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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

To the attention of:

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Re CSA Consultation Paper 25-401: Potential Regulation of Proxy Advisory Firms

Dear Sir or Madam:

This letter is submitted by Gildan Activewear Inc. ("**Gildan**" or the "**Company**") in response to Consultation Paper 25-401 (the "**Consultation Paper**") published by the Canadian Securities Administrators (the "**CSA**") on the potential regulation of proxy advisory firms ("**PA Firms**"). Gildan participated in a working group of issuers organized by Norton Rose Canada LLP and our responses mirror those contained in its letter. 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 twenty years. In the last decade, the CSA adopted new rules on governance and many shareholders requested that issuers engage with them on various topics, including executive compensation. The number of shareholder proposals has increased and various market participants have published corporate governance guidelines that they believe should be adhered to by issuers.

Corporate governance issues have emerged as being increasingly complex. Many institutional shareholders have a diversified portfolio of investments, but limited resources to analyze and decide how to vote on various proposals or proposed resolutions of issuers. As a result, PA Firms have become important players in the public marketplace and have gained an unparalleled influence.

Because of their influence and impact on issuers, the regulation of PA Firms has become a matter of public interest. The Company believes that the CSA should put in place a framework in which PA Firms will be properly overseen in order to ensure predictability, transparency and fairness in the voting process. Such regulation should include an obligation to register with securities commissions, as well as requirements regarding the engagement process of PA Firms and the content of their reports.

You will find below comments on each question set forth in the Consultation Paper. 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 Consultation Paper

General

1. ***Do you agree, or disagree, with each of the concerns identified in the Consultation Paper, namely: (i) potential conflicts of interest, (ii) perceived lack of transparency, (iii) potential inaccuracies and limited engagement with issuers, (iv) potentially inappropriate influence on corporate governance practices, and (v) the extent of reliance by institutional investors on the advice of such firms? Please explain and, if you disagree, please provide specific reasons for your position.***

Gildan agrees that the concerns identified in the Consultation Paper do arise in connection with the activities undertaken by PA Firms. We are very concerned about various conflicts affecting PA Firms, many of which are outlined in the Consultation Paper: (i) offering consulting services to an issuer and at the same time providing proxy advisory services to institutional clients about the same issuer; (ii) ownership structure of PA Firms; (iii) being the proponent of a shareholder proposal from an institutional client; and (iv) most importantly, having an interest in adding, every year, new governance requirements.

On the subject of transparency, Gildan finds there is a lack of disclosure about how PA Firms arrive at their voting recommendations. It is often very difficult to identify the factors on which they base their recommendations and the relative weight of each factor with respect to a particular recommendation. This lack of disclosure means that investor clients cannot always ascertain the quality of a recommendation and, therefore, make a fully informed decision on whether to follow the recommendation or not. In our view, this creates uncertainty for issuers.

Another concern is related to the presence of mistakes and inaccuracies in reports of PA Firms and the difficulties issuers face attempting to cause the PA Firms to correct them. If a PA Firm make mistakes in its recommendation or analysis, such mistakes could have a direct influence on the votes of shareholders.

With respect to the issue of influence on governance practices, Gildan is concerned that proxy advisors have become "standard setters" for governance by introducing voting guidelines that have essentially become mandatory for issuers if they are to receive favourable voting recommendations. This is in spite of the fact that the CSA has determined that corporate governance standards should generally not be prescriptive but adapted to each issuer's unique circumstances.

Also, many institutional investors rely on PA Firms for voting recommendations because they do not have the internal resources to analyze the practices of each issuer they invest in, making it essential that PA Firms' recommendations be based on accurate and complete information.

It should also be recognized that voting recommendations and guidelines issued by PA Firms may have an impact on the capital markets beyond such reliance from institutional investors. Information or conclusions regarding a recommendation may be released to the media while the full report is not made available. This may particularly be the case in contested meetings, and the shareholder vote may be swayed as a result.

While there is no reason to prohibit institutional investors from relying on expert advice, and such advice may have positive effects in encouraging shareholders to vote, it is also important that safeguards be put in place to ensure PA Firms avoid conflicts of interest and that the voting process be predictable, transparent and fair. Institutional investors must be able to understand the basis upon which a recommendation is prepared and be assured information that underlies the recommendation is accurate and complete.

Gildan believes the appropriate way to control these concerns is through registration and regulations to ensure a proper process and avoid conflicts of interest. Some may suggest that securities commissions should not regulate PA Firms on the basis that PA Firms provide private services to shareholders and are not within the jurisdiction of securities commissions. However, because of the increasing role such firms are playing in the capital markets, we believe that it is in the public interest, and therefore at the heart of the securities commissions' mission, to establish the appropriate governance framework in which PA Firms are to operate.

2. Are there other material concerns with PA Firms that have not been identified? Please explain.

Gildan believes that the particular concerns listed above are heightened in connection with contested meetings and meetings to approve significant transactions. Additional concerns that arise in these circumstances include:

- unlike directors and officers of an issuer, PA Firms bear no economic risk of loss when issuing a voting recommendation that is based on incomplete or inaccurate information; and

- it is often unclear as to how PA Firms determine their voting recommendations, and issuers—especially in the context of a complex transaction—need to have a reasonable opportunity to provide all necessary information to the PA Firm before a recommendation is issued.

Furthermore, it is also unclear as to whether PA Firms employ, or retain, the necessary technical personnel to effectively review proxy material. Other market participants are subject to competency requirements. The personnel of PA Firms are not. The CSA should ensure that the personnel of PA Firms be subject to competency requirements and that the firms themselves be under an obligation to provide proper training to their personnel.

3. Are there specific gaps in the current practices of PA Firms which justify regulatory intervention? Is there a concern that future gaps could be created as a result of new entrants or changes in business or other practices?

The Company believes that the activities of PA Firms should be regulated or subject to oversight, as they exercise substantial influence in the capital markets without the corresponding accountability or economic exposure. The need for regulation or oversight is heightened by the lack of market competition among proxy advisors. The market dominance of the current providers of proxy advice in the Canadian market means there is no industry group to provide a set of standards to which PA Firms would need to comply.

We believe that PA Firms should be required to engage with issuers and that the rules of engagement should be overseen by securities regulators. We also believe that PA Firms should be required to include in their final reports the responses of issuers with respect to their voting recommendations, especially when issuers disagree with the opinion of the PA Firms. In this way the institutional clients of PA Firms obtain a complete view and the issuers have a practical means to respond to the PA Firms. This would parallel the right of issuers to respond to the proposals of shareholders which have to be included in issuers' proxy circulars.

The way voting guidelines are adopted and disclosed should also be regulated. Given the increase in influence PA Firms have over corporate governance standards and practices, market participants should have a say on the development and adoption of those

guidelines. We are aware that some PA Firms administer surveys and request comments from market participants on specific issues but we believe that it is not enough. Those firms should solicit feedback and engage in a real discussion with issuers and other market participants on draft voting guidelines.

With respect to conflicts of interest, Gildan is of the view that PA Firms should not be allowed to provide consulting services to issuers. One of the reasons for this prohibition is that PA Firms often refuse to engage with an issuer until its circular is issued. They refer the issuer to their consulting services until then. This creates a deadlock and leaves the issuer in a void, as explained in our answer to Question 9 below.

At the very least, PA Firms should be required to specifically disclose conflicts of interest, as described in our answer to Question 5 below. The current disclosure practice of PA Firms to state that there is a possibility of a conflict of interest without providing details about such conflict is insufficient.

4. Do you believe that the activities of PA Firms should be regulated in some respects and, if so, why and how?

As mentioned above, Gildan believes that PA Firms should have to register with the securities regulatory authorities, that the engagement process should be regulated and that the content of their reports should include comments from issuers. There should also be specific regulations surrounding the existence and disclosure of conflicts of interest. Finally, we believe that there should be regulations overseeing the way voting guidelines are adopted and disclosed and that such guidelines should be adopted only after comments have been provided by market participants and considered by PA Firms.

Registration should provide discipline and improve quality and regulations should ensure predictability, transparency and fairness.

<u>Potential conflict of interest</u>

5. To what extent do you consider PA Firms to: (i) be subject to conflicts of interest in practice, (ii) already have in place appropriate conflict mitigation measures, and (iii) be sufficiently transparent regarding the potential conflicts of interests they may face? If you are of the view that current disclosure by PA Firms regarding potential conflicts of interest is not sufficient, please provide specific examples of such insufficient conflicts of interest disclosure and suggestions as to how such disclosure could be improved.

As stated above, the Company believes that PA Firms should not be allowed to provide consulting services to issuers. To the extent they would be allowed to do it, they should be more transparent about those conflicts. When providing a voting recommendation with respect to an issuer, they should be required to clearly disclose:

- whether the issuer in question has retained them to provide assistance with its corporate governance practices. Such disclosure should not be of a general nature but be specific to the issuer that is the subject of the voting recommendation.

Statements that the issuer may be a client of a PA Firm would not be sufficient for these purposes; and

- whether an institutional investor that has put forward a shareholder proposal that is the subject of their voting recommendation is a client of the PA Firm issuing the recommendation.

We also believe that PA Firms should publicly disclose the policies and organizational structures which they have adopted to minimize conflicts of interest that may affect their advice.

6. If you are of the view that there are conflicts of interest within PA Firms that have not been appropriately mitigated, which of these are the most serious in terms of the potential (negative) impact on development of their voting recommendations and why?

We believe that the most important conflict of interest relates to the fact that PA Firms have a significant incentive to continuously raise new governance issues and add new layers of requirements that issuers must follow in order to avoid negative voting recommendations. New requirements are included in their guidelines every year, and not all new requirements are in the best interest of all issuers. The more complicated the guidelines or criteria become, the more institutional investors need to rely on PA Firms to do the analysis and ultimately make the voting recommendation/decision. Most institutional investors do not have the internal resources to fully comprehend the issues at hand for all issuers in which they invest.

Since advising on governance issues is the core of a PA Firm's business, it is very difficult to mitigate such inherent conflict. The only way to do so is by putting in place oversight mechanisms that will ensure that the adoption of voting guidelines and the voting process are predictable, transparent and fair. Only regulation can achieve that objective.

7. Should the CSA 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 PA Firm research staff who review an issuer's disclosure from being made aware of the identity of their firm's consulting clients?

We do not believe that the burden should be on the issuers to disclose a PA Firm's conflicts of interest. See our answer to Question 5.

Perceived lack of transparency

8. Could disclosure of underlying methodologies and analysis provide beneficial information to the market or would the commercial costs of doing so be too significant?

PA Firms should be required to disclose in more detail what elements/factors are considered in their analysis and the relative importance of these factors in making their final decision. Gildan is of the view that the current disclosure of methodologies is too vague. PA Firms often refer in their reports to proprietary models or matrices, which are not disclosed, thus offering an incomplete analysis.

We believe that increased transparency with respect to the reasoning involved in arriving at a voting recommendation would be beneficial to all.

Issuer engagement

9. To what extent could there be an improvement in the dialogue with issuers during the vote recommendation process?

We have experienced PA Firms refusing to engage in a dialogue with us on specific questions before we have published our circular, instead referring us to their consulting services. Although this makes business sense from the point of view of PA Firms, this leaves issuers in a void. For issuers that wish to do so, engaging with PA Firms before their circular is issued would be much more efficient.

PA Firms should also be required to engage with issuers in the process leading to the issuance of their reports to institutional investors. PA Firms should be required to provide a draft to issuers a reasonable amount of time before issuing the final report so that the issuers can provide feedback. This would greatly diminish the probability of mistakes or inaccuracies in the reports. The engagement process should also be regulated so that issuers have enough time to properly review the reports and provide feedback.

We have noticed that even after providing our comments to PA Firms, sometimes comments have been ignored and inaccuracies have been included in the final reports. We agree with what was reported in a letter of the Society of Corporate Secretaries & Governance Professionals to the SEC dated December 27, 2010:

> One of the major factors undermining integrity in the proxy voting system is that the recommendations of proxy advisory firms are often based on mistakes of fact. The Society's Survey results indicate that 65% of the respondents experience--at least once--a vote recommendation based on materially inaccurate or incomplete information, or where the proxy advisory firm reported as a fact information that was incorrect or incomplete. One quarter of those respondents experienced inaccurate or incomplete information on several occasions. For the respondents who found inaccurate information in a vote report, the proxy advisory firm did not correct the mistake 57% of the time. Furthermore, in 44% of the instances where issuers found mistakes and the proxy advisory firm reviewed its

> recommendations, the proxy advisory firm was unwilling to change the recommendation or factual assertion. In another 22% of the instances where issuers found mistakes, the proxy advisory firm was unwilling to reconsider the recommendation at all.[1]

Gildan acknowledges that PA Firms are under immense pressure to produce many reports in a very short timeframe. However, a compressed timeframe does not negate the need for thorough, comprehensive and accurate reports and we believe that the current system can be improved. For instance, issuers should be aware of when a report is expected, in order to allocate internal resources to review the report when they receive it. It is particularly critical to have enough time to review the report in the case of complex transactions.

We believe that PA Firms should be under an obligation to immediately correct underlying information where they have been provided with evidence of its inaccuracy and to include the views of the issuer in their report.

10. During proxy season, is it appropriate for a PA 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 PA Firms?

We are unable to identify any circumstances where it would not be appropriate for PA Firms to engage with issuers. If, on a very exceptional basis, they refuse to engage with certain issuers, PA Firms should at least disclose this in their reports and explain why they refused with respect to a specific issuer. Also, all circumstances in which a PA Firm will not engage with an issuer should be determined in advance and disclosed publicly. We believe that the engagement process is especially critical in the case of complex transactions where a voting recommendation is to be issued.

11. If a PA Firm, as a matter of policy, believes that there are certain circumstances where it is not appropriate for it to give issuers an opportunity to review its reports, would it be sufficient to only require in these circumstances that the underlying rationale for such policy be disclosed? Please explain. Or, alternatively should PA Firms be required to provide issuers with an opportunity to review their reports in all circumstances?

We believe issuers should be allowed to review PA Firm reports in all cases.

12. Should we prescribe the details of the processes that PA Firms implement to engage with issuers? If so, what do you suggest the requirements should be?

Gildan believes that these processes should be prescribed in order to ensure predictability, transparency and fairness. PA Firms should be open to discussions with

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[1] Available at : http://www.sec.gov/comments/s7-14-10/s71410-289.pdf

issuers throughout the year and provide draft reports at least two weeks before annual meetings. Issuers should know in advance when they will receive the report and be allowed a reasonable period (at least three business days) to respond. The responses of the issuers should be included in the PA Firms' reports.

Potentially inappropriate influence on corporate governance practices

13. 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?

PA Firms issue voting policies on an annual basis without any requirement to discuss such proposed policies with any market participant. In addition, some PA Firms provide corporate governance ratings. These practices allow them to influence issuer behaviour without proper consultation with market participants. As mentioned before, we are aware that PA Firms send surveys to their institutional investor clients and sometimes request comments from other market participants regarding specific issues. However, this is not sufficient. They should provide a real opportunity to market participants to comment on their full guidelines before they are adopted and applied.

There is an additional concern that in updating their voting policies and guidelines on an annual basis, PA Firms are under commercial pressure to amend their standards more frequently than necessary in order to be perceived as being at the forefront of governance and providing value to their institutional clients. These standards seem to be adopted without empirical research as to their benefits and without the thorough analysis completed by securities regulators with respect to governance requirements. In some instances, they may be inspired from US policies without considering the characteristics of Canadian issuers. A well documented study of the Rock Center for Corporate Governance with respect to voting guidelines on compensation related matters has determined that, in the context of say-on-pay votes, there is a real possibility that some of the voting guidelines are actually against the best interest of issuers and shareholders:

> First, proxy advisory firm recommendations have a substantive impact on say-on-pay voting outcomes. Second, a significant number of firms change their compensation programs in the time period *before* the formal shareholder vote in a manner consistent with the features known to be favored by proxy advisory firms apparently in an effort to avoid a negative recommendation. Third, the stock market reaction to these compensation program changes is statistically *negative*. Thus, the proprietary models used by proxy advisory firms for say-on-pay recommendations appear to induce boards of directors to make choices that *decrease* shareholder value.[2]

[2] Available at : http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2101453

A related issue is the "one size fits all" approach of PA Firms, which results in cookie-cutter guidelines that do not address the nuances of certain types of issuers. Boards are under pressure to accept PA Firm policies, which may impede their ability to exercise their duties to act in the best interest of their corporation.

The concern about the "one size fits all" should be considered in light of its direct contrast to the CSA's approach to governance in National Policy 58-201 Corporate Governance Guidelines, which clearly states that the guidelines are not intended to be prescriptive and which encourages issuers to develop their own corporate governance guidelines.

We are of the view that proxy advisors should be required to publicly make available their procedures for developing corporate governance standards and allow market participants the opportunity to comment on draft guidelines.

Proposed regulatory responses and framework(s)

14. Do you think a securities regulatory response is warranted in connection with each of the concerns identified above? Please explain why or why not.

Yes, we are of the view that a securities regulatory response is warranted. Given the significant role the PA Firms play in the market, some form of regulation and oversight is necessary. See our answers to the previous questions.

15. Do you agree with the suggested securities regulatory responses to each of the concerns raised? If not, what alternatives would you suggest?

See our answers to the previous questions.

16. Do you agree or disagree with the requirements and disclosure framework set out in section 5.2.1 to address the concerns identified? If not, please indicate why. Would you prefer instead one of the other suggested securities regulatory frameworks identified above? If so, please indicate why. Do you agree or disagree with our analysis of these frameworks? Do you have suggestions for an alternative regulatory framework?

As mentioned above, Gildan believes that registration and regulations would be the best way for securities regulators to oversee the work of PA Firms and to ensure predictability, transparency and fairness for all market participants.

17. Are you of the view that we should prescribe requirements in addition to or instead of those identified above for PA Firms?

See our answers to the previous questions.

Additional questions for issuers

18. Overall, what has been your experience with PA Firms? Please be as specific as possible.

While not all of our experiences with PA Firms have been negative, Gildan has experienced (i) PA Firms refusing to engage with us prior to the issuance of our circular, (ii) being given very little time to review PA Firms' reports; and (iii) PA Firms not taking into account comments to correct inaccuracies.

19. Do you believe that the concerns identified negatively affect voting outcomes at shareholders' meetings? Please provide specific examples of situations where any of the concerns identified above resulted in what you consider to be an inappropriate vote outcome and describe the nature and extent of the harm caused to market integrity.

While Gildan has not experienced inappropriate vote outcomes due to PA Firms firsthand, we believe that the concerns identified above could have a negative impact on voting outcomes at shareholders' meetings. Institutional investors rely heavily on PA Firms and such firms' processes often lack predictability, transparency and fairness.

20. In those instances where you have identified potential inaccuracies in a PA Firm's recommendation, were these material inaccuracies that would have resulted in a change in the PA Firm's vote recommendation? Please provide specific examples of how this situation resulted in an improper vote outcome (i.e., what was the risk to market integrity).

Gildan has not encountered material inaccuracies in a PA Firm's recommendation that would have resulted in a change in its vote recommendation.

Conclusion

In short, Gildan believes that it is in the public interest to adopt a framework to oversee PA Firms. PA Firms should be required to register with securities commissions and should be prohibited from entering into conflict of interest situations, or, at a minimum, be required to appropriately disclose conflicts of interest. They should be required to engage with issuers throughout the year, and the engagement process should be fair, transparent and efficient. Issuers should be allowed to comment on the reports of PA Firms, which should include greater detail about the elements considered in the analysis, and PA Firms should be required to correct any inaccuracies and include the comments of issuers in their report. Finally, when developing voting guidelines and policies, PA Firms should be required to properly consult with market participants.

Thank you for allowing us to comment on this subject.

Sincerely,

Lindsay Mathews
Vice-President, General Counsel and Corporate Secretary

c.c. William D. Anderson, *Chairman of the Board*
Sheila O'Brien, *Chair of the Corporate Governance Committee*