

September 20, 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

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**Re: Canadian Securities Administrators Consultation Paper 25-401: Potential Regulation of Proxy Advisory Firms**

September 20, 2012

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 potential regulation of proxy advisory firms.

Proxy advisory firms have become an integral and necessary part of institutional investors' execution of voting rights. Institutional investors typically cast votes at a high number of shareholder meetings which take place in a very condensed period each year, due to issuers in most markets holding their annual shareholder meeting within six months of their fiscal year end. BlackRock, which has a team of 20 corporate governance professionals globally, submits votes at approximately 15,000 shareholder meetings in over 90 countries on an annual basis, including more than 650 shareholder meetings in Canada. The bulk of these votes occur in the

second quarter of the year. The increasingly global focus of investors adds additional demands on the resources allocated to proxy voting analysis. Meeting materials are often available only in the company's local language, which can present a challenge for foreign investors. Cross-border voting introduces a further layer of complexity in the form of market-specific restrictions, burdensome administrative requirements, and narrow disclosure windows, to name a few.<sup>1</sup>

With these considerations in mind, the value added by proxy advisory firms to their clients is clear. Proxy advisory firms are able to devote dedicated expert resources to information gathering – from issuer meeting materials to publicly available news flow – and to identifying market-specific restrictions or voting requirements. They can also employ the resources for translation of meeting materials to facilitate analysis by the proxy advisory firm and its clients. More importantly, the proxy advisory firms repackage this information into a concise, easily-digestible format to enable more efficient review by institutional investors. Most, if not all, institutional investors make use of proxy advisory research to help identify resolutions which will require greater attention or more in-depth analysis.

To summarize our view on proxy advisory firms, we believe it is primarily within the purview of investors to oversee their chosen data providers and research vendors, including proxy advisors, consistent with investors' duties of care and diligence and that institutional investor clients are well positioned to impose market discipline on proxy advisory firms. We believe that proxy advisory firms have generally taken steps 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.

Attached please find responses to some of the specific questions posed in the consultation paper. We appreciate the opportunity to address and comment on the issues raised by the consultation paper. 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,

**Robert E. Zivnuska**

Director

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, 2012, BlackRock's AUM was US\$3.56 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. BlackRock also offers risk management, advisory and enterprise investment system services to a broad base of institutional investors through BlackRock Solutions®.*

*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.*

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<sup>1</sup> For specific discussion of BlackRock's view on the effectiveness of the Canadian proxy voting system, please refer to BlackRock's comment letter on OSC Staff Notice 54-701 – Regulatory Developments Regarding Shareholder Democracy Issues.

*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 ("BlackRock Canada") is a member of the Canadian Coalition for Good Governance ("CCGG") and a number of national industry associations reflecting our global activities and reach.*

**Responses to Canadian Securities Administrators Consultation Paper 25-401: Potential Regulation of Proxy Advisory Firms, Section 5.3 *Specific request for comment***

**Q5. To what extent do you consider proxy advisory firms to: (i) be subject to conflicts of interest in practice?**

A proxy advisory firm's exposure to real or perceived conflicts of interest is dependent to a large extent on what range of services it provides and utilization of appropriate conflict mitigation measures. A paper by Professor Tamara C. Belinfanti<sup>2</sup> examines this problem by using Institutional Shareholder Services ("ISS") as a case study. ISS currently provides proxy advisory services to investors, corporate governance advisory services to public companies, and issues corporate governance ratings on public companies for consumption by the investing public. The potential conflict of interest is the provision of proxy advice on public companies, which is supposed to be independent, and the sale of corporate governance advice to these same public companies. The latter practice entails ISS providing advice to issuers on how to structure proposals and governance more broadly to help them achieve a greater rate of support on their general meeting resolutions from shareholders.

In order to address concerns in relation to conflicts of interest, ISS has created a separate subsidiary to provide this consultancy service to public companies, and has installed information barriers between its corporate governance ratings and corporate governance advice businesses.

**(ii) already have in place appropriate conflict mitigation measures?**

Our expectation of proxy advisory firms offering additional services that could result in real or perceived conflicts of interest is that they would have the appropriate policies and procedures including controls that would manage and mitigate these risks. This includes managing potential conflicts between different business units as well as within any one business unit. Within the proxy voting business, the business model (i.e., services are paid for by investors as clients, and not by the issuers on whom proxy voting analysis is being produced) does not raise any real conflict of interest. Between business units, we would look for a clear separation of roles between the sales side and the analytical side and appropriate information barriers to address the potential conflict.

**(iii) be sufficiently transparent regarding the potential conflicts of interests they may face?**

We welcome public disclosure by proxy advisory firms on the policies and procedures they have in place to manage and mitigate the risk of real or perceived conflicts of interest, but of greater importance to us is that proxy advisory firms privately provide their clients with the information that their clients require in order to conclude that from the client's perspective the potential conflict is being appropriately managed. Such information is usually requested and provided in the context of a request for proposal or due diligence review by clients. An evaluation of the effectiveness of these policies and processes should be carried out on a regular basis by proxy advisory firms and any issues arising from such regular evaluation should be addressed. We believe that substantial additional regulation of proxy advisory firms would likely impose costs that will ultimately be borne by proxy advisory firm's clients, i.e., investors, and it should therefore be clear how such regulation would benefit investors. We encourage CSA to allow investors, and the market for proxy services, to impose discipline on providers.

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<sup>2</sup> Tamara C. Belinfanti, Professor, New York Law School, "The Proxy Advisory and Corporate Governance Industry: The Case for Increased Oversight and Control", New York Law School Legal Studies Research Paper Series 09/10 #18 (2009), pages 8-17.

**Q7. Should we propose an amendment to NI 51-102 to require reporting issuers to disclose consulting services from proxy advisors in their proxy circular? Or would such disclosure undermine the existing controls and procedures (i.e., “ethical wall”) in place which currently may prevent proxy advisory firm research staff who review an issuer’s disclosure from being made aware of the identity of their firm’s consulting clients?**

We believe that CSA should not propose an amendment to NI 51-102 to require reporting issuers to disclose consulting services from proxy advisors in their proxy circular. We believe that any such disclosure requirement would undermine the conflict mitigation measures (in particular, information barriers) discussed in our response to Q5.(i).

**Q10. During proxy season, is it appropriate for a proxy advisory firm to engage with issuers in all circumstances or are there legitimate business and policy reasons why it should not be required to do so? Are there certain special types of situations where it is more important that issuers are able to engage with proxy advisory firms?**

Dialogue with issuers when drafting voting recommendations can be valuable as this provides the issuer with the opportunity to clarify the rationale behind less straightforward resolutions. However, we would expect all issuers to be confident that their publicly disclosed materials provide sufficiently comprehensive and clear discussion of the issues at hand to permit any proxy advisor, or, more importantly, any investor, to make an informed and accurate decision without the need to engage with the issuer.

As proxy advisory firms are not always shareholders in these issuers, it is our impression that issuers can sometimes be less responsive to the proxy advisory firms' attempt to get in contact. In this regard, investors should also communicate to issuers the value of speaking to proxy advisory firms. However, we would also stress that issuers should not speak only to proxy advisory firms with the expectation that these firms will represent the voting decision of the ultimate shareholder. In other words, issuers should be open to speaking with proxy advisory firms as well as investors.

Proxy advisory firms should be transparent in their policy for dialogue with issuers, including whether they do engage with issuers. There is market variance in this regard from the issuers' side. For example, in Canada and the US we believe it is more common for an issuer to engage with proxy advisory firms to disseminate important information on resolutions, rather than speak with investors directly. In the European Union issuers will speak with proxy advisory firms and investors alike, or even focus greater engagement on their investors with less communication being provided to proxy advisors.

**Q13. To what extent should there be a more fair and transparent dialogue between proxy advisors and market participants on the development of voting policies and guidelines? Is it sufficient for proxy advisors to address governance matters by soliciting comments from their clients?**

It is extremely important for proxy advisory firms to receive feedback from their clients on their guidelines and implementation of these guidelines on a regular basis. In light of the diversity of views among investors regarding the key considerations in making a proxy voting decision, it is the role of a proxy advisory firm to understand their clients' divergent perspectives and to then use its own judgment in developing the proxy advisory firm's voting policies and guidelines. This assessment would ideally be done when the guidelines are reviewed to incorporate any market updates. This is a lengthy engagement between the proxy advisory firm and their clients, so it is important to ensure the review takes place at an appropriate time of year.

Additionally, clients who have custom guidelines should regularly review the implementation by the proxy advisory firm of these guidelines and make refinements where necessary.

We see the benefit of dialogue between proxy advisory firms and issuers so that the latter has an opportunity to provide their views on the practicality of, for example, implementing governance structures recommended by the voting guidelines. However, we see a limited role for issuers to play in the development or refinement of a proxy advisory firm's guidelines, as the guidelines are intended to serve the needs and goals of clients (i.e., investors), rather than issuers.

**Q18. To what extent and in what ways do you rely on the services provided by proxy advisory firms? Please be as specific as possible.**

Like other institutional investors, BlackRock typically uses research and other data services from proxy advisory firms as one of many inputs in making proxy voting decisions. Proxy advisory firms also provide operational and administrative support related to proxy voting. Proxy advisory firms are able to devote time and dedicated resources to information gathering – from issuer meeting materials to publicly available news flow – and to identifying market-specific restrictions or voting requirements. They can also employ the resources for translation of meeting materials. More importantly, the proxy advisors repackage this information into a concise, easily-digestible format to enable more efficient review by institutional investors. We believe that most, if not all, institutional investors make use of proxy advisory research to help identify resolutions which will require greater attention or more in-depth analysis.

**Q19. How do you view your duty to vote and how do the vote recommendations of proxy advisory firms play a part in your decision-making process?**

We believe we have a fiduciary duty to clients to protect and enhance the economic value of the companies in which we invest on their behalf. We seek to perform this duty, in part, through engagement with companies including, where clients have given us authority, voting at shareholder meetings.

The level of influence proxy advisory firms has 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.

Utilizing proxy advisory research should not be confused with following a proxy advisor's vote recommendations. In Canada, BlackRock uses proxy advisory research as one of many inputs into our analysis, and we make our vote decisions in accordance with our own proxy voting guidelines.

**Q20. Do institutional investors have the ability to require changes to proxy advisory firms' practices without the need for regulatory intervention?**

We believe that institutional investor clients are well positioned to impose market discipline on proxy advisory firms. We would expect clients or potential clients to evaluate the policies and procedures in place to address conflicts of interest, transparency concerns, and quality assurance considerations prior to subscribing to a proxy advisory firm's services, and on an on-going basis thereafter. In our experience, service providers, including proxy advisory firms, are generally responsive to the needs and concerns of their clients without the need for regulatory intervention.

**Q22. Given the above-noted concerns regarding the overall quality and lack of transparency underlying the vote recommendations of proxy advisory firms, what measures do you take and, overall, how do you gain assurance that such recommendations are reliable for your voting purposes?**

The processes in place to ensure reliable and independent voting recommendations should be made transparent to the clients and potential clients as there should be a point of consideration in the assessment undertaken by potential clients of any proxy advisory firm. One potential way to gain comfort in the on-going improvement of the quality of analysis would be an annual review by the proxy advisory firm of its research in order to check for accuracy of information provided, and of its voting recommendations in order to check for consistency of approach to analysis, including in relation to its stated guidelines. Clients could receive the results of such an audit upon request. In addition, to help clients understand the methodology and principles behind vote recommendations, proxy advisory firms should consider public disclosure of their voting guidelines to the extent possible.

Clients should also be aware of the process in place for the publication of research reports, from information gathering to publication of the analysis.

As previously discussed, investors will employ proxy advisory research and recommendations to varying degrees. Because of these varying degrees of use, the ability of investors to have confidence in the information provided by the proxy advisor research is just as important as their confidence in the voting recommendation.

**Q23. Do you view the policy development process and resulting proxy voting guidelines of proxy advisory firms as appropriate and reflective of your governance preferences and views? Would input from issuers further benefit or potentially hinder such process?**

Please refer to our response to Q13.