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September 21, 2012

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés 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

c/o
John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
jstevenson@osc.gov.on.ca

-and-

Me Anne-Marie Beaudoin
Secrétaire de l'Autorité des marchés financiers
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Dear Sirs / Mesdames,

Re: Comments on Canadian Securities Administrators Consultation Paper 25-401: Potential Regulation of Proxy Advisory Firms (the "Consultation Paper").

We submit the following comments in response to the Notice and Request for Comments published by the Canadian Securities Administrators (the "**CSA**") on June 21, 2012 ((2012) 35 OSCB 5681) with respect to the Consultation Paper.

Thank you for the opportunity to comment on the Consultation Paper. We support the CSA's initiative to increase transparency, integrity and accountability in the proxy advisory process. Our specific comments with respect to the issues raised in the Consultation Paper are set out below.

We agree with many of the concerns outlined in the Consultation Paper and specifically with concerns relating to potential inaccuracies in proxy advisory reports and limited engagement with issuers. Given the potential influence that proxy advisors can have, we support any initiative that seeks to improve the standard and quality of the process. As discussed in further detail below, we encourage advance consultation with issuers to allow for errors to be corrected and to aid in improving the overall quality of the analysis. While we understand that proxy advisors aim to develop voting policies focussed on shareholders' interests, governance is highly context-specific. Increased dialogue and interaction with issuers can help in development of more tailored policies and in the application of such policies on a fact-specific basis, having regard to the circumstances at hand.

Potential Conflicts of Interest

We agree that the structure and operations of proxy advisory firms could lead to actual or perceived conflicts of interest. Measures taken to identify and address such actual or perceived conflicts of interest would enhance the integrity of the proxy advisory process and thereby benefit the proxy advisory firms themselves, as well as their clients, issuers and shareholders in general.

In this regard, we support the implementation by proxy advisory firms of policies and procedures designed to identify and manage potential conflicts of interest. Such policies and procedures should be governed by the principle of fostering increased integrity and transparency in the proxy advisory process and ideally be publicly disclosed. This would help to ensure the application of a standard set of principles as well as consistency and objectivity. Such policies and procedures should also include the advisory firm's policy on how identified conflicts of interest will be communicated to clients (and in this respect, we recommend clear disclosure in the proxy advisory report or other advisory work product, along with an explanation of how the particular conflict has been addressed). We also support the separation of the provision of consulting services from voting recommendations and the implementation of appropriate safeguards to ensure the group that provides one set of services is not influenced by the other. However, we do not believe that the specific standards or requirements for such policies and procedures need to necessarily be prescribed by the CSA. While we support that proxy advisory firms should establish and maintain such policies and procedures, periodically evaluate their effectiveness, and disclose how such policies and procedures are appropriate or effective in achieving their objectives, in our view, the firms themselves should determine what is appropriate or adequate given their particular ownership structure and business model.

We do not agree that it is necessary to amend NI 51-102 to require reporting issuers to disclose consulting services from proxy advisors in their proxy circulars. While

shareholders generally may be interested to know whether proxy advisors have provided consulting services to the issuer, as discussed above, it would be more appropriate and effective to have disclosure of conflicts of interest in the proxy advisory report that is delivered by the advisor to its client.

Perceived lack of transparency

We agree that the disclosure of underlying methodologies, analysis, models and assumptions that are used by proxy advisors to arrive at their vote recommendations in a manner that balances the proxy advisor's need to protect proprietary information would be helpful. We believe that such disclosure could lead to greater transparency and integrity in the proxy advisory process, and allow issuers to take a more proactive approach to potentially contentious issues.

Issuer engagement

As part of their policies and procedures to increase transparency and accountability, we agree that proxy advisers should adopt standards for engagement with issuers, which include standards for seeking to ensure the accuracy of research relied upon and information disclosed, as well as the process for publication of preliminary reports and solicitation of comments from issuers. We encourage prior engagement with issuers as we understand there can be reluctance to change a recommendation once a report has been issued. We also understand that once a report has been issued, the onus falls on the issuer to communicate any changes made in response to the advisory report to ensure that shareholders are properly apprised of such developments before they vote. This can require significant commitment of time and resources by issuers, which can be avoided with adequate prior engagement. Proxy advisory firms should therefore also consider implementation polices for responding to issuer comments including disclosure of such comments and/or how they have been addressed in their report to clients.

While we encourage greater engagement with issuers, we do not agree that the details of such processes need to be prescribed by the CSA. Further, while we acknowledge that increased issuer engagement would improve the overall process, we do also do not believe that issuer engagement should be mandated. Proxy advisers should be free to choose whether or not they will engage issuers depending on their own business model. However, the proxy advisor's engagement policy, once established, should be disclosed and consistently applied. Such an approach affords flexibility for the adviser while permitting the advisory clients to make an informed choice and retain the advisor whose business model accords with the particular client's needs.

Potentially inappropriate influence on corporate governance practices

We agree that proxy advisory firms should implement fair and transparent procedures for developing corporate governance standards. These procedures should ideally include the proxy advisory firm's policy for soliciting comments on its standards and be publicly disclosed. While we agree that increased contribution

from issuers and directors would enhance the quality and relevance of the overall process, we do not agree that it should be mandated. A proxy advisory firm should instead be able to determine how best to incorporate the views of the various constituents that are involved and affected, while disclosing and explaining how the particular method chosen by the firm is adequate to ensure the quality and objectivity of its standards.

Proposed regulatory responses and framework(s)

We agree that implementation of a consistent disclosure framework that incorporates specific requirements focussed on the transparency, consistency and accuracy of the proxy advisory process would help to improve the overall quality and integrity of the process. However, we encourage a principled approach that aims to address the concerns of issuers and others, while affording proxy advisors with the flexibility necessary to adopt what is appropriate and relevant to their particular needs. Such an approach could fall within a range of options, including for example, articulation of a standard of care for proxy advisory firms that is broadly phrased and recognizes that governance is highly context–specific.

This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

Thank you for the opportunity to comment on these proposals.

Regards,

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Edward J. Waitzer
Ramandeep K. Grewal

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