethical question that needs to be aired over bargain-basement or “zombie voting” i.e. automated voting without oversight at the cheapest possible price.

Nobody really wants to admit to it in public, however it is clear that there are asset owners and managers who feel compelled to vote and so treat shareholder voting as a compliance exercise rather than one integral to the investment process. That devalues the entire process for the considered owners who do put considerable effort, resources and thoughtfulness into their engagement programs.

The question which possibly should be asked is whether an annual review of policy questions is sufficient? Governance practices change all year round and companies are not one size fits all, their circumstances change too. The right to vote and the right to sell are the same in corporate law, although we would agree that in securities law there are differences in the regulation and enforcement approach. We do not believe, for example, that it would be considered appropriate for an asset manager to simply let their broker buy or sell according to the recommendations of their analysts. If votes are an asset of the fund (they are inextricably linked to the underlying security) should voting be treated differently?

The historic undue reliance on credit rating agencies is a clear and understandable concern for global regulators. As a result of the discussion and debate about excessive intermediation in the investment chain we are beginning to see a greater role for the compliance and internal audit function in monitoring shareholder voting and decision making processes.

If we wish to see higher standards of governance and engagement between companies and their owners, is a hands-off approach which assumes that a computer is doing the right thing a sufficient response? Are there cost concerns on the part of asset managers and asset owners? Does this mean that the governance research process is under-invested? These are very valid questions and they go beyond the anti-proxy advisor lobbying. However, we do believe that root cause issues about how sustainable, long-term governance is tackled in a fully holistic sense will serve the markets well in the long-term rather than short-term fixes.

We would therefore request that the CSA defers this particular question in order to undertake a more detailed legal review of the implications of the proposal in the context of fiduciary responsibility, not just in the Canadian environment but elsewhere globally as fiduciary duty concepts with regards to what can be outsourced are highly varied.

In conclusion, we welcome the CSA's principles-based approach. A principles-based approach promotes and respects personal principles and integrity rather than mere compliance, it allows an evolutionary and responsive approach to an important topic which is proportional and respectful of the proper reporting lines in the share ownership process. They also respect individual business models which promotes diversity and competition. Hard-wired regulations or laws once made can be very difficult to unwind and can have unforeseen and unintended consequences that are later regretted.

Sincerely and respectfully,

Sarah Wilson
Chief Executive
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Telephone: +44 1376 503500
Web: www.manifest.co.uk

INCLUDES COMMENT LETTERS

**De :** Marcel DeGroot [mailto:MDeGroot@pathwaycapital.ca]
**Envoyé :** 19 juin 2014 16:03
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

To all:

I agree with John Budreski's letter and thank John for taking the time to prepare as he speaks for many us. I believe the proxy advisory firms need to be held unaccountable for their advice. Currently I see their approach as making broad generalizations about people and companies. In my opinion they don't seem to have the desire or time to check facts and understand the specifics of what they are advising on. I think this is a lazy approach where profit is put ahead of accuracy and is completely unacceptable given their market influence. As a Chartered Accountant working with public companies I have many standards to which I need to be accountable. I believe the firms need to have standard to ensure there is transparency, integrity and accountability.

I am President of Pathway Capital a small venture capital firm that works with successful mining people to create value. We have been founders and/or early stage investors in numerous public companies including Peru Copper (acquired by Chinalco), Luna Gold, Galway Resources (acquired by AUX), Esperanza (acquired by Alamos), Sandstorm, Bear Creek, Anthem United, Underworld Resources (acquired by Kinross) and Lowell Copper to name a few.

I thank you for considering John's letter and the comments above and would be happy to further discuss.

Best regards,

Marcel de Groot
PRESIDENT

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**De :** [redacted]
**Envoyé :** 22 juin 2014 16:29
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** Re: Request for Comment Regarding Proxy Advisory Firms.

I agree with the proposal by John Budreski.

Mary Ritchie
Corporate Director

[redacted]

INCLUDES COMMENT LETTERS

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Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
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Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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23 June 2014

Subject: **CSA Notice and Request for Comment: Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms***

Ladies and Gentlemen:

This letter is submitted on behalf of Mercer (Canada) Limited ("Mercer") in response to the Canadian Securities Administrators' (CSA) request for comment on Proposed National Policy 25-201 Guidance for Proxy Advisory Firms (issued April 24, 2014 and referred to herein as the "Proposal").

Mercer is a global company that provides human resources and related financial advice, products, and services, including compensation consulting services, to corporations, boards of directors, and board human resource and compensation committees. We help clients around the world advance the health, wealth, and performance of their most vital asset — their people. Mercer's

Executive Rewards practice provides executive compensation and benefits consulting services to companies around the globe, including major Canadian and US public companies. We assist clients in designing and implementing executive and director remuneration programs. We also have extensive experience working with proxy advisory firms and institutional investors. Based on this experience, we appreciate the difficulties issuers have in understanding the advisors' proxy vote recommendation process and the complexities issuers encounter in addressing the advisors' concerns.

**General Observations**

We would like to express our overall support for the objectives of the Proposal: to set out recommended practices for proxy advisory firms in relation to the services they provide to their clients and their activities, and to provide guidance to proxy advisory firms designed to:

- promote transparency in the processes leading to a vote recommendation and the development of proxy voting guidelines
- foster understanding among market participants about the activities of proxy advisory firms.

In light of specific concerns noted by the CSA about proxy advisory firms that have been raised by market participants, primarily issuers and their advisors, we support the CSA's Proposal. These concerns include: (i) potential conflicts of interest, (ii) perceived lack of transparency, (iii) potential inaccuracies and limited engagement with issuers, (iv) potential corporate governance implications, and (v) the extent of reliance by institutional investors on the recommendations provided by proxy advisory firms. We note that these concerns are not limited to Canada but are being addressed in Europe and the US as well.

In March 2014, the European Securities and Markets Authority (ESMA) Best Practices Principles Group released a proxy advisor code of conduct — Best Practice Principles for Shareholder Voting Research & Analysis. The code includes three best practice principles addressing: service quality, conflicts-of-interest management, and communications policy. Guidance is provided for each principle, which is intended to complement legislative, regulatory, and other requirements. The principles operate on a "comply or explain" approach because not all companies in the industry offer the same service in the same way.

Mary Jo White, Chair of the US Securities and Exchange Commission (SEC), stated recently that the agency will soon review recommendations for possible regulatory action targeting proxy advisory firms. The agency is considering whether it should address concerns about the existence

and disclosure of conflicts of interest on the part of proxy advisory firms, and about the accuracy and transparency of the formulation of their voting recommendations. This review follows an SEC Concept Release issued in 2010 that sought comments on the extent to which the voting recommendations of proxy advisory firms serve the interests of investors in informed proxy voting.

We believe the CSA Proposal will address similar issues in Canada but we are concerned that the advisory nature of the Proposal language may not be strong enough to induce proxy advisors to follow the guidance. We recommend the CSA adopt stronger language, similar to that of the ESMA code of conduct, to encourage greater compliance, as discussed below.

**Part 1: Purpose and application**

We agree that the recommended practices for proxy advisory firms are a step in the right direction to promote transparency in the processes leading to a vote recommendation and the development of proxy voting guidelines, and to foster understanding among market participants about the proxy advisors' activities. However, we do not believe that, as drafted, they are sufficient to achieve these goals. Although the CSA guidance is not intended to be prescriptive or exhaustive, we believe the advisory language of the Proposal is not strong enough to compel the proxy advisors to comply with the proposed recommendations.

The following phrases used throughout the Proposal, for example, are not likely to induce the proxy advisors to alter their practices: "we expect," "we encourage," proxy advisors "may wish to consider," and "where possible" we expect proxy advisors to disclose. This is not merely a question of semantics but goes to the heart of how the proxy advisory firms are apt to respond to the guidance. The advisory nature of this language takes the teeth out of the guidance and may not result in changes in how proxy advisors do business. In this way, the Proposal is not consistent with the goal of addressing the concerns raised by the CSA and other stakeholders.

In comparison, the ESMA Best Practice Principles for Shareholder Voting Research & Analysis use stronger language to convey that proxy advisors should adhere to the Principles, including phrases such as: "should have and disclose," "should explain," "should describe," "should implement," and "should maintain." This more prescriptive language is likely to have a greater influence on proxy advisor behavior and result in greater compliance with the recommendations.

## Part 2: Guidance

### 2.1 Conflicts of interest

We agree that identification, management, and mitigation of actual or potential conflicts of interest are essential to ensure the ability of proxy advisory firms to provide independent and objective services to clients. Encouraging proxy advisors to consider designating a person to assist in addressing conflicts of interest may help address these concerns. However, the language in 2.1(3) could result in proxy advisors choosing not to address conflicts of interest at all. The Proposal states that "Proxy advisory firms may address actual or potential conflicts of interest by implementing appropriate practices. Proxy advisory firms may consider taking the following steps to address actual or potential conflicts of interest" [emphasis added]. We recommend the guidance state that advisors "should" take steps to address actual or potential conflicts, and not just state they "may address" them.

Section 2.1(4) states that the CEO and board of directors are "generally expected to be responsible for… endorsing the policies and procedures and the code of conduct adopted to address actual or potential conflict of interest situations and ensuring that the individuals acting on behalf of the proxy advisory firm are made aware of its policies and procedures and code of conduct." Instead of stating that individuals should comply with the policies and procedures, the Proposal states that they should be "made aware" of them. We recommend the CSA strengthen the Proposal language to encourage compliance.

Furthermore, we believe proxy advisors should identify and disclose any potential conflicts and explain the nature of the conflict, how the firms' conflict of interest policies and procedures are implemented, and how the advisor concluded that the policies and procedures are effective for managing conflicts. These disclosures should appear prominently on the advisors' websites as well as in an obvious place in their reports to issuers and institutional shareholders.

### 2.2 Transparency and accuracy of vote recommendations

The Proposal addresses the transparency and accuracy of vote recommendations, but the language of the guidance may not result in meaningful disclosure or increased accuracy. Section 2.2(3) states that "Proxy advisory firms may consider taking the following steps when determining vote recommendations" [emphasis added]. Stronger language would make it more likely that the proxy advisors would take the recommended steps of adopting written policies and procedures, implementing internal safeguards and controls, and evaluating the effectiveness of their policies and procedures. Similarly, 2.2(5) states: "Where possible and without compromising the proprietary or commercially sensitive nature of information, we expect proxy advisory firms to post

or describe on their website their policies and procedures as well as internal safeguards and controls leading to vote recommendations." This language leaves room for the advisors to decline to post significant information on their policies and procedures by claiming it is proprietary.

Greater disclosure of the proxy advisors' underlying methodologies and analysis would provide issuers and other market participants with useful information about the advisors' procedures and conclusions without undue cost to these firms. A "black box" approach to advisors' analyses and vote recommendations makes it difficult for issuers to understand how to respond to the advisors' concerns and may make it harder for institutional investors to interpret the recommendations. On the other hand, a more formulaic approach also raises concerns about using a one-size-fits-all approach to evaluating pay and governance matters. Including stronger language to increase the likelihood that proxy advisors will disclose their methodologies and analyses would provide beneficial information to issuers, investors, and the market.

**2.3 Development of proxy voting guidelines**

Proxy advisors have significant influence over issuers' pay and governance decisions and their impact is not limited to vote results. We are concerned that their potential impact on market integrity is not adequately addressed in the Proposal. Issuers are increasingly making decisions about compensation program design and governance matters in response to proxy advisors' pay and governance policies. This could pressure companies to implement plans and programs and adopt practices that are inconsistent with their overall business strategies and policies, and that may not reflect the views of their shareholders. We believe the proxy advisors have become *de facto* standard setters for pay and corporate governance practices and that the language in the guidance should be stronger to clarify what is expected of them to address stakeholder concerns.

In addition, we believe the guidance should recommend that the proxy advisors should consider the points of view of all stakeholders in developing their guidelines. The Proposal states in section 2.3 it is a "good practice" for proxy advisory firms to ensure that their voting guidelines are developed in a consultative and comprehensive manner and that the proxy advisors "may consider" taking certain steps to ensure this outcome. However, this advisory language may not be sufficiently strong to result in changes in proxy advisor practices. Although proxy advisors typically seek input in developing their voting guidelines, it is not clear how this input contributes to the final policy guidelines since there is sometimes little transparency in the policy development process.

**2.4 Communication with clients, market participants, the media and the public**

We agree that: “It is a good practice for proxy advisory firms to properly manage their communications with clients, market participants, the media and the public.” We also agree with the Proposal’s expectations regarding communications in proxy reports about conflicts of interest, methodologies, data accuracy, etc. However, stating it is a “good practice” may not be sufficient to result in adoption of this practice by the proxy advisors. Similarly, stating that communications should be “properly managed” seems to set the bar too low.

We recommend adopting minimum standards, not just expectations or good practices, that the proxy advisors should follow if approached by an issuer that notes inaccuracies in the advisors’ reports or is seeking to discuss a potential negative vote recommendation. Although portals through which issuers can report data discrepancies are helpful, it is not clear whether the proxy advisors will correct errors or notify their institutional investor clients. We recommend the proxy advisors give all issuers an opportunity to review draft reports before voting recommendations are issued and that the advisors respond to issuers’ concerns in the final report.

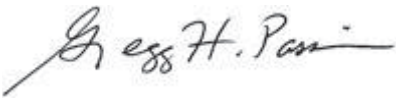
We appreciate that institutional investors have fiduciary duties to make informed and rational decisions on behalf of their participating investors and that this is reflected in the proxy advisors’ efforts to maintain a standardized approach to evaluating proposals and making vote recommendations. However, we are concerned that institutional investors may not be getting the best advice if it is compromised by potential conflicts of interest, is based on inaccurate data and lacks a clear understanding of the issuers’ unique characteristics. There should be effective safeguards to ensure the proxy advisory firms are providing their institutional investor clients with accurate information and objective analyses. Requiring proxy advisors to include a statement in their final reports explaining any disagreements with the issuer would give institutional investors an additional perspective.

*******

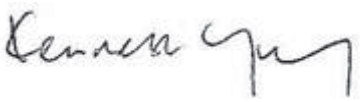
We appreciate the opportunity to comment on the Proposal, and respectfully request that the CSA consider the recommendations set forth in this letter. We are prepared to meet and discuss these matters with the CSA at its convenience. Any questions about this letter may be directed to Gregg Passin or Kenneth Yung.

Respectfully submitted,

Gregg Passin
Senior Partner, North America Practice Leader – Executive Rewards
(1 212 345 1009)



Kenneth Yung
Principal, Canada Executive Rewards Leader
(1 403 476 3246)



June 23, 2014

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial and Consumer Affairs Authority
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Financial and Consumer Services Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

***Attention:***
The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Me. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

Re: **Request for Comments – Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms***

We are writing in response to the Canadian Securities Administrators (CSA) request for comments on Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*.[1] NEI Investments commends the CSA for continuing efforts to enhance corporate governance in Canada, for taking on a convening role in efforts to address problems in the proxy voting system, and for seeking stakeholder input.

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[1] Canadian Securities Administrators. *Proposed National Policy 25-201 Guidance for Proxy Advisory Firms*. [Online] 2014. http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140424_25-201_rfc-proxy-advisory-firms.htm

NEI INVESTMENTS

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NEIinvestments.com Toll Free: 1.888.809.3333
400 - 155 University Avenue Toronto, Ontario M5H 3B7

With approximately $6 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders and provide higher risk-adjusted returns to shareholders. We participate in this consultation as an investment institution undertaking engaged proxy voting. At NEI Investments, wherever we are legally permitted to do so, we vote every one of our proxies according to a detailed set of proxy voting guidelines that are updated regularly and are publicly available.[2] While we use a proxy advisory firm to facilitate research and voting, in-house staff members are responsible for analyzing and executing every vote.[3] We also solicit opinions from our external portfolio managers in addition to engaging directly with issuers and our proxy advisors.

In the following pages we set out our comments and recommendations on the issues raised in Proposed National Policy 25-201. Since our initial submission to the CSA on the topic in 2012, we submitted comments in 2013 to the Governance Research Providers Group's public consultation on new international Best Practice Principles (BPP) for proxy advisory firms, which stemmed from the previous consultation by the European Securities and Markets Authority (ESMA). In light of our understanding that these best practices principles have been adopted and implemented by key proxy advisory firms[4] across all of their operations, we provide general comments on several matters raised in the Proposed Policy, as well as specific feedback on our experience as end-users of the services provided by the proxy advisory firms, linking this input to the questions posed by the CSA as far as possible.

## Does the Guidance meet a priority need?

In our view, it would not be helpful for CSA to issue its own guidance for proxy advisors at this time. Although we have some concerns about proxy voting advisory services, we would question whether this is the biggest priority for regulatory reform within the proxy voting system. We are more concerned about other issues: being able to vote at all in the international context; enhancing the assignment of voting rights so that it is not only more accurate, but also supports and rewards a long-term sustainable value perspective among investors; and creating a system that provides assurance that our shares are being voted in accordance with our instructions. We have no control over these challenges at present, while the extent to which we rely on proxy advisors does lie within our own control. Furthermore, we believe the issues covered by these proposals are of more concern to issuers than to institutional investors. Proxy voting advisors provide important services for investment institutions: proxy voting platform and vote disclosure services are essential to us, and proxy research is extremely useful, especially for international holdings.

Fundamentally, we believe that the international nature of the proxy advisory firms, their clients and the companies covered by the research, necessitates the adoption of international best practices. From our perspective, BPP is a step toward an international good practice framework and should be given the opportunity to evolve before overlaying country-by-country guidance. Such guidance could increase compliance costs for advisors, potentially reducing the number of firms willing or able to serve the Canadian market. Once proxy providers have published compliance statements regarding their BPP responsibilities then a more thorough assessment of any gaps in best practice could be conducted. In the meantime, we believe that the CSA should prioritise addressing problems related to the proxy voting infrastructure. Once the core

[2] NEI Investments. *Proxy Voting Guidelines*. [Online] 2012. [2014 version forthcoming.] https://www.neiinvestments.com/Pages/ESGServices/EngagingCompanies/ProxyVoting.aspx

[3] Responsible Investment Association. *Canadian Mutual Fund Proxy Voting Survey*. [Online] 2014. http://riacanada.ca/canadian-mutual-fund-proxy-voting-survey/

[4] Institutional Shareholder Services Inc. (ISS). *ISS Compliance Statement for Best Practice Principles of Shareholder Voting Research & Analysis.* [Online] 2014. http://www.issgovernance.com/compliance/due-diligence-materials/

structural issues have been addressed then country specific guidance for proxy advisory firms could proceed, as long as it built on and strengthened the current principles and practices embodied in BPP.

While the CSA has been diligently engaging with key stakeholders involved in capital markets, the purpose of the Proposed Policy and its intended outcomes have become difficult to ascertain, challenging the notion that the CSA should provide guidance on the business conduct of service providers contracted by institutional investors, and raising a broader issue regarding the CSA's possible jurisdiction over service providers to other stakeholders, such as corporate issuers. Since corporate issuers utilize third-party executive compensation and recruitment consultants, might the CSA also be expected to provide guidance to those service providers? In the case of executive compensation consultants, the pay structures they recommend for senior executives play a key role in incentivizing performance and risk-taking, which can have a far more significant material impact on a company than any voting advice provided by proxy advisory firms to investors. Executive recruitment firm fees are often based upon a percentage of the final salary of the new hire, potentially incentivizing those firms to promote more expensive candidates over more competent ones, again with significant impacts for long-term value creation.

We firmly believe that providing guidance for proxy advisory firms should be a lower priority than resolving proxy voting infrastructure problems. If, after resolving these problems, the CSA has capacity to develop guidance for service providers, then the scope of this effort should include firms that provide services to investors *and* issuers.

## Specific Comments

***Q1. Do you agree with the recommended practices for proxy advisory firms? Please explain.***

We are not convinced that any material concerns exist with regard to proxy advisory firms' operations, therefore, we do not believe that the Proposed Policy is needed at this time. As noted above, we believe the basic premise that the CSA should be providing guidance to service providers of institutional investors is largely invalid. The CSA should pend this premature effort in light of the progress made at the international level through the publication of BPP. Once the effectiveness of BPP has been tested, the CSA could publicly support it, or if necessary offer limited additional guidance for the Canadian context to address any weaknesses in the framework. We suggest the CSA should analyze the proxy advisory firms' BPP compliance statements and conduct a gap analysis to ensure that any country-by-country guidance builds on and strengthens BPP.

***Q2. Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.***

As noted above, we do not believe the Proposed Policy fulfils a need at present.

***Q3. Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?***

As not all the first BPP compliance statements of the international proxy advisory firms had been published as of mid-June 2014, it is premature to comment on this question.

***Q4. We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?***

We support efforts to address potential conflicts of interest but consider this guidance to be overly prescriptive. The question of how proxy advisors structure these efforts is a day-to-day business operations matter for individual firms to determine.

***Q5. We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?***

We believe engagement with issuers is the responsibility of investors, not proxy advisory firms. Proxy advisory firms may choose to limit or avoid contact with issuers as a matter of principle or for day-to-day business operations reasons. Where dialogue does take place as part of the proxy advisory firm's research processes, we believe it should be disclosed, and that it should be restricted to fact-checking, as other forms of engagement may create potential for conflict of interest. We note that advisors would need to undertake less fact-checking dialogue if issuers provided clearer disclosure for proxy analysts.

***Q6. A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?***

We develop our own proxy voting guidelines, which are implemented by our proxy advisor. It is clearly incumbent upon us to understand our own guidelines. Additional guidance on obtaining confirmation is moot where an investment institution that has contracted with an advisor for implementation of its own proxy voting guidelines.

Where a client is using the proxy advisor's house guidelines and the automatic voting service, the consequences of failure to obtain confirmation are not articulated in the Proposed Policy. Should a proxy advisor suspend voting on behalf of a client that has not provided the required confirmation? How would a proxy advisory firm be sanctioned if it failed to obtain confirmation from a client? How would confirmation be actualized in a meaningful way? As this proposal raises more questions than it answers, we question its practicality and relevance, either as a one-time or annual procedure.

## Conclusion

While we appreciate the complicated context in which CSA is seeking to enhance proxy advisory firms' operations, we suggest that reforming the proxy voting infrastructure is a far more important priority. We recommend postponing further consultation on the Proposed Policy until the proxy advisory firms have published compliance statements under BPP, allowing a more comprehensive and accurate assessment of any gaps in good practice that require further guidance.

Should you have any questions with regard to this submission, please do not hesitate to contact Michelle de Cordova, Director, Corporate Engagement & Public Policy (mdecordova@NEIinvestments.com, 604-742-8319).

Sincerely,
NEI Investments

Robert Walker
Vice President, ESG Services & NEI Ethical Funds

cc:
Ms. Michelle de Cordova, Director, Corporate Engagement & Public Policy, NEI Investments
Mr. Randy Evans, Senior ESG Analyst, NEI Investments

**De :** Nolan Watson [redacted]
**Envoyé :** 15 juin 2014 22:17
**À :** John Budreski; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

To Whom It May Concern,

I have reviewed the CSA Notice and Request for Comment regarding Proposed National Policy 25-201 and I am deeply concerned that it is largely inadequate and if implemented as proposed would do little to nothing to address the issues that currently exist with respect to the lack of accountability by proxy advisory firms.

I have been the President and CEO of Sandstorm Gold Ltd (a NSYE MKT and TSX listed company) for the past 6 years, and prior to that was the Chief Financial Officer for a multi-billion dollar NYSE and TSX listed company. I take corporate governance very seriously as these matters go to the heart of the integrity of our capital markets and therefore the cost of capital for Canadian companies and therefore to the heart of our economy. I agree completely with the attached letter written by John Budreski and I hope, for the sake of the Canadian capital markets, that these comments and recommendations will be followed.

Sincerely,

Nolan Watson

INCLUDES COMMENT LETTERS

NORTON ROSE FULBRIGHT
Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
1 Place Ville Marie, Suite 2500
Montréal, Québec H3B 1R1 CANADA

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July 22, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Our reference:
01016599-0016

**To the attention of:**

M$^{e}$ Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22$^{e}$ étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22$^{nd}$ Floor
Toronto, Ontario M5H 3S8
e-mail: comments@osc.gov.on.ca

Dear Sir or Madam:

## Proposed National Policy 25-201: Guidance for Proxy Advisory Firms

This letter is submitted in response to the proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (the **Proposed Policy**) published by the Canadian Securities Administrators on recommended practices and disclosure for proxy advisory firms (the **PA Firms**). This letter reflects comments generated from a working group constituted of issuers having a combined market capitalization of more than $70 billion (the **Working Group**). We thank you for the opportunity to comment on this important topic.

## General

The business of providing services regarding proxy votes has grown and changed dramatically in the last two decades. Corporate governance issues are becoming more and more complex and institutional investors now own a majority of the shares in circulation. Many of these institutional investors have a diversified portfolio but limited resources to analyze and decide how to exercise their voting rights at shareholders' meetings. As a result, PA Firms have become important players in the public marketplace and have gained an unparalleled influence. As further described below, members of the Working Group are of the opinion that the Proposed Policy adequately targets but insufficiently addresses issuers' main concerns.

You will find below comments on each question set forth in the Consultation Paper with details as to the views of the members of the Working Group. Some of our comments are repetitive due to the nature of the questions. We apologize for any redundancy.

## Comments on each question set forth in the CSA Notice and Request for Comment

***1. Do you agree with the recommended practices for proxy advisory firms? Please explain.***

The members of the Working Group agree with the recommended practices for PA Firms contained in the Proposed Policy. However, they are of the opinion that although the Proposed Policy targets the right concerns, guidance is insufficient in certain specific areas.

Because of their influence in the marketplace, regulation of PA Firms has become a matter of public interest and securities commissions should develop prescriptive rules to regulate certain key aspects of their activities. As further described below, members of the Working Group believe that the appropriate way to address issuers' concerns is through registration of PA Firms with the securities commissions and the development of binding measures to prevent conflicts of interest, to diminish inaccuracies in proxy advisors' reports and to ensure the development of proxy voting guidelines that are adapted to the Canadian context.

***2. Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.***

The Working Group is of the view that PA Firms should ideally be precluded from issuing a vote recommendation in any situation of conflict of interest. Conflicts of interest may arise, *inter alia*, when a PA Firm provides consulting services to the issuer subject to a vote recommendation or when a shareholder proposal has been put forward by a PA Firm's client. At a minimum, PA Firms should be required to insert a note in their recommendations to warn clients that an actual or potential conflict of interest exists. Members of the Working Group believe that PA Firms would benefit from the securities commissions' guidance in the development of their codes of conduct establishing best practices to prevent conflicts of interest.

Members of the Working Group are also concerned with inaccuracies in PA Firms' reports and the fact that institutional investors rely extensively on vote recommendations based on potentially flawed analysis. To ensure the quality of the analysis informing such recommendations, members of the Working Group believe that securities commissions should verify if PA Firms' analysts possess minimal standards of education, experience and training. The Working Group also expects PA Firms to immediately modify their vote recommendation after realizing that their decision was based on flawed analysis.

Members of the Working Group worry that PA Firms have a certain interest in promoting complex rules of corporate governance and have recently become *de facto* corporate governance standard setters. They believe securities commissions should ensure that PA Firms take sufficient measures to adapt proxy voting guidelines to the Canadian context and the reality of Canadian issuers. They are of the view that PA Firms should be strongly encouraged to obtain comments by a specific number of relevant Canadian market participants and required to publish empirical studies or methodologies used in the development of their guidelines.

Finally, members of the Working Group believe the appropriate way to address the abovementioned concerns is through registration and regulations. Registration will ensure the proper monitoring of PA Firms and enable securities commissions to receive complaints from market participants while regulation will prevent conflicts of interest, ensure the quality of the analysis informing voting recommendations and the development of relevant proxy voting guidelines.

Some may suggest that securities commissions should not regulate PA Firms on the basis that they provide private services to institutional investors and as such do not fall within their jurisdiction. However, because of the increasing role such firms are playing in the capital markets, members of the Working Group believe that it is in the public interest, and therefore at the heart of the securities commissions' mission, to request registration of all PA Firms with securities commissions and to introduce binding measures to address key areas of concerns. PA Firms bear many similarities with credit rating agencies and should be treated in a similar fashion.

***3. Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?***

The Working Group believes the Proposed Policy promotes meaningful disclosure to clients and the public related to conflicts of interest, the approach or methodologies leading to a vote recommendation and communication with market participants. However, PA Firms should be required to publish methodologies or empirical studies used in the development of proxy voting guidelines. Issuers should also be given the opportunity to include a brief response in the voting materials to be sent to investors when PA Firms issue a contrary recommendation. This information, together with the disclosure contemplated in the Proposed Policy, would foster a greater understanding of what clients and market participants can expect from PA Firms.

***4. We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?***

Members of the Working Group are in favour of PA Firms designating a person to assist with addressing conflicts of interest but prefer to leave it to PA Firms to determine how they should comply with the Proposed Policy and whether this person should also be participating in their day-to-day activities.

***5. We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?***

The quality of information provided to institutional investors is a priority to the Working Group. Each issuer should be given at least two business days to review a draft of a PA Firm's vote recommendation. Such draft should be sent to issuers free of charge. Issuers should be able to send their comments to PA Firms and engage with them in a discussion with respect to any mistake or inaccuracy in the PA Firms analysis. Should the outcome of the discussions between a PA Firm and the issuer still be a contrary recommendation, the issuer should then be allowed to include a brief response in the PA Firm's materials to be provided to investors.

***6. A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?***

Members of the Working Group are of the view that to ensure truly informed consent by clients, such confirmation should be obtained following each amendment to PA Firms' proxy voting guidelines.

NORTON ROSE FULBRIGHT

## Conclusion

In short, members of the Working Group believe that it is in the public interest to adopt a framework to oversee the activities of PA Firms. Although the Proposed Policy targets the right concerns, guidance is insufficient in certain key areas. As such, PA Firms should be required to register with securities commissions to ensure the monitoring of their activities. The introduction of binding measures should also be required to diminish the appearance of conflicts of interest, to guarantee a certain level of quality in voting recommendations, to prevent factual inaccuracies and to ensure the development of relevant proxy voting guidelines.

Thank you for allowing us to comment on this subject.

Yours truly,

(s) Norton Rose Fulbright Canada LLP

**De :** Peter Akerley [redacted]
**Envoyé :** 19 juin 2014 14:18
**À :** 'John Budreski'; Consultation-en-cours; Comments@osc.gov.on.ca
**Objet :** RE: Request for Comment Regarding Proxy Advisory Firms.

John,

I agree with your comments.

Regards,
Peter Akerley,
CEO of ERD-TSX

-----Message d'origine-----

De : Philip Webster [redacted] Envoyé : 22 juillet 2014 13:44 À : Consultation-en-cours; Comments@osc.gov.on.ca Cc : John Budreski Objet : Re: Request for Comment Regarding Proxy Advisory Firms.

Dear Me Beaudoin and Secretary of the OSC.

I am a director of Morien Resources Corp and Erdene Resource Development and was formerly a director of Western Financial Group.

I fully concur with the position presented by Mr. John Budreski regarding Proxy Advisory Firms in his excellent letter attached.

Yours truly

Philip L. Webster

Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

July 8, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

C/O: Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22th Floor
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Montreal, QC H4Z 1G3
consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, P.O. Box 55
Toronto, ON M5H 3S8
comments@osc.gov.on.ca

BY EMAIL

Dear Sir/Madam:

**RE: Canadian Securities Administrators ("CSA) Proposed National Policy 25-401: Guidance for Proxy Advisory Firms (the "Proposed Policy")**

This submission is made by the Pension Investment Association of Canada ("PIAC") in response to the Proposed Policy released on April 24, 2014 on guidance for proxy advisory firms.

20 Carlton Street, Suite123, Toronto, Ontario M5B 2H5
Tel 1-416-640-0264 Fax 1-416-585-3005 info@piacweb.org www.piacweb.org

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over $1.2 trillion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

We are pleased to have the opportunity to comment on the issues raised in the Proposed Policy. PIAC member funds are long-term institutional investors in the global equity markets. Through proxy voting our members promote better corporate governance and corporate responsibility with the objective of enhancing issuer performance and shareholder value.

Every three years, PIAC conducts a survey on proxy voting practices among its member funds. The survey results over the years have shown that, given the high volume of votes cast during the condensed period when annual general meetings are held, it is essential for a significant portion of our member funds to use the research services provided by proxy advisory firms. PIAC is not concerned about the role or current structure of proxy advisory firms and as stated in an earlier submission on November 22, 2013 , we do not see the need for regulation of these firms. We feel that they provide a number of valuable services and generally promote good corporate governance practices.

While PIAC still feels that a CSA response is not necessary, we acknowledge that the CSA has arrived at a different conclusion. However, it is encouraging that the CSA has responded with the least onerous option of merely providing guidance on recommended practices and disclosure. Our view is that many of the recommended practices are already in place and PIAC supports the overall direction to not issue prescriptive guidance to proxy advisory firms.

In terms of whether or not the Proposed Policy will result in meaningful disclosure, our sense is that it will not. For example, conflicts of interest are already acknowledged by proxy advisory firms within the body of their reports and procedures are in place to deal with such conflicts. Many of the suggestions made in the Proposed Policy have already been addressed by additional disclosure on a voluntary basis.

We are somewhat concerned that the CSA has broadly defined the proxy advisory firms' responsibilities to include the media and the public. While high profile proxy contests may get attention in the press, a proxy advisory firm remains primarily accountable to its clients who pay for their research and services. The implication that proxy advisory firms are under some obligation to engage with the general public goes well beyond their responsibilities in our view.

In terms of questions 4, 5 and 6 posed in the Proposed Policy, PIAC views these as going beyond the realm of guidance, to being overly prescriptive. Suggesting a designated individual to assist with conflicts as well as vote recommendations, development of guidelines and communications enters the realm of specific business practices that really

should be left to the firm to decide. PIAC's view would be similar on whether firms should engage with issuers and requiring firms to obtain confirmation from clients on whether voting guidelines have been reviewed. We see no value in such prescriptive guidance that would have no real impact on how advisory firms conduct business or on how institutions would approach proxy voting.

To reiterate, PIAC does not see the need for regulation of proxy advisory firms but can support the development of best practice guidance that does not become prescriptive. As stated in our previous submission on this issue, we encourage the regulators to focus more resources on proxy voting reform to ensure the accountability, transparency and efficiency of the proxy voting system. This is an area where both issuers and investors largely agree on deficiencies that should be addressed.

We appreciate this opportunity to comment on the consultation. Please do not hesitate to contact Katharine Preston, Acting Chair of the Corporate Governance Committee (416-681-2944 or kpreston@optrust.com), if you wish to discuss any aspect of this letter in further detail.

Yours sincerely,

Michael Keenan
Chair

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PLACEMENTS
MONTRUSCO BOLTON

23 juin 2014

Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

À l'attention de:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Commission des valeurs mobilières du Manitoba
Commission des valeurs mobilières de l'Ontario
Autorité des marchés financiers
Commission des services financiers et des services aux consommateurs (Nouveau-Brunswick)
Superintendent of Securities, Île-du-Prince-Édouard
Nova Scotia Securities Commission
Surintendant des valeurs mobilières, Yukon
Surintendant des valeurs mobilières, Territoires du Nord-Ouest
Surintendant des valeurs mobilières, Nunavut

**Sujet: Réponse au projet d'Avis 25-201 relatif aux indications à l'intention des agences de conseil en vote**

Chère Me Anne-Marie Beaudoin:

Placements Montrusco Bolton inc. (« PMBI » ou « nous ») est une firme de gestion d'actifs basée à Montréal, dont les actifs sous gestion sont de plus de 5 milliards de dollars. Dans le cadre de ses activités de gestion en actions canadiennes, PMBI engage régulièrement des discussions axées sur la bonne gouvernance avec des émetteurs présents sur la bourse canadienne. En 2014 seulement, PMBI a présenté 14 propositions aux actionnaires de 3 sociétés, dont 7 de ces propositions ont été acceptées et chacune des 7 autres ont reçu au moins 10% des votes.

PMBI est familière avec les questions liées aux circulaires de sollicitation de procurations ainsi qu'au processus d'engagement avec les émetteurs et agences de vote pour ce qui a trait aux propositions présentées aux actionnaires.

Ayant pris récemment connaissance du présent projet, PMBI s'est sentie interpellée par certains aspects du présent avis qui, tels que présentés, vont porter préjudice aux épargnants et investisseurs dans leurs doits fondamentaux.

Christian Godin, M.Sc.
Vice-président principal et chef des actions
Placements Montrusco Bolton inc.

CG/cgl

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**Réponses de Placements Montrusco Bolton inc. aux 5 questions liées au projet:**

Question 1. Approuvez-vous les pratiques recommandées aux agences de conseil en vote? Veuillez fournir des explications:

Nous croyons que ce projet doit être absolument revu et corrigé pour la protection des épargnants et investisseurs. L'exercice des droits des épargnants et investisseurs a été et est encore aujourd'hui l'objet d'obstruction de la part des émetteurs et menacé par l'alourdissement des mécanismes réglementaires qui l'entourent. Ce projet tel qu'il est présenté menace le plein exercice de ce droit, car il accroit la charge de travail et les coûts des agences qui supportent les actionnaires dans l'exercice de leur droit de vote. De plus, ce projet aura pour effet d'augmenter le coût et de réduire le temps d'accès à ces rapports au détriment des actionnaires, qui doivent s'instruire avant de voter pour des propositions et des candidats aux postes des conseils d'administration.

Il faut se rappeler que la grande majorité des sociétés listées sur les bourses canadiennes font parvenir leur circulaires de procurations dans la même période limitée (avril et mai) et qu'un nombre important d'émetteurs attendent la date limite pour faire parvenir celles-ci à leurs actionnaires. Il en résulte un engorgement important, qui est lui même exacerbé par des délais entre la publication du circulaire et la date de l'assemblée. Ces délais sont de plus accentués par des dates de tombée qui sont parfois 2 ou 3 jours avant la tenue desdites assemblées d'actionnaires. En demandant aux agences d'obtenir une validation supplémentaire des faits de leur analyse auprès des émetteurs, ce projet limite le temps de recherche déjà trop restreint dont dispose les agences pour faire un travail de grande qualité. L'épargnant et l'investisseur (les actionnaires) disposeront donc d'encore moins de temps pour consulter les analyses de ces agences.

Plus précisément, aux chapitres des indications, nous relevons plusieurs items qui devraient être revus ou retirés.

Nous croyons que la directive 2.1.2 devrait être corrigée pour utiliser l'expression "conflit d'intérêt potentiel" au lieu de "conflit d'intérêt" pour les exemples a, b et c.

Concernant la directive 2.2.2, il est demandé aux agences de conseils de fonder leurs recommandations sur l'information publique des émetteurs afin de réduire le risque d'erreur ou d'inexactitude. Cette démarche est louable si l'information publiée par les émetteurs est toujours exacte, complète, transparente et à jour. Or, dans la pratique, nous avons noté que ce n'est absolument pas toujours le cas. Le projet doit donner aux agences toute la latitude requise pour qu'elles puissent exercer librement leur jugement et élaborer les meilleurs recommandations face aux dossiers où l'information publique est inexacte, incomplète, opaque et non à jour.

À la directive 2.2.3 aux points a et b, vous demandez aux agences de suivre des procédures qui reflètent la conjoncture du marché et l'environnement règlementaire locale. Nous croyons que l'indication 2.2.3-a aura des conséquences indésirables pour les sociétés listées au Canada basées dans des juridictions où les droits humains, les règles fiscales et la protection de l'environnement sont contraires aux lois et aux droits canadiens. Nous considérons l'indication 2.2.3-b trop prescriptive, car superflue et non justifiée. Les agences de vote ont déjà des standards extrêmement élevés et sont plus souvent rigoureuses que les émetteurs de part la nature même de leurs activités. Cette indication fait également abstraction de l'existence d'une période d'engorgement accentuée par des délais déraisonnables de par leur brièveté. Cette mesure contribue à l'accroissement des coûts pour les épargnants et à la réduction du temps de consultation de ces recommandations.

Pour les directives 2.4.2-c et 2.4.2-d, nous croyons que les indications, bien que louables, soient trop prescriptives et exigeant un travail plus fastidieux que nécessaire.
Par ailleurs, nous sommes d'avis que l'indication 2.4.4 telle qu'elle est écrite peut devenir abusive. En la suivant à la lettre, les agences doivent relayer à leurs clients toutes les corrections et mises à jour d'erreurs communiquées par un émetteur. Nous ne croyons pas que cette tâche incombe aux agences. De plus, cette indication, telle que nous l'interprétons, engendrera encore une fois des coûts supplémentaires pour les épargnants et investisseurs.

Ce projet protège avant tout les émetteurs et donne à leurs avocats-conseils des outils administratifs légaux additionnels pour stopper l'adoption de propositions d'actionnaires qu'ils regardent d'un mauvais œil que ce soit pour la compensation, la transparence, la protection des épargnants, l'environnement ou la responsabilité sociale.

Question 2. Y-a-t-il des préoccupations qui ne trouvent pas de réponse dans le projet d'avis relativement aux agences conseil en vote? Veuillez fournir des explications.

Non

Le projet ne couvre pas assez la protection des épargnants sur le plan de la validité des informations transmises par les émetteurs, les faits et éléments d'information qui peuvent faire en sorte qu'un administrateur puissent être considéré comme non lié ou non-indépendants, sur le contrôle réels exercé par la haute directions ou les administrateurs sur certains blocs d'action, etc..

Question 3. Le projet d'avis favorise-t-il la communication d'information utile aux clients des agences, aux participants au marché et au public? Dans la négative, quels autres éléments d'information devrait être ajoutés?

Nous sommes vraiment déçus de lire dans ce document que l'AMF considère demander aux agences de communiquer avec les émetteurs pendant la période de rédaction de leur recommandation. Tel qu'elle est présentée, cette initiative va créer un préjudice au public et aux épargnants et investisseurs. En suggérant aux agences de communiquer avec les émetteurs directement pendant la période de rédaction des recommandations, l'AMF place les émetteurs en contrôle de l'information avant même que les actionnaires soient appelés à statuer sur des questions sensibles liées à une prise de contrôle, la rémunération, l'élection de membres du conseil d'administration, une pilule empoisonnée, etc. Il est impensable que l'AMF consente à informer à l'avance l'émetteur des intentions d'une agence en position de faire basculer un vote d'actionnaires.

De plus, ce processus additionnel ne peut qu'augmenter le temps de rédaction et le coût qui y est relié, ainsi qu'abréger le temps entre la publication de la recommandation et la date de tombée pour l'exercice des votes. Les épargnants et investisseurs (actionnaires), ainsi que le public, sont les grands perdant dans cette initiative.

Question 4. Nous encourageons les agences de conseil en vote à envisager de désigner une personne qui les aidera à traiter les conflits d'intérêt. Devrions-nous aussi faire en sorte que cette personne les aide dans la formulation de leurs recommandations de vote, l'élaboration des lignes directrices en matière de vote par procurations et les questions relatives aux communications?

Non.

Les agences existent seulement par et pour répondre aux besoins des épargnants et investisseurs qui les emploient pour réaliser des analyses, émettre des recommandations et enregistrer leurs votes.

PMBI est pleinement satisfaite du travail des agences de vote et croit que ces agences font un travail admirable et professionnel compte tenu des contraintes et obstacles avec lesquels elles doivent composer.

PMBI demande à l'AMF de ne pas s'immiscer dans sa relation d'affaires et sont rapport professionnel avec ces agences. L'AMF doit réaliser qu'avec ce projet elle se porte essentiellement à la défense des émetteurs et des firmes d'avocats qui les emploient.

Autrement dit, ce sont les intérêts et les préoccupations des associations d'épargnants et les regroupements d'investisseurs qui devraient être pris en considération par l'AMF et non pas le contraire comme c'est présentement le cas.

Les agences n'ont pas besoin d'une structure supplémentaire. Elles font un excellent travail et ont démontré leur capacité à s'autoréguler lorsque l'AMF, l'OSFI, les investisseurs, les épargnants, les associations d'investisseurs, les bourses, les émetteurs ou le public font part de leurs préoccupations.

Question 5. Nous nous attendons à ce que les agences de conseil en vote communiquent leur manière d'aborder le dialogue et les échanges avec les émetteurs dans l'élaboration de leurs recommandations de vote. Devrions-nous aussi les encourager à communiquer avec les émetteurs durant ce processus? Dans l'affirmative, quels devrait être les objectifs et la forme de ces communications?

Nous croyons fortement que vous ne devriez absolument pas encourager les agences à communiquer avec les émetteurs pendant le processus. Les agences existent pour aider les épargnants et investisseurs dans leur décision de vote sur le conseil d'administration, la rémunération de la haute direction, les pilules empoisonnées, les prises de contrôle, les propositions d'actionnaires minoritaires sur la gouvernance, etc. Nous ne comprenons donc pas pourquoi les hautes directions devraient être informées sur le contenu d'une recommandation avant les actionnaires. Est-ce qu'un juge ou arbitre informe en avance une partie et non l'autre de ce qu'il va accepter comme preuve pour rendre son verdict? Non. Il devrait en être de même dans le cas présent.

L'AMF ne doit pas aller de l'avant avec cette indication. Il s'agit encore une fois d'un mécanisme de protection des émetteurs et non des épargnants et investisseurs.

Cette indication va rendre encore une fois la tâche plus difficile pour les actionnaires cherchant à faire inscrire et adopter des propositions dans l'intérêt des actionnaires.

Il ne faut pas oublier que les agendas des assemblées d'actionnaires sont sous le contrôle des émetteurs qui tendent à publier leurs circulaires de procurations à la dernière minute, ce qui laisse bien peu de temps pour les analyser.

Les émetteurs jouissent déjà d'un nombre impressionnant de mécanismes de protection. Par exemple, ils ne sont pas contraints par la quantité d'information qu'ils soumettent. En effet, il leur est permis de fournir des contre argumentations aux propositions d'actionnaires qui peuvent être 10 fois plus longues et détaillées que ce que la réglementation permet aux actionnaires. De plus, ils peuvent changer d'une année à l'autre la forme et la quantité d'information qui se retrouve dans leur circulaire de procuration.

Veuillez également vous référer à notre argumentaire de la question 3.

Question 6. Les agences de conseil en vote peuvent fournir aux clients des services de vote automatique reposant sur leurs lignes directrices en matière de vote par procuration. Devrions-nous les encourager à envisager d'obtenir la confirmation que le client a lu et accepté ces lignes directrices? Dans l'affirmative, devrions-nous les encourager à obtenir cette confirmation annuellement et après toute modification de ces lignes directrices?

Notre réponse est oui pour les deux parties de la question 6.

**Conclusion**

Nous croyons que les agences font un excellent travail, qu'elles font preuve de diligence et qu'elles sont impartiales et hautement professionnelles. L'AMF doit se rappeler que les émetteurs et les firmes d'avocats sont en conflits d'intérêt lorsqu'ils émettent des recommandations visant l'encadrement des agences-conseils. Nous croyons que les épargnants et investisseurs (actionnaires) minoritaires sont les principaux perdants dans cette réforme et que les émetteurs sont les grands gagnants.

Nous sommes étonnés que les autorités diminuent et obstruent les mécanismes d'aide aux épargnants et actionnaires. Avec ce projet, les mécanismes dont se sont dotés les épargnants et investisseurs sont alourdis, désavantagés, engorgés et handicapés. Il deviendra plus difficile pour eux de se faire une opinion éclairée parce que la date de publication des recommandations sera vraisemblablement retardée suite à l'augmentation de la tâche dictée aux agences et du coût de service. Ce dernier sera moins abordable pour les épargnants et investisseurs, alors que les hautes directions et les conseils d'administration auront accès aux conclusions des recommandations de vote avant les épargnants et investisseurs, ainsi qu'avant le public.

POWER CORPORATION OF CANADA
751 VICTORIA SQUARE, MONTRÉAL, QUÉBEC, CANADA H2Y 2J3

STÉPHANE LEMAY
VICE-PRESIDENT, GENERAL COUNSEL
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July 21, 2014

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Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Re: Canadian Securities Administrators 25-201 –Proxy Advisory Firms

Power Corporation of Canada ("Power Corporation"), as a diversified international management and holding company, has directly and indirectly invested many billions of dollars in Canada, the United States, Europe and Asia, in public and private companies that are active in the financial services, communications and other business sectors. We are major long-term shareholders of Canadian public companies, notably Power Financial Corporation, Great-West Lifeco Inc. and IGM Financial Inc.

Power Corporation and its group companies are active participants in the public dialogue regarding shareholder democracy and corporate governance matters in Canada.

We had welcomed the Canadian Securities Administrators (the "CSA") initiative in considering the potential regulation of proxy advisory firms to address concerns raised about the activities of such firms and their potential impact on Canadian capital markets. We provided a detailed response to the Consultation Paper 25-401 dated September 19, 2012 (the "Consultation Paper"). We do not

re-iterate in this submission the thorough response we made at that time nor the research underlying it. That letter provides a comprehensive basis for our comments below, with supporting analysis, research and references. Our views have not changed.

Unfortunately, the proposed National Policy 25-201 (the "Policy") does not adequately address the concerns raised in the Consultation Paper and by reporting issuers. We believe there is a balanced approach which can address the concerns of all capital markets stakeholders, and, importantly, which can further the objectives of securities legislation (which, after all, should be the rationale for all proposed CSA initiatives).

**Necessity for Regulatory Oversight**

Based on an accumulation of anecdotal evidence and as a logical extrapolation of empirical studies regarding the influence of proxy advisors in the U.S. and throughout the world, we believe it is important for the CSA, through securities laws, to implement a comprehensive framework to regulate proxy advisors, including certain minimum prescribed requirements.

We think it is important to note that their advice impacts not just the proxy advisors' clients, but also other significant capital market participants, such as reporting issuers, their directors and most importantly their shareholders who are not the clients of such firms.

**Issuer Engagement**

The concern with which Power Corporation has the most experience relates to issuer engagement. Power Corporation has historically been the subject of factually erroneous reports by proxy advisors, which required corrections to reports after they had been issued and had influenced voting results. In other cases, corrections were not made.

Reflecting the importance of disclosure in an information circular, applicable Canadian securities legislation regards such a document as a "core document" for purposes of civil liability for secondary market disclosures.

As a consequence, we believe that it is appropriate to require that a proxy advisory firm properly engage with issuers during proxy season. Given the important role of proxy advisors in assisting investors in making voting decisions regarding matters to be presented at shareholder meetings and the consequential nature of the outcome of such votes to participants, including participants in the capital markets beyond the proxy advisory firm's clients (even on what may be viewed as routine matters), it is essential that proxy advisory reports contain accurate information and that voting recommendations are based on an accurate interpretation and comprehensive review of publicly available information. The outcome for matters voted on by shareholders, even if not patently strategic, can have an impact on both the current and future financial performance and reputation of an issuer and its directors.

Given that there is sufficient time between the release of meeting materials and investors' voting deadlines in Canada, a robust and credible issuer engagement process should be mandatory if a proxy advisor is to issue a report regarding an issuer.

Issuers should be provided with a draft voting advisory report prior to its release, especially in the case of "withheld" or "against" management voting recommendations and be given an appropriate opportunity to respond before a report is finalized. In this respect, as we previously indicated, we are particularly supportive of the CSA making mandatory certain aspects that have been recommended in the French Autorité des marchés financiers *Recommendation No. 2011-06 of 18 March, 2011 on Proxy Advisory Firms*.

One of the primary objectives of securities legislation is the timely, accurate and efficient disclosure of information concerning reporting issuers. It appears incongruous that the CSA would not enact certain minimum requirements for proxy advisory firms to achieve this fundamental objective of securities legislation, particularly as the proposed requirements we and other market participants previously suggested, and propose again herein, are not intrusive or onerous, and the benefits of which would only assist in timely, accurate and efficient disclosure.

**Report Disclosure Liability**

Canadian securities laws prescribe the level of detail and accuracy of information required to be disclosed by issuers for matters to be considered at shareholder meetings. In particular, if action is to be taken on any such matter, other than the approval of annual financial statements, issuers are required to briefly describe the substance of the matter in sufficient detail to enable reasonable securityholders to form a reasoned judgment concerning the matter. Rules concerning information circulars in respect of business combinations, related party transactions, take-over bids and issuer bids also mandate disclosure of all matters that would reasonably be expected to affect the decision of securityholders. Further, information circulars concerning take-over bids and issuer bids must contain executed certificates attesting that such documents contain no untrue statement of a material fact and do not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

As noted, applicable Canadian securities legislation regards such a document as a "core document" for purposes of civil liability for secondary market disclosures. To the extent that the disclosures contained in reports (or included, summarized or quoted in other documents) released by or with the consent of proxy advisors alter the mix of available information through the inclusion of an untrue statement of a material fact (e.g., an erroneous voting recommendation based on an untrue factual support for such a recommendation) or omits to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made (e.g., the absence of a sufficient explanation regarding the voting recommendations included in the report), we believe that there should be an appropriate liability regime for proxy advisors. As the sole purpose of a proxy advisor's voting report is to provide a voting recommendation, any error in such a report would likely be considered important to a reasonable shareholder in deciding how to vote on a matter. Considering the significant economic and reputational consequences that inaccurate or incomplete information concerning matters to be voted upon at a shareholder meeting can have on issuers and other stakeholders, proxy advisors should be held accountable for the content of their reports.

**Policy Formulation/Application and Disclosure of Policies**

As we previously indicated in our response to the Consultation Paper, as proxy advisory firms are strategically situated at the critical nexus of institutional investors, reporting issuers and shareholder democracy, a few proxy advisory firms have cultivated substantial, indirect rulemaking power, without any of the usual regulatory checks and balances. Proxy advisors have evolved, without securities regulatory oversight in Canada, and in the absence of the discipline provided by vigorous competition, into de facto standard setters or private regulators in respect of corporate and securities legal matters that have important and long-term national policy implications.

Although it is our view that issuer engagement during the policy formulation process is imperative, we are sensitive to the fact that proxy advisors function pursuant to contractual relationships with their clients and, accordingly, their policies may primarily reflect their clients' views. However, given the significance of their influence, we believe that policies developed and supported by proxy advisory firms should be clear, robust and based on empirical evidence, while also being flexible enough to appropriately contemplate and accommodate the approaches to governance that issuers thoughtfully determine to be appropriate for their unique circumstances. For example, there are legitimate governance differences for controlled companies like Power Corporation and our controlled public company subsidiaries. While a "one-size-fits-all" approach is clearly inappropriate, policies of proxy advisory firms should be formed and applied in a manner that reflects the diversity of businesses and structures that comprise Canada's capital markets.

Proxy advisors should accordingly be required to disclose the internal procedures, guidelines, standards, methodologies, assumptions and sources of information supporting their recommendations, including in respect of their data-gathering procedures. Such disclosure should be sufficient to permit not only the clients of proxy advisors, but others affected by them, to assess the quality of the data and analysis that inform voting recommendations and evaluate such recommendations on their merits.

We believe it is also important for sufficient disclosure to be made by proxy advisors, and be applied consistently, to allow issuers to form a reasonable expectation of voting recommendations in advance, without the issuer being required to purchase services and advice from the proxy advisor.

**Resources**

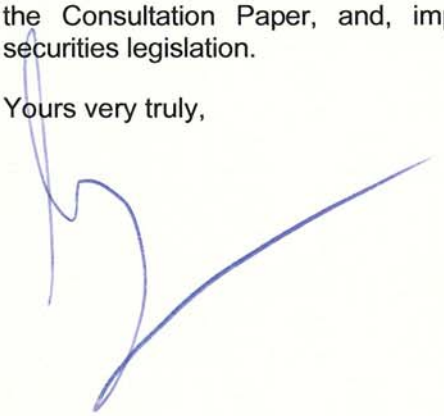
Regulation of proxy advisory firms should ensure that such firms deploy sufficient resources to carry out high-quality assessments of each proxy matter for which advice is to be provided. They should have appropriate knowledge, qualifications and experience with respect to the subject matter of voting recommendations (e.g., compensation policies, industry-specific aspects of complex merger and acquisition transactions, etc.), as well as appropriate time to consider such matters fully, after sufficient engagement with issuers, rather than just through a mechanical, "check-the-box" approach.

**Potential Conflicts of Interest**

Proxy advisors should be required to establish, maintain, enforce and disclose publicly written policies and procedures to address and manage conflicts of interests. Also, we believe that proxy advisors should be required to provide timely, clear and specific disclosure of any actual or potential conflict of interests they identify. A generic disclosure that a conflict of interest *may* exist in the circumstances is insufficient in our opinion. Finally, the CSA should consider whether disclosure may be insufficient to protect against the consequences of certain types of conflicts of interests, that go directly to the proxy advisor's decision making ability and whether such conflicts should not instead be prohibited.

We accordingly believe there should be certain minimum requirements relating to the matters referred to above, which would not unduly restrict the flexibility and operations of proxy advisor firms, which would address the concerns identified in the Consultation Paper, and, importantly, further the primary objectives of securities legislation.

Yours very truly,



INVESTISSEMENTS PSP INVESTMENTS

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BY EMAIL

June 18, 2014

British Colombia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marché financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Dear Sir/Madam:

**RE: Notice and Request for Comment Proposed National Policy 25-201 Guidance for Proxy Advisory Firms ("Proposed Policy")**

This submission is made by the Public Sector Pension Investment Board ("PSP Investments") in response to the Proposed Policy released on April 24, 2014.

By way of background, PSP Investments is a Canadian Crown corporation established to invest the amounts transferred by the Government of Canada since April 1, 2000, for the pension plans of the Public Service, the Canadian Forces and the Royal Canadian

Mounted Police, and since March 1, 2007, for the Reserve Force Pension Plan. To achieve its investment mandate, PSP Investments makes investments in public and private assets. As at September 30, 2013, PSP Investments' net assets under management were worth over $82.3 billion.

## General Comments

We are pleased to have the opportunity to comment on the issues raised in the Proposed Policy. As a long-term institutional investor in the global equity markets, through proxy voting and active engagement with issuers, we promote better corporate governance and corporate responsibility with the objective of enhancing issuer performance and shareholder value.

Last year, PSP Investments voted globally at more than 2,900 shareholder meetings which represented over 30,000 resolutions. As part of the active management of our proxy voting activities, we review proxy circulars, reports from proxy advisory firms and other service providers and consult with our portfolio managers when voting the equities held in accounts managed internally as well as those in segregated accounts managed by external managers. PSP Investments uses the voting platform of a proxy advisory firm to ensure that all votes are submitted validly and on time, but PSP Investments retains at all times full voting authority.

As we stated in our comment letter on the 2012 *CSA Consultation Paper 25-401*: *Potential Regulation of Proxy Advisory Firms*, we are not concerned about the role or current structure of proxy advisory firms. We feel that they provide a number of valuable services and generally promote good corporate governance practices. While their proxy advisor reports and voting recommendations may be a matter of interest to us, we evaluate matters on which we are entitled to vote carefully and cast our votes as we consider appropriate, in accordance with the Proxy Voting Guidelines adopted by our Board of Directors.

Regarding the Proposed Policy, we do not believe that the proposed approach of providing guidance on recommended practices and disclosure by proxy advisory firms will lead to meaningful changes since proxy advisory firms operating in Canada already have similar policies and practices in place and disclose them publicly. We believe that the lack of understanding from issuers and other market participants on the role of proxy advisory firms has contributed to the development of unnecessary regulation.

Notwithstanding our continued belief that regulation of proxy advisory firms is not required, we are satisfied that the Proposed Policy is limited to providing guidance on practices and disclosure and is not intended to be prescriptive.

## Specific Comments

### Conflicts of Interest

There is a perception from issuers that conflicts of interest exist with proxy advisor firms and that these conflicts of interest are not properly managed. Having had the opportunity

to discuss this issue with proxy advisory firms, we do not have any reasons to believe that the ethical walls in place within proxy advisory firms or their internal processes are inefficient to manage properly conflicts of interest. We do not expect the Proposed Policy to result in any substantive changes since proxy advisory firms already have appropriate policies and procedures in place.

**Transparency and Accuracy of Vote Recommendations**

We do not think that transparency is a significant problem; proxy advisory firm reports disclose adequately the reasons for their vote recommendations and make available their voting policies on their websites. In addition, voting recommendations are derived from the information that issuers disclose in their proxy circulars.

Although factual errors can occur from time to time (sometimes due to a lack of clarity in the proxy circular), we, as a client of the proxy advisory firms, are satisfied with the proxy reports we receive and do not believe that there is a problem with the quality of the vote recommendations or the resources, knowledge and expertise of the proxy advisory firms.

**Development of Proxy Voting Guidelines**

Proxy advisory firms already develop their proxy voting guidelines in a highly consultative manner, soliciting input from its clients, the institutional shareholders. We question whether proxy advisory firms need to regularly consult with and consider the preferences and views of the general public on governance issues and proxy voting guidelines. The proxy advisory firms relationship with its clients is governed by private contractual arrangements and therefore guidance suggesting input from the general public is overreaching. The decision to consult with issuers should be left to the proxy advisory firms. However, issuers should always be made aware of any changes to the proxy voting guidelines, as discussed above.

**Communications with Clients, Market Participants, the Media and the Public**

We question the guidance to put policies in place to manage communications with respect to the media and public in general and any questions, concerns, or complaints that the proxy advisory firms may receive. As noted above the relationship between proxy advisory firms and its clients is a contractual one and if and how the proxy advisory firms communicate with third parties should not be subject to regulation.

Furthermore, we question whether the guidance to communicate in reports to clients "any known or potential limitations or conditions in the research and analysis used to prepare the vote recommendations" is reasonable or even possible to fulfill in practical terms.

Similarly, we do not believe it is practical to suggest that proxy advisors' reports provide "identification of the information that is factual and that information that comes from analytical models and assumptions".

The institutions have the requisite expertise to make these distinctions for themselves and the Proposed Policy should not set up unreasonable expectations.

**Corporate Governance Practices**

Proxy advisory firms develop their proxy voting policies in consultation with their clients and in some instances the issuers. The proxy voting policies generally incorporate what is predominantly seen as best governance practices which is generally adapted to the standards of the local market. We feel that the influence of these voting policies has generally had a positive impact on corporate governance practices in Canada as issuers are paying attention to them. It is important to note that large institutional investors such as PSP Investments generally have their own proxy voting guidelines which may differ from those of the proxy advisory firm on many fronts. We encourage issuers to provide feedback on PSP Investments' Proxy Voting Guidelines, if they have concerns with the governance aspects that we consider when voting. PSP Investments is employing the research services of more than one proxy advisory firm and does not rely exclusively on these proxy advisor reports when making its voting decisions. In addition to these reports, PSP Investments carefully reviews proxy circulars, consults its portfolio managers, conducts its own independent research prior to casting its vote. We believe that many institutional investors have a similar decision-making process.

**Response to specific Questions**

1) *Do you agree with the recommended practices for proxy advisory firms?*

   No, the Proposed Policy generally mirrors the policies and practices that proxy advisory firms already follow. Regulation appears unnecessary.

2) *Are there other material concerns with proxy advisory firms that have not been covered in the Proposed Policy?*

   No.

3) *Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public?*

   Since the relationship between the proxy advisory firm and the client is a private contractual one, we disagree with the suggested guidance to consult with issuers, other market participants and the public on vote recommendations and changes to proxy voting guidelines. Proxy advisory firms already develop their proxy voting guidelines in a highly consultative manner and these guidelines are made available on their website.

4) *We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?*

As discussed above, PSP Investments is satisfied with the quality of the reports it receives from proxy advisory firms and the resources, knowledge and expertise of the proxy advisory firms. Although potential conflicts of interest may arise from time to time, as a client of proxy advisory firms, we are not concerned with the independence of the reports we receive and are satisfied with the current policies and procedures in place to safeguard against conflicts of interest.

5) *We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what would be the objectives and format of these objectives?*

Proxy advisory firms already disclose their approach regarding dialogue or contact with issuers. The decision to consult or not with issuers should be left to the proxy advisory firms. We are comfortable with any intervention from an issuer to correct factual errors.

6) *A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to the vote recommendation? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?*

No, institutional investors are sophisticated investors with the required expertise to manage their proxy voting activities.

We appreciate this opportunity to comment on the Proposed Policy. Please do not hesitate to contact the undersigned if you wish to discuss any aspect of this letter in further detail.

Sincerely,

Stéphanie Lachance

Stéphanie Lachance
Vice President, Responsible Investment and
Corporate Secretary

SHARE
SHAREHOLDER ASSOCIATION for RESEARCH & EDUCATION

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial and Consumer Affairs Authority
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
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E-mail: comments@osc.gov.on.ca

And

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

19 June 2014

**RE: CSA Notice and Request for Comment: Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms***

Thank you for the opportunity to comment on the above proposal.

SHARE is a national non-profit organization and an advisor on responsible investment to Canadian institutional investors. Responsible investment is an approach which recognizes the importance of environmental, social and governance (ESG) factors in the financial performance of investments and the long-term stability of capital markets. Our clients, which include pension funds, asset managers,

foundations, religious institutions and trade unions, have assets under management of more than $14 billion. We offer responsible investment services to help clients incorporate ESG issues into their investment management processes, and provide education, policy advocacy and practical research on relevant issues. Proxy voting is one service we offer to clients.

We and our clients view the voting rights attached to company shares as valuable assets and the exercise of those rights is a critical part of responsible investment. Our analysts research ballot issues and vote according to SHARE's public proxy voting guidelines or customized client guidelines.

We wish to underscore that the key relationships in the voting process are between the issuer and the shareholder and between the institutional investor and its beneficiaries. By voting their shares, institutional investors are exercising their rights as owners of the companies and are acting on behalf of beneficiaries. We agree with the statement in the consultation paper that "issuers … may engage with their shareholders, who have the ultimate responsibility of determining how to exercise their right to vote, to explain why they have adopted a given corporate governance practice."[1] Proxy advisory firms are important facilitators and advisers to the voting process, but they are not the ultimate decision makers.

Responsible ownership, supported by such standards as the UN Principles for Responsible Investment (UNPRI) and the UK Stewardship Code, encourages institutional investors to scrutinize and engage with the companies they own, and aims to enhance the responsiveness of issuers to institutional investors. These standards extend to service providers. The UK Stewardship Code states, "the Code ….applies, by extension, to service providers, such as proxy advisors and investment consultants."[2] The UNPRI suggests that signatories "communicate ESG expectations to investment service providers."[3] We believe that directing the CSA's attention to investor stewardship as a whole would be of greater benefit to capital markets.

In view of the above, we agree with the CSA that separate, prescriptive regulation of proxy advisory firms is not warranted. In the interests of greater transparency on the part of all actors in the voting system, we have no objection to voluntary guidance for proxy advisory firms which would encourage disclosure of conflict of interest policies, proxy voting guidelines, and the methodologies used in analysis. Many of our practices already conform to the suggestions contained in the proposed policy. However, we suggest the CSA give further thought to whether the guidance should include information on communications with clients, market participants, the media and the public, which may be overly prescriptive. Regarding question 5 of the consultation paper, we do not see the need to encourage proxy advisory firms to engage with issuers as they prepare vote recommendations as this will depend on the particular approach of the advisory firm.

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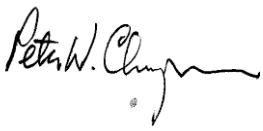
[1] CSA Notice and Request for Comment, Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*, April 24, 2014, p. 4
[2] The UK Stewardship Code, September 2012, Application of the Code, s.2, p.2
[3] UN Principles for Responsible Investment, Principle 4, "Possible Actions". http://www.unpri.org/about-pri/the-six-principles/

SHARE
SHAREHOLDER ASSOCIATION for RESEARCH & EDUCATION

Thank you again for the opportunity to comment. SHARE would be pleased to elaborate on any of the arguments outlined above.

Sincerely,



Peter Chapman
Executive Director
Shareholder Association for Research and Education

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July 23, 2014

VIA ELECTRONIC MAIL
comments@osc.on.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Subject: Proposed National Policy 25-201(Guidance for Proxy Advisory Firms)

Dear OSC Secretary:

The Shareholder Communications Coalition ("Coalition") is pleased to provide its comments to the Canadian Securities Administrators ("CSA") regarding proposed National Policy 25-201, Guidance for Proxy Advisory Firms.

The Coalition comprises three professional associations in the United States: Business Roundtable, National Investor Relations Institute, and Society of Corporate Secretaries & Governance Professionals.

For almost a decade, the Coalition has been an advocate for reforms to address specific problems that have been raised regarding proxy advisory firms. The Coalition agrees with CSA that more needs to be done to address conflicts of interest, promote transparency in proxy advisory firm processes, and ensure accuracy in company reports.

Although the regulatory framework for investment advisers and their service providers is different in Canada than in the United States, we want to share with CSA the Coalition's regulatory proposals for addressing the common issues that have been raised regarding the role and legal status of proxy advisory firms.

Attached are two comment letters the Coalition has submitted in the past year: (1) a letter to the U.S. Securities and Exchange Commission ("SEC"), dated December 4, 2013, commenting on issues discussed at an SEC Roundtable on Proxy Advisory Services; and (2) a letter dated December 20, 2013, commenting on the Best Practice Principles developed by and for Governance Research Providers in Europe.

Please feel free to contact our office with any questions, or if we can provide any additional information about the U.S. perspective on these issues.

Sincerely,

Niels Holch
Executive Director

Attachments

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December 4, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Subject: SEC Roundtable on Proxy Advisory Services
File Number 4-670

Dear Ms. Murphy:

The Shareholder Communications Coalition ("Coalition")[1] is pleased to provide its comments to the Securities and Exchange Commission ("SEC"), in connection with the Roundtable on Proxy Advisory Services to be held on December 5, 2013.

The Coalition is very supportive of the SEC's interest in reviewing the appropriate level of regulation of proxy advisory firms under the Federal securities laws. This review should include the role of these firms in the proxy system and the processes used by these firms to generate voting recommendations and make voting decisions for their institutional investor clients.

In its 2010 Concept Release on the U.S. Proxy System, the SEC acknowledged that proxy advisory firms have considerable influence on the proxy voting process. Many market participants agree, and this influence is only going to increase with growing shareholder activism and the Dodd-Frank requirement of regular "say on pay" votes.

Despite their large role in proxy matters, proxy advisory firms remain generally unregulated and unsupervised. Substantial concerns have been raised by many different participants in the proxy process about: (1) conflicts of interest involving several of their business practices; (2) a lack of transparency concerning their standards, procedures, and methodologies; and (3) their use of incorrect factual information in formulating specific voting recommendations.

[1] The Shareholder Communications Coalition ("Coalition") comprises three associations: Business Roundtable, National Investor Relations Institute, and Society of Corporate Secretaries & Governance Professionals. More information about the Coalition and its advocacy activities can be accessed at www.shareholdercoalition.com.

Concerns have also been expressed about whether institutional money managers are exercising appropriate oversight over the proxy advisory firms they retain, consistent with their fiduciary duties as registered investment advisers.

As the SEC evaluates the role and legal status of proxy advisory firms, the Coalition has developed the attached recommendations for the agency to consider in connection with any new rulemaking or interpretive guidance on this subject.

Thank you for your consideration of these views. Please feel free to contact me or any member of the Coalition with any questions, or if you need additional information.

Sincerely,

[redacted]

Niels Holch
Executive Director
nholch@holcherickson.com

Attachment

cc: The Honorable Mary Jo White
The Honorable Luis A. Aguilar
The Honorable Daniel M. Gallagher
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar
Keith Higgins, Division of Corporation Finance
Norm Champ, Division of Investment Management

# Regulatory Reform Recommendations – Proxy Advisory Firms

## Background

Public companies and many other participants in the proxy process have expressed concerns about the considerable influence in the shareholder voting process that is exercised by private firms providing proxy advisory services to institutional investors. These firms operate today with very little regulation or oversight. Concerns with respect to their role in the proxy process were discussed in a Securities and Exchange Commission ("SEC") Concept Release, issued in July 2010.[1]

There is a lack of transparency in the way proxy advisory firms operate, with insufficient information available about their policies, procedures, guidelines, and methodologies. Conflicts of interest exist in several of their business practices; and concerns exist about their use of incorrect factual information in formulating specific voting recommendations.

Despite their large role in proxy matters, proxy advisory firms typically develop their policies using a "one-size-fits-all"—instead of a case-by-case—approach that applies the same standards to all public companies, instead of evaluating the specific facts and circumstances of each company they evaluate.

One of the reasons that proxy advisory firms have become so powerful is that many proxy participants interpret SEC and Department of Labor rules and guidance as requiring institutional investors to vote all their proxies at shareholder meetings as a part of the fiduciary duties they owe to their clients, investors, and beneficiaries. Moreover, SEC staff have issued no-action letters suggesting that investment advisers can avoid their own conflict of interest concerns through the use of proxy advisory firms.

Many institutional investors and their third-party investment managers—especially mid-size and smaller firms—reduce their costs by not having dedicated in-house staff to analyze and vote on proxy items. Instead, these institutional investors and managers typically outsource their voting decisions to proxy advisory firms, or make their voting decisions solely on the recommendations of proxy advisory firms.

The proxy advisory industry is not subject to any uniform regulatory framework. While the largest proxy advisory firm, Institutional Shareholder Services ("ISS"), is registered under the Investment Advisers Act of 1940, the second biggest, Glass Lewis, has failed to register as an investment adviser and is not subject to any regulatory supervision. Moreover, the SEC's rules applicable to investment advisers do not reflect the unique role that these advisory firms perform in the proxy voting process.

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[1] Concept Release on the U.S, Proxy System, U.S. Securities and Exchange Commission, 75 Fed. Reg. 42,982 (July 22, 2010).

Nevertheless, in May 2013, the SEC sanctioned ISS under the Advisers Act for failing to establish or enforce written policies and procedures to prevent the misuse of material, non-public information by ISS employees with third parties.[2]

Additionally, the SEC has created an exemption from its proxy solicitation rules for these firms, so they are not required to file their reports or otherwise abide by solicitation and disclosure rules that apply to other participants in the proxy process. Thus, their reports, in contrast to company and shareholder proxy materials, are not publicly available, even after annual meetings.

Given the significant role of proxy advisory firms in the proxy process, the lack of a uniform regulatory framework for these firms needs to be addressed. Proxy advisory firms should be subject to more robust oversight by the SEC and the institutional investors that rely on them.

## Regulatory Reform Recommendations

The Shareholder Communications Coalition ("Coalition")[3] recommends that the SEC adopt the following regulatory measures for proxy advisory firms:

1. **SEC Registration**. Registration of all proxy advisory firms, pursuant to the Investment Advisers Act of 1940.

2. **Regulatory Framework for Proxy Advisory Firms**. Development of a regulatory framework that reflects the role that proxy advisory firms perform in the proxy voting process. This regulatory framework should, at a minimum, require each proxy advisory firm to:

- establish, maintain, and enforce written policies and procedures to address conflicts of interest;
- establish, maintain, and enforce a written code of ethics and professional conduct;
- establish, maintain, and enforce an effective internal control structure governing the implementation of and adherence to the policies, procedures, guidelines, and methodologies used to provide proxy voting recommendations to persons with whom the proxy advisory firm has a business relationship;

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[2] See Order Instituting Administrative and Cease-and-Desist Proceedings and Imposing Remedial Sanctions and a Cease-and-Desist Order, In the Matter of Institutional Shareholder Services, Inc., Administrative Proceeding File No. 3-15331, May 23, 2013, available at http://www.sec.gov/litigation/admin/2013/ia-3611.pdf.

[3] The Shareholder Communications Coalition comprises three associations: Business Roundtable, the Society of Corporate Secretaries & Governance Professionals, and the National Investor Relations Institute. More information about the Coalition can be accessed at www.shareholdercoalition.com.

- provide for website disclosure of the policies, procedures, guidelines and methodologies used by each proxy advisory firm to develop proxy voting recommendations; and

- require proxy advisory firms to maintain records and file annual or other reports required by the SEC.

3. **Additional Transparency Requirements**. Any regulatory exemption from the SEC's proxy solicitation rules should require that a proxy advisory firm comply with the following conditions:

- provide each public company with an advance copy (i.e., 5 business days before issuance) of any report that includes a proxy voting recommendation about such company, to permit the company to review and comment on the factual accuracy of statements made in the report.[4] Each public company should be permitted to share an advance copy of a report by a proxy advisory firm with its legal counsel and other advisers on a confidential basis;

- promptly correct any factual error in a report that is identified by a public company;

- disclose when comments have been received by a public company on the front page of a report about that company, with an Internet address or link provided for investors to access such comments; and

- make available on its website without charge (or file with the Commission) a copy of each report that contains a proxy voting recommendation about a public company, no later than 90 days after the shareholder meeting to which the voting recommendation relates.

4. **Fiduciary Responsibilities of Investment Advisers**. The Coalition recommends the withdrawal of the two No-Action letters issued in 2004, permitting registered investment advisers to rely on a proxy advisory's firm's general policies and procedures pertaining to conflicts of interest, instead of evaluating any specific conflicts of interest that an investment adviser or proxy advisory firm may have.[5]

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[4] One proxy advisory firm—ISS—provides draft reports in advance (on a very short turnaround) only to companies that are listed in the S&P 500. Other companies are not permitted to review draft reports from ISS. The other major proxy advisory firm—Glass Lewis—does not provide draft reports in advance for any public company.

[5] See Letter from Douglas Scheidt, Associate Director and Chief Counsel, Division of Investment Management, to Kent S. Hughes, Managing Director, Egan-Jones Proxy Services, May 27, 2004, available at http://www.sec.gov/divisions/investment/noaction/egan052704.htm; and Letter from Douglas Scheidt, Associate Director and Chief Counsel, Division of Investment Management, to Mari Anne Pisarri, Pickard and Djinis LLP (on behalf of Institutional Shareholder Services, Inc.), September 15, 2004, available at http://www.sec.gov/divisions/investment/noaction/iss091504.htm.

Further, the SEC should consider issuing rules or guidance emphasizing the responsibility of registered investment adviser to exercise appropriate oversight over its proxy voting process, including its use of proxy advisory firms, to ensure that its voting decisions with respect to client securities are in the best interests of its clients. Client oversight of proxy advisory firms should include conflicts of interest; internal standards, methodologies, and controls; workflow management, and quality of analytical staff and work product.

The SEC should also consider the appropriateness of requiring registered investment advisers to publicly disclose on at least an annual basis the following: (a) any engagement by an adviser of a proxy advisory firm in connection with the voting of securities; and (b) the adviser's policies and procedures for oversight of the voting recommendations provided by each proxy advisory firm engaged for this purpose.

December 4, 2013

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December 20, 2013

VIA ELECTRONIC MAIL
consultation@bppgrp.info

Dr. Dirk Andreas Zetzsche
Independent Chairman
Drafting Committee of the Best Practice
Principles for Governance Research Providers
c/o University of Liechtenstein
Furst-Franz-Josef-Strasse
9490 Vaduz
Liechtenstein

Subject: Public Consultation on Best Practice Principles for Governance Research Providers

Dear Professor Zetzsche:

The Shareholder Communications Coalition ("Coalition"), based in Washington, D.C., is pleased to provide its comments regarding the draft Best Practice Principles ("Principles") developed by (and for) Governance Research Providers in Europe and globally.

The Coalition comprises three associations based in the United States: Business Roundtable (www.businessroundtable.org), National Investor Relations Institute (www.niri.org), and Society of Corporate Secretaries & Governance Professionals (www.governanceprofessionals.org). More information about the Coalition and its advocacy activities can be accessed at www.shareholdercoalition.com.

The Coalition's comments relate to providers that make recommendations on shareholder voting—so called proxy advisory firms—as a subset of those entities providing governance research services.

Proxy advisory firms have considerable influence in the shareholder voting process for public companies, yet operate today with little regulation or oversight. As discussed at the U.S. Securities and Exchange Commission's Roundtable on Proxy Advisory Services on December 5, 2013, a number of concerns have been raised over the years about the use of these firms by institutional investors and the manner in which individual proxy advisory firms operate:

- It is unclear whether institutional money managers are exercising appropriate oversight over the proxy advisory firms they retain, consistent with their fiduciary responsibilities;

- There is a lack of transparency in the way proxy advisory firms operate, with insufficient information available to the public markets about their policies, procedures, guidelines and methodologies;

- It is unclear whether proxy advisory firms are taking appropriate steps to see that their analysts responsible for making voting recommendations have the requisite experience, qualifications, and training in current corporate governance issues, particularly compensation issues, and board policies and practices;

- Several of the practices employed by proxy advisory firms raise conflicts of interest concerns and are not adequately disclosed to their clients; and

- Proxy advisory firms sometimes use incorrect factual information in developing specific voting recommendations for shareholder meetings, and these firms do not have consistent processes in place to identify, correct, and disclose these factual errors.

The Coalition notes the conclusion by the European Securities and Markets Authority ("ESMA") that no clear evidence exists of a "market failure" in relation to how proxy advisory firms interact with institutional investors and public companies. We believe, however, that market failure is not the proper measure and misses the point. In the U.S. markets at least, the proxy advisory firms have significant influence over proxy voting by virtue of particular laws and regulations that encourage investors' reliance on their services. The Coalition supports a comprehensive solution, including the consideration of a uniform regulatory framework that applies to these firms and reflects the unique role that they play in the proxy voting process.

In that regard (and in response to question #3 of the Consultation), the Coalition does not believe that a comply-or-explain approach with respect to these Principles is practical or appropriate. The principal objective of a comply-or-explain framework is to grant flexibility for companies to deviate from a code to accommodate company-specific circumstances. This approach is appropriate for corporate governance practices, to acknowledge differences in organizational and governance structures and processes. However, we do not believe it is appropriate for what is, in effect, a baseline standard of conduct governing providers of vote recommendations (and who sometimes provide a direct voting service) that are used by many investment advisers, sometimes without full review or analysis.

Nevertheless, the Coalition does believe that the draft Principles are an important first step in addressing some of the concerns that have been raised. If the Principles are

followed, they will provide for improved transparency and disclosures regarding the internal processes that proxy advisory firms use to develop voting recommendations and decisions for their institutional investor clients. They do not, however, address other significant concerns, such as:

- A lack of disclosure of specific conflicts that exist routinely as a result of certain business practices engaged in by proxy advisory firms;
- The integrity of data collection and verification practices for the wide-range of company and market data that is central to arriving at a thoughtful and well-reasoned voting recommendation;
- The use of incorrect factual information by these firms in formulating specific voting recommendations; and
- Inadequate disclosures to the public markets about how proxy firms operate and how they develop voting recommendations.

What follows are comments by the Coalition on specific matters contained in the draft Principles and the questions raised in the accompanying Consultation.

## A. Principle One: Service Quality

1. Research Policy and Methodologies. The Coalition strongly supports more transparency and disclosure to clients, companies, and the public markets of the research policies and "house" voting guidelines used by proxy advisory firms. It also believes that these policies and guidelines should be developed with a greater opportunity for companies and investors to provide input into their development.[1]

   Beyond the opportunity for public input regarding policies and guidelines, information about the internal processes and methodologies used by proxy advisory firms to develop proxy voting recommendations should be disclosed publicly on their respective websites. This is necessary to ensure that the public markets have confidence in the conclusions that these firms reach on specific shareholder voting issues.

   Additionally, given their influential role in the proxy voting process, each proxy advisory firm should be required to establish, maintain, and enforce an effective internal control structure governing the implementation of, and

[1] While Institutional Shareholder Services ("ISS") does seek comments on some of its draft voting policy changes each year, it is unclear how the comments and inputs from different constituencies are used in crafting the policies. Additionally, the ISS comment period is very short, typically two weeks, and does not provide adequate time for most public companies to analyze and provide comments on the draft policies.

adherence to, the policies, guidelines, and methodologies used to provide proxy voting recommendations to persons with whom the proxy advisory firm has a client relationship.

2. Quality of Research. The Coalition supports the intent of the draft Principles to encourage proxy advisory firms to take steps to ensure the reliability of the information they use in the research process, but believes the Principles should be more specific. In order to ensure that company reports are factually accurate, proxy advisory firms should provide each company with an advance draft copy of any report that includes a proxy voting recommendation about such company. This would permit each company to review and comment on the accuracy of factual statements made, or omissions, in a report before it is issued to clients, before any of the proxy advisory firm's recommendations become public, and before any institutional investors vote their shares based on information that might be erroneous.

   At least one proxy advisory firm—Institutional Shareholder Services—provides draft reports in advance for this purpose to companies that are listed in the S&P 500 index. This practice should be required of all proxy advisory firms and cover all companies for which they are making voting recommendations, so that a uniform approach to fact-checking by companies is achieved.

   After receiving public company comments on specific reports, proxy advisory firms should promptly correct any factual error(s) identified. Firms should also disclose when comments have been received by a public company and permit investor access to such comments.

   In order to improve the discourse in public markets about the research, analysis, and conclusions by proxy advisory firms regarding individual companies and permit academic study, each firm should disclose on its website (or through a regulatory filing) a copy of each report that contains a proxy voting recommendation about a public company, sometime after the shareholder meeting to which the voting recommendation relates.

3. Employee Qualification & Training. The Coalition agrees with the draft Principles that proxy advisory firms should evaluate and improve employee qualifications and training, to ensure that "staff members are trained on the relevance and importance of their activities and on how they contribute to service delivery." In addition, analytical staff should have an understanding of specific corporate governance policies and board practices, so they can appreciate the unique circumstances of each individual company they evaluate. This is particularly true with respect to compensation matters and the say-on-pay vote. Indeed, the Coalition believes that experienced,

qualified, and well-trained staff should be a central tenet of any Best Practice Principles, and, therefore, could be given much greater prominence.

Additionally, to ensure the highest quality work product possible, the Coalition believes that proxy advisory firms and their clients should evaluate workflow management policies and procedures, the quality of the analyst work product, and whether technology is being used most effectively within these firms.

4. Client & Supplier Understanding. The Coalition believes that the responsibilities of the institutional investors that retain proxy advisory firms should be addressed.[2] Each institutional investor with fiduciary responsibilities should be exercising appropriate oversight over its proxy voting process, including its use of proxy advisory firms, to ensure that its voting decisions are in the best interests of its clients and beneficiaries. In addition, institutional investors should provide more disclosure to their beneficiaries and the public about their proxy voting policies and how they utilize the advice of proxy advisers. Further, proxy advisory firms should disclose to the public markets any framework that they have developed to facilitate oversight efforts by their institutional investor clients. Our comments and recommendations are aimed, in part, at enabling investors to exercise an appropriate level of oversight.

   Whether as a part of the Principles or otherwise,[3] oversight of proxy advisory firms by institutional investors should include, at a minimum, an evaluation of the following: (1) conflicts of interest; (2) internal standards, methodologies, and controls; and (3) quality of analytical staff and work product.

**B. Principle Two: Conflicts of Interest Management**

1. Conflicts of Interest Policy and Disclosure. The draft Principles identify the most important potential conflicts that may arise in the course of the day-to-day operations of a proxy advisory firm. The Coalition agrees that these are some of the proper conflicts to address, but does not believe the development of a general conflicts of interest policy is alone sufficient. It is important that specific conflicts relating to matters to be voted upon be disclosed to the other clients of a proxy advisory firm in connection with voting recommendations. Examples include:

   - Disclosure by any firm providing corporate governance and/or executive compensation consulting services to a company, while at the same time providing voting

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[2] *See, e.g.*, question #12 in the Consultation document.
[3] *See, e.g.*, the U.K. Stewardship Code.

recommendations to institutional investor clients on proxy matters involving the same company;[4]

- Disclosure by any firm providing voting recommendations on shareholder proposals submitted to companies by any of their investor clients; and

- Disclosure by any firm that has a business or professional relationship with a company and/or investor client that transcends a client relationship.

The Coalition questions the assertion made in the draft Principles that the public disclosure of specific conflicts may create problems with the use of information barriers by some proxy advisory firms. These information barriers, it is argued, can prevent a potential conflict from becoming an actual conflict.[5] In the Coalition's view, however, the use of information barriers is a separate issue from the disclosure of a specific conflict. Institutional investors and other public market participants involved in making voting decisions should be specifically informed of every conflict, as they weigh the voting recommendation(s) made by a proxy advisory firm, including the conflict that arises when the firm is paid by an investor that advances a shareholder proposal or has an item on the company's proxy upon which the firm makes a recommendation.

**C. Principle Three: Communications Policy**

Dialogue with Issuers, Shareholder Proponents & Other Stakeholders. The Coalition supports additional opportunities for dialogue between proxy advisory firms and public companies, as well as with other participants in the proxy process. In addition to the transparency and disclosure measures noted earlier in this comment letter, the Coalition reiterates its comment that all proxy advisory firms provide public companies with advance copies of their individual reports for review of factual statements. Any factual errors should then be corrected promptly and the proxy advisory firm should disclose in its reports that public company comments were received and permit investor access to such comments. The Coalition also believes that the public markets

[4] The Coalition understands from the recent SEC Roundtable that ISS discloses to its investor clients, upon request, a list of those companies subscribing to its corporate governance and/or executive compensation consulting services.

[5] This theoretically would arise in the case where a corporate consulting client was known to a firm analyst making a recommendation. Knowing the fact that the corporate consulting client purchases services from the firm could, in fact, cloud the judgment of the analyst and cause him or her to be prone to make recommendations favorable to the company.

would benefit greatly from the disclosure of all company reports by each proxy advisory firm, at some point after a shareholder meeting.[6]

**D. Other Issues**

As noted earlier, the Coalition believes the draft Principles are an important first step in addressing some of the concerns that have been raised regarding the role of proxy advisory firms. However, a more comprehensive approach is necessary to address these concerns, including consideration of a uniform regulatory framework that applies to these firms and reflects the unique role that they play in the proxy voting process.

Thank you for the opportunity to provide comments on the draft Principles and for considering our views. Please feel free to contact me at nholch@holcherickson.com, or through our Coalition website (www.shareholdercoalition.com), with any questions, or if you need additional information.

Sincerely,

[redacted]

Niels Holch
Executive Director

[6] The Coalition also believes that a delayed disclosure of these reports would not adversely impact the competitive or proprietary interests of individual proxy advisory firms.

INCLUDES COMMENT LETTERS

INCLUDES COMMENT LETTERS

Shorecrest Group Ltd.
120 Adelaide St. West, Suite 2500, Toronto, Ontario, M5H 1T1
www.shorecrestgroup.com

July 22nd, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities Nunavut,

**Attention:**

The Secretary
Ontario Securities Commission
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22nd Floor
Toronto, Ontario
M5H 3S8
Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Montreal, Quebec
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E-mail: **consultation-en-cours@lautorite.qc.ca**

SHORECREST GROUP LTD.
120 Adelaide St. West, Suite 2500, Toronto, Ontario, M5H 1T1, www.shorecrestgroup.com

Dear Secretary and Me Beaudoin:

**Re: Proposed National Policy 25-201 Guidance for Proxy Advisory Firms**

This letter is in response to the CSA's Notice and Request for Comments related to the proposed policy on proxy advisory firms. Shorecrest group appreciates the opportunity to offer our comments on the proposed policy. Shorecrest is a proxy advisory and shareholder communication firm that assists issuers and activist investors achieve the desired level of support for a shareholder meeting or plan of arrangement. We are a subscriber to both ISS and Glass Lewis, and are very familiar with the impact of these reports and the process.

We agree with the CSA statement that proxy advisory firms play an important role in the voting process by assisting institutional investors in exercising their voting rights at shareholder's meeting. There is an increasing amount of disclosure required each year with annual meetings, special motions and transactions. Without the assistance of proxy advisory firms, a large segment of institutional investors would not feel they had adequate resources to make an informed decision on important shareholder matters. Most issuers would agree that they want their shareholders to participate in the voting process and that vote participation is having an increasing importance in the public markets. While the proposed policy is a good step in the right direction, it does not address a number of concerns and difficulties encountered by issuers.

**Conflict of Interest:**

The impact that proxy advisory firms have on the outcome of a meeting, can be substantial for certain issuers. While the proposed policy recommends adequate disclosure to the proxy advisory firm's client, it does not extend that disclosure to the issuer.

For instance, there is no disclosure if the dissident or activist shareholder is also a client of the proxy advisory firm. This information can have significant impact on all shareholders voting decision, not only to the advisor's clients but to other non-subscribers. In a proxy contest or contested motion, routinely, the proxy advisor's recommendations and comments are communicated to all shareholders, not just subscribers via press release. It would be beneficial for both sides to be aware of any conflict or perceived conflict in making the recommendation public.

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120 Adelaide St. West, Suite 2500, Toronto, Ontario, M5H 1T1, www.shorecrestgroup.com

**Transparency and accuracy of vote recommendations:**

The financial information that is used for these reports and recommendations come from various sources. While our experience is that they are generally accurate, there are occasions when the accuracy of the information has been questioned.

However, often the issuer is not aware of the report or its contents, and therefore unaware of any inaccurate information being disseminated to the advisor's subscribers. ISS may provide, a copy of their draft report to issuers on the TSX Composite. The issuer is then provided 24 to 48 hours to review the material and to point out any material inaccuracies. The majority of issuers do not get to see a draft copy of the report and will not receive a copy of the final report unless they obtain it from a service provider.

In our experience, there have been a number of issuers that have received large withhold or against vote on a motion and are unaware of a negative recommendation. On occasion, the negative recommendation was the result of a small oversight, which the issuer can quickly correct. For example, we have encountered issuers that have received withhold votes on the governance committee because the breakdown of director elections was not filed on SEDAR with the voting results. An issuer may feel they have met this requirement because they issued a press release with the results as required by the TSX. However, Glass Lewis is looking for this information in the voting results filed via SEDAR, and since they are missing from this report, determine they have not disclosed the information. Once the issuer is advised of the oversight, they have an opportunity to correct this and refile their voting results. Thus obtaining a favourable recommendation. However, the issuer is often not aware of the problem, and therefore cannot resolve it. Given that more and more issuers are adopting majority voting guidelines, it is essential that the withhold votes they receive are justified and not the result of a technical deficiency.

**Development of proxy voting guidelines:**

We would agree with the statement that the potential influence, proxy voting guidelines developed by proxy advisory firms may have an impact on the corporate governance practices of issuers and proxy advisory firms should avoid a "one size fits all" approach. They can also effect the issuer's ability to have a stock option plan, executive compensation approved.

The required approval to implement effective compensation, can effect an issuer's ability to attract and retain key employees. It is difficult for many issuers to predetermine if their plan will receive the required approval from the advisory firms. It can be a challenge to determine if a plan will fall within the share value transfer and annual cost analysis calculations done by the proxy advisory firms. It is easy to determine by reviewing the advisor's guidelines, if a particular plan contains the minimum absolute numerical and amendment provisions requirements to meet the advisor's approval. However, despite meeting these guidelines, and issuer may run into a problem because of the determination of the svt and cost analysis calculation. It is difficult for an issuer to determine if they are meeting the expectations of the advisory firm, since the calculation includes a number of assumptions and also contain a component that is based on a comparison to an issuer's peer group. The peer group is determined by the advisory

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firm and the bench mark target changes throughout the year as the peer group files their most current information. It is essential that the analysis be fully disclosed for an issuer to make a more informed decision when designing their plans. Also, it is important that the proxy advisory firm are open to considering additional information to take into account key factors that may cause an issuer to deviate from peer group bench mark. As the assumptions made in these analysis, can effect whether or not the issuer falls into an acceptable range.

**Communications with clients, market participants, the media and the public:**

It is difficult for an issuer to determine the extent of their exposure of a negative recommendation as they are often unaware which of their holder's subscribers to the proxy advisory firms and to the extent to which the holder automatically follow recommendation or have their own guidelines. To assist an issuer in making the determination on how much weight to give to the proxy advisory firm, we would suggest that at the time a holder discloses annually their voting decisions that they include additional information regarding the influence of the proxy advisory firm. Holders would disclose which proxy advisory firm, if any, they subscribe to and to what extend they followed their recommendations.

Thank you for the opportunity to comment on the proposed policy.

Sincerely,

"signed"

Penny Rice
Managing Director
Shorecrest Group

INCLUDES COMMENT LETTERS

**De :** Frazer, Suzan [mailto:suzan.frazer@mcinnescooper.com]
**Envoyé :** 24 juin 2014 11:11
**À :** Consultation-en-cours; Comments@osc.gov.on.ca
**Cc :** John Budreski; #Corporate Finance
**Objet :** Request for Comment Regarding Proxy Advisory Firms

Me Anne-Marie Beaudoin and the Secretary of the OSC:

John Budreski sent me a copy of his response to the April 24, 2014 "*CSA Notice and Request for Comment – Proposed National Policy 25-201 - Guidance for Proxy Advisory Firms*", copy attached. I circulated that the Notice and Mr Budreski's response to members of our firm's Corporate Finance Group. I note that the OSC site indicates that the Notice is open for comment until July 24, 2014.

Members of our Group met to consider the CSA Notice and Mr Budreski's response.

Some of Mr Budreski's comments under the heading "Challenges" are factual in nature and we have not done any due diligence to confirm his statements. However, we are in general agreement with points he raises.

Many of our public company clients currently do not have a large institutional investor base and so they do not feel the impact of the recommendations of proxy advisory firms as much as other issuers do. However, we agree with the statements in the CSA Notice that "proxy voting is an important feature of our capital markets" and "proxy advisory firms play an important role in the voting process".

Given the importance of proxy voting and the role played by proxy advisory firms in the voting process, we are in agreement with the four part regime recommended by Mr Budreski in his response under the heading "Recommended Action"

Regards,

MCINNES COOPER

**D. Suzan Frazer**
Partner
McInnes Cooper

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INCLUDES COMMENT LETTERS


June 17, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Me Anne-Marie Beaudoin
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E-mail: comments@osc.gov.on.ca

Re: CSA Notice and Request for Comment – Proposed National Policy 25-201 – *Guidance for Proxy Advisory Firms*

Dear Sirs/Mesdames:

This letter is submitted in response to the Canadian Securities Administrators ("**CSA**") Notice and Request for Comment on Proposed National Policy 25-201 – *Guidance for Proxy Advisory Firms* (the "**Proposed Policy**").

Trinidad Drilling Ltd. ("**Trinidad**") appreciates the opportunity to provide comments on the Proposed Policy. Trinidad is a Calgary based oilfield contract drilling company with extensive operations in both Canada and the United States, together with significant operations in Mexico and the Middle East. Trinidad is traded on the Toronto Stock Exchange (the "**TSX**") under the symbol "TDG", and has a current market capitalization of approximately $1.7 billion.

We feel compelled to comment as a result of our recent negative experience with Institutional Shareholder Services Inc. ("**ISS**") during the 2014 proxy season. We believe that the lack of

accountability and lack transparency in the ISS process should not remain unchecked; instead, we are of the view that proxy advisory firms should be subject to binding regulation. The summary below of our recent dealings with ISS evidences how, in a vacuum of regulation, proxy advisory firms are able to act capriciously and wantonly to the detriment of issuers and their shareholders.

***Summary of Recent Experience with ISS***

The following is a chronology of Trinidad's recent interaction with ISS:

- On April 4, 2014, Trinidad SEDAR filed its information circular (the "**Circular**") for the 2014 annual meeting of shareholders (the "**AGM**") to be held on May 8, 2014.
    - Matters for consideration at the AGM included the customary three year shareholder re-approval of Trinidad's stock option plan (the "**Option Plan**"), as required by the TSX.
- On the morning of April 22, 2014, Trinidad's Vice President, Investor Relations, received the following email from ISS:
    - "Attached please find for your review a courtesy preliminary draft of ISS' proxy analysis for your company's upcoming annual meeting. Your comments must be submitted by 4:00 PM Eastern, Wednesday, April 23, 2014. If we do not receive your comments by this deadline, the proxy analysis will be finalized and disseminated without your input."
    - The preliminary ISS Report recommended an AGAINST vote in respect of the re-approval of the Option Plan. In particular, ISS identified the following two issues:
        - Non-employee directors' participation was not acceptably limited; and
        - The Option Plan's amendment provision did not adequately restrict the board's ability to amend the Option Plan without shareholder approval.
- Trinidad reviewed the comments in the preliminary ISS Report and determined to amend the Option Plan to satisfy the concerns of ISS.
    - An email confirming the same was sent to ISS by our legal counsel on April 23, 2014 at 3:22 PM ET.
    - At 3:29 PM ET, ISS confirmed receipt with the following email: "Thank you very much for your time and attention in reviewing this draft analysis. We will carefully consider your comments, and incorporate as warranted. We will let you know if we have any further questions."
- On April 24, 2014, Trinidad was provided with a copy of ISS' final, issued report, which completely ignored Trinidad's response and recommended an AGAINST vote in respect of the approval of the Option Plan.

- Assuming a mistake had been made, Trinidad's Vice President, Investor Relations placed phone calls and emails to ISS to discuss. Representatives of ISS advised by email that they refused to consider Trinidad's proposed amendments as they had not been SEDAR filed.
    - It was patently unreasonable to expect Trinidad to SEDAR file a revised Option Plan on SEDAR within that timeframe for the following reasons:
        - Trinidad was given one business day to capitulate to ISS' demands – if there were valid reasons for Trinidad to object, ISS was not prepared to enter into discussions;
        - Amendments to the Option Plan require directors' approval – as with most public companies, 48 hours' notice is required to convene a board meeting;
        - Amendments to the Option Plan require the prior consent and approval of the TSX, a process involving dialogue and filings with the TSX; and
        - SEDAR filings are available to the public – to the extent the revisions to the Option Plan as proposed were not satisfactory to ISS, multiple drafts would be posted on SEDAR, thereby causing potential confusion in the market.
    - It is our view that the consultation process was artificial so as to result in ISS publishing an AGAINST recommendation, in spite of Trinidad's bona fide intentions to meet ISS' demands.
- As the loss of the Option Plan would have a potentially significant adverse impact on Trinidad's compensation program, over the following days Trinidad obtained Compensation Committee, Board and TSX approvals for an amended Option Plan, and, on April 29, 2014 filed the same on SEDAR, together with a press release describing the amendments.
- Since the publication of the ISS Report, the scrutineers' reports on ballot were showing that the Option Plan would not be approved at the AGM.
- On April 29, 2014, ISS published a Proxy Alert wherein they reversed their AGAINST recommendation to a FOR recommendation in respect of the Option Plan.
- The AGM was held as scheduled and the Option Plan was approved.

Obvious questions arise from the scenario described above:

- Why is ISS not required to provide a reasonable timeframe for comment on their draft reports (particularly in circumstances where prior board and regulatory approval is required before an issuer can commit to a resolution of the issue)?
- Why is ISS not required to engage in dialogue with an issuer to receive and genuinely consider the issuer's reasoning behind the drafting of a compensation plan?

The results of the above process are unacceptable:

- Management and the board had to immediately dedicate resources in order to intervene and prevent the loss of a compensation plan – actions which were both stressful and costly.

- ISS got to "look good" with their subscribers, as the public record reflected ISS going to battle with Trinidad over a compensation plan and winning, although Trinidad was immediately amenable to addressing ISS' issues from the outset.

Incidentally, we also have concerns respecting the process followed by Glass Lewis. Unlike ISS, who at least provided us with a copy of their recommendation, Glass Lewis required Trinidad to pay $5,000 to get access to their report. We fail to see how this promotes either transparency of process or meaningful dialogue.

Our comments below are provided with the above as context.

***Comments***

*1. Do you agree with the recommended practices for proxy advisory firms? Please explain.*

We have significant concerns regarding the lack of regulatory oversight of proxy advisory firms and we are of the view that the Proposed Policy and recommended practices therein constitute a very "light touch" response. A policy-based approach is simply not an appropriate or sufficient regulatory response for the governance of the practices of proxy advisory firms and will not ensure transparency in their practices or the integrity of the Canadian capital markets. In particular, the Proposed Policy does not adequately address our concerns (or the concerns of various market participants and their advisers) regarding the following issues: (a) inappropriate and significant influence on corporate governance practices; (b) inaccuracies and limited engagement with issuers; and (c) lack of transparency and conflicts of interest.

In our opinion, these significant concerns, which are detailed below, warrant a more prescriptive, rules-based regulatory response that includes mandatory compliance.

(a) Inappropriate and significant influence on corporate governance practice

Proxy advisory firms wield significant influence over the voting process. Given the relatively low turnout at shareholder meetings in Canada, the votes held by institutional investors can have a significant impact on the voting results, and therefore any recommendations made to institutional investors by proxy advisory firms can have a profound effect on voting results. As corporate governance standards evolve (due in large part as a direct result of the increasingly complex best practices developed and recommended by the proxy advisory firms themselves), the clients of proxy advisory firms increasingly rely on the expertise and advice of proxy advisory firms. This is patently obvious where institutional investors have signed up for automatic vote services provided by proxy advisory firms, but even where such services are not provided, the clients of proxy advisory firms rely heavily on their assessments and recommendations.

Given their significant influence over the proxy voting process, proxy advisory firms have become "quasi regulators" and standard-setters of corporate governance practices, and yet they are not held to any discernible standards in such regard.

(b) Inaccuracies and limited engagement with issuers

In our experience, proxy advisory reports often contain factually incorrect information, upon which vote recommendations are based. Such errors can have a number of significant, negative results for issuers. Incorrect information and analysis may lead to inappropriate advice on an important decision, negative reputational implications for individuals or affect

other aspects of corporate governance, which affects all shareholders of an issuer, not just those which engage the services of proxy advisory firms.

Often, these inaccuracies are detected only after a proxy advisory report has been published, and there are no requirements to retract or correct such incomplete or inaccurate information. Inaccuracies can be detected if a draft is provided to the issuer in advance (which we note is often not the practice of proxy advisory firms), but when drafts are provided in advance, issuers are typically provided an inadequate amount of time to review and respond. Furthermore, proxy advisory firms do not have a duty to engage with issuers, therefore there is no obligation on proxy advisory firms to respond to any requests to correct misinformation, to review any response submitted by an issuer, or to allow the issuer any opportunity to address concerns of the proxy advisory firm. This one-way consultative approach compromises the ability of shareholders to make informed decisions and weakens the integrity of capital markets in Canada.

We understand that proxy advisory firms are under pressure to produce many reports in a short timeframe; however, this does not negate the need for thorough, accurate reports. Prior issuer review of draft proxy advisory reports and mandated engagement by proxy advisory firms with issuers would lead to fewer inaccuracies in published reports and help to preserve the integrity of the proxy voting system.

(c) Lack of transparency and conflicts of interest

Proxy advisory firms should be required to disclose their methodologies, sources of information, assumptions used to prepare reports and rationales for their voting recommendations. The adoption and application by proxy advisory firms of internal and unpublished policies creates an unpredictable regime in which policies are misunderstood and inconsistently applied and voting recommendations cannot be linked to previously published guidelines. This lack of transparency does not promote a clear and responsible voting system and leads to shareholders blindly relying upon the recommendations of proxy advisory firms.

Additionally, this lack of transparency creates an environment in which issuers feel compelled to buy the services offered by proxy advisory firms, as this is the only practical way an issuer can determine whether there will be a favourable proxy advisory recommendation, which may be critical to determining levels of possible approval, which in turn is necessary for corporate decision-making as to matters to be put forward to shareholders for approval.

A business model based in part upon fee-based proxy review services benefits from a lack of transparency, fuelled by the practices of the proxy advisory firms, which creates an inherent conflict of interest.

The issues identified above need to be addressed by a regulatory regime that consists of more than recommended practices; it needs to be rule-based and compel mandatory compliance in order to ensure transparency, appropriately address conflicts of interest and preserve the integrity of the proxy voting system. Proxy advisory firms play an ever-increasing role in the voting process and in shareholder communications regarding corporate governance practices. While issuers are held to strict, prescribed disclosure requirements so as to best assist shareholders in assessing an issuer's practices, a policy-based approach for proxy advisory firms will do little to assist market participants, including shareholders, in assessing the proxy advisory firms' compliance with such policies.

*2. Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.*

The Proposed Policy does not include specific guidance regarding engagement with issuers or the provision of draft proxy advisory reports to issuers in advance of issuing vote recommendations.

*3. Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?*

We do not feel that the Proposed Policy, which by its nature is guidance only and does not mandate compliance therewith by proxy advisory firms, is a sufficient regulatory response to this matter. Given our experience with proxy advisory firms and their reluctance to correct errors or participate in an open exchange of information and dialogue, we do not believe a policy-based regulatory response will promote meaningful change. Please see our response to question 1 for further details.

*4. We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?*

Yes, in our view, proxy advisory firms should designate a specific person to be responsible for these matters. This person's contact information should be made available to the public to promote greater transparency and engagement with issuers. This should be a requirement, rather than a recommended practice.

*5. We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?*

In our view, proxy advisory firms should be required to engage with issuers during the process to ensure that incorrect information is not included in proxy advisory reports and to give issuers an opportunity to explain their rationale for certain practices or decisions, or to otherwise address the issue. This should be a requirement, rather than a recommended practice.

There are many reasons why such engagement with issuers is beneficial to the proxy voting process. The one-size-fits-all approach adopted by proxy advisory firms in their analysis is often inappropriate in the circumstances. Issuers may be able to provide insight without which proxy advisory firms are ill-equipped to make recommendations. In other situations, as was our experience in the 2014 proxy season, issuers may be prepared to make revisions or otherwise address the recommendations of proxy advisory firms in order to satisfy their concerns. Trinidad made the recommended changes of the proxy advisory firm, however such changes were not recognized resulting in inaccurate information being published by the proxy advisory firm. This provided no benefit to any of the market participants.

6. *A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?*

In our view, automatic vote services do not promote responsible voting and we do not believe such services should be offered. To the extent these services continue to be permitted, not only should proxy advisory firms be required to obtain confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines, but they should be required to do so both on an annual basis and following any amendments. In addition, proxy advisory firms should be required to annually publish all proxy voting guidelines and notify the marketplace upon any amendments to such guidelines.

We thank you for the opportunity to submit these comments and would welcome an opportunity to discuss them with you.

Yours very truly,

**TRINIDAD DRILLING LTD.**

"*Ken Stickland*"

By: _____

Name: Ken Stickland
Title: Lead Director and Chair,
Corporate Governance &
Nominating Committee

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