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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
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The Secretary
Ontario Securities Commission
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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.

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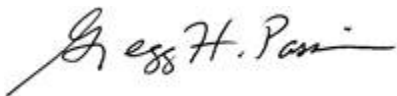
23 June 2014

Me Anne-Marie Beaudoin, Autorité des marchés financiers
The Secretary, Ontario Securities Commission

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,

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