

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

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To the attention of:

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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.

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.

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