

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<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, Tour de la Bourse  
Montréal, Québec  
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and

Mr. John Stevenson  
Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario  
M5H 3S8

**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.

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<sup>1</sup>. 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

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<sup>1</sup> [https://www.osc.gov.on.ca/documents/en/Securities-Category2-Comments/com\\_20120820\\_25-401\\_magidsons.pdf](https://www.osc.gov.on.ca/documents/en/Securities-Category2-Comments/com_20120820_25-401_magidsons.pdf)

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

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<sup>2</sup> 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.

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<sup>2</sup> 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.



Institute of Corporate Directors  
Institut des administrateurs de sociétés

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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