

August 23, 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:

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Dear Sir/Madame:

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

Thank you for the opportunity to provide comment on the most recent consultation paper regarding the role and influence of proxy advisory firms. It is crucial that the CSA evaluates all relevant information and takes into consideration a wide range of views on this important issue. For this reason, we have reviewed the consultation paper closely and would like to offer our conclusions on the issues that have been raised. Before addressing each issue raised in the paper, we are addressing the specific questions posed for institutional investors in Section 5.3 as we feel these responses provide valuable context for the remainder of our comments.

bcIMC manages a C\$92 billion portfolio of globally diversified investments on behalf of the public sector pension plans of British Columbia, and publicly-administered trust funds, as well as other public sector bodies. As a large, diversified investor, bcIMC believes that sound corporate governance and corporate responsibility practices contribute to the long-term success of the public corporations in which we own shares. bcIMC also believes that by being an active shareholder, we

can influence directors and management to improve corporate governance practices and disclosure and hold company board of directors to account when necessary.

Proxy voting is our most basic means of influence and holding directors to account. bcIMC votes our shares in every meeting of every Canadian company, all of our American holdings as well as 75% of the market value of our international holdings. We devote substantial internal resources to proxy voting with dedicated professionals situated in the Public Equities Department, an internal proxy voting database that records all vote decisions, and Corporate Governance & Proxy Voting Guidelines that are continually updated to reflect evolving expectations. In 2011, bcIMC voted on more than 9,000 issues at close to 1,800 companies globally, of which 1,400 issues were voted at 411 Canadian companies.

Given this level of voting volume combined with the condensed period that annual general meetings are held (in Canada, this is primarily in May and June), it is essential that we utilize the research provided by proxy voting advisory firms. Using such research is a cost effective way of exercising our fiduciary duty and voting in the best interests of our clients. What needs emphasis in the above statement is that we utilize *research* from such firms, and do not depend on the ultimate recommendations that are included within the research provided.

Throughout the consultation paper, the CSA seems to mischaracterize the services provided by proxy advisory firms by narrowly focusing on the recommendation. For bcIMC, the recommendation is not paramount and we purchase research from firms such as ISS and Glass Lewis in order to come up with our own voting decision that is in line with our Corporate Governance & Proxy Voting Guidelines. We understand that issuers might be more focused on the final recommendation but that is not our primary motivation for contracting a proxy voting advisory firm.

To be clear, the only service we purchase from proxy voting advisory firms is the provision of research reports that supplement our own research and will inform our ultimate decision on any given item on the ballot. It is our responsibility as institutional investors to carry out our own due diligence and execute our vote accordingly. For this reason, we are most concerned about receiving quality research that is accurate, comprehensive and timely. These are generally not areas that we would think require regulation as it is the users of the research that demand a quality product that meets their needs. Therefore, investors can and should continually engage with service suppliers to enhance the quality of the product.

For bcIMC, this means ongoing dialogue with both ISS and Glass Lewis about their research process, methodologies, quality control measures, procedures for handling conflicts of interest as well as monitoring accuracy. Where we have questions or concerns we speak directly to the service provider to seek resolution and assurance. Ultimately, if our concerns are not addressed, we can and will choose a different service provider.

In terms of policy development at proxy advisory firms, as previously mentioned bcIMC has its own policies and guidelines. There is some consistency between our policies and those of the advisory firms on basic issues such as board independence, attendance records, and percentage of audit vs. non-audit fees for example. However, more often than not, bcIMC's policies are stricter than those of the advisory firms particularly in the area of compensation including stock option

plans. We routinely vote against stock option plans that are supported by both advisory firms as we dislike director participation in such plans, prefer performance conditions for option grants and have stricter limits for dilution and burn rates. This is just one example where our policies differ but there are several others.

While it is anecdotal, it is worth pointing out that in one of the most high profile AGMs of 2012, a significant portion of investors did not follow either of the recommendations of Glass Lewis or ISS on the issue of executive compensation. During the proxy battle between Canadian Pacific Railway and Pershing Square, both of the dominant proxy voting advisory firms recommended supporting the advisory say on pay vote while close to 40% of shareholders voted against management on this issue<sup>1</sup>. This is one of the lower levels of support received by a Canadian issuer and the result was clearly not dependent on the recommendations of the advisory firms.

It is also our understanding that all market participants have the ability to participate in policy development at proxy voting advisory firms. While Glass Lewis does not engage on ballot items during the peak proxy voting season, issuers may request a meeting outside of this period and ISS does issue a public call for comment as was done recently on July 24, 2012 (see <http://www.issgovernance.com/press/policysurvey>). Based on these efforts, question #23 posed in the consultation paper about issuer input does not seem relevant.

With this context in mind, we would now offer comments on each of the specific concerns that have been summarized in the consultation paper.

### **Potential Conflicts of Interest**

Of all the concerns raised in the consultation paper, conflicts of interest are the most significant for bcIMC whether perceived or real conflict exists. The investment community is well aware of the potential for conflicts to impact market integrity based on experience with credit rating agencies as well as sell-side research firms that also have business relationships with issuers. However, it is our conclusion that the proxy advisory firms have voluntarily responded to potential conflicts of interest and are sufficiently transparent with clients.

Many of the proposed approaches in the consultation paper have already been adopted such as separation of advisory services in the case of ISS; disclosing when its parent company (Ontario Teachers' Pension Plan) has a significant ownership position in the issuer at question in the case of Glass Lewis; or disclosing when a shareholder proponent is a client. Clients of ISS can also receive a list of corporate consulting clients in order to conduct their own due diligence while also protecting the firewall between consulting and research. Based on these voluntary efforts by the industry, a regulatory response would not seem to improve market integrity and would only waste valuable resources within the CSA.

### **Transparency**

It is our impression as a heavy user of proxy voting research that the industry is already highly transparent and regulation in this area would not be of benefit to the market. There is a limit to

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<sup>1</sup> In its Report on Voting Results filed with Sedar on May 18, 2012, Canadian Pacific Railway disclosed support for its advisory vote of 61.67%.

transparency when there is a customer base that pays for a valuable service and too much transparency only undermines the competitive nature of the business. These firms have invested resources to develop proprietary models of analysis for certain issues and those models should be protected.

In our opinion, it is up to investors to conduct their own due diligence on each firms' methodologies and processes to determine which service best meets their needs. Inevitably, there is also going to be some subjective analysis required particularly when it comes to mergers and acquisitions as well as shareholder proposals and this simply cannot be regulated in a meaningful way. Disclosing further details about unique methodologies or full reports that are sold on a commercial basis will undermine the market for these products.

### **Issuer Engagement**

As investors, we recognize that issuer engagement can improve the quality of the research product particularly when it comes to accuracy of facts. However, we are also sensitive to the reality that many issuers see engagement as a way to convince the advisory firm to support management. For this reason, we feel that any issuer engagement should be limited to correcting factual errors and not simply become a platform for differences in opinion. If advisory firms choose to provide a draft report, which can be very challenging in a condensed voting season, they should do so without disclosing actual vote recommendations. This should focus the conversation on the relevant facts and contextual information rather than influencing the vote recommendation.

We are concerned that mandatory engagement with issuers could reduce the time we have to receive and analyze the purchased research. The compressed timelines in proxy voting season already pose significant challenges for bcIMC and we would not want any further reduction of time to digest material and execute our vote on time.

Mandating proxy voting advisory firms to disclose actual reports to issuers prior to publication and forcing engagement with issuers, causes us concern if it places these firms in the position of intermediary between issuers and shareholders. This may actually deter issuers from directly engaging with their investor base and issuers should understand that engaging with proxy advisory firms is not a substitute for communicating and engaging with shareholders.

We do not see the need for the CSA to prescribe processes for firms to engage with issuers for the reasons stated above. This should remain a choice for each advisory firm with full disclosure as to why the approach adopted is the most appropriate for that firm. This provides information to investors who can then decide which service meets their needs.

### **Influence on Corporate Governance Practices**

This is not a concern for bcIMC as voting policies and guidelines are generally aligned with well established principles of good governance and firms regularly survey clients to obtain feedback. Since investors are the primary client of proxy voting advisory firms, it is entirely appropriate for advisors to seek feedback and input from investors. As noted earlier in our submission, issuers also have the option of providing input into guideline development but firms are accountable to their client base first and foremost.

bcIMC is an advocate of transparency and accountability in the capital markets and we are concerned that issuers may be focusing undue attention on the proxy advisory firms in an attempt to limit improvements in these areas. From the investor perspective, proxy voting advisory firms are not the standard setters but rather, they respond to the interests and concerns of the institutional investment community. This means that we would see the influence of advisory firms as generally positive in nature that reflects broad investor sentiment and gets us closer to a market that is more transparent and accountable to shareholders.

### **Proposed Regulatory Responses**

As we have tried to emphasize throughout this submission, it is our impression that a regulatory response to address the role of proxy advisory firms would be an over-reaction to concerns that are stemming from a narrow base of market participants. Overall, proxy voting advisory firms are transparent, open to engaging with a variety of stakeholders and play a valuable role in assisting investors to exercise our fiduciary duty on behalf of clients.

The requirements and disclosure framework set out in section 5.2.1 have already substantially been implemented on a voluntary basis. If the CSA does determine that a response is warranted, bcIMC would prefer either a 'comply or explain' framework or the development of best practices guidance given that we have not seen evidence that there are significant negative impacts on market integrity. Ultimately, the costs of any regulatory regime will likely be absorbed by clients, which is an additional concern given the significant investment already made in the area of proxy voting at bcIMC.

We would also caution that the CSA should carefully monitor the various international regulatory initiatives identified in the consultation paper. Given that most proxy voting advisory firms operate in several jurisdictions providing research in all markets, it would be onerous to pursue regulation that was out of line with global expectations. This would also create additional barriers for any smaller firms trying to compete with the dominant players in the industry.

Thank you again for the opportunity to contribute our views to this discussion. If you have any questions about this submission please contact either Jennifer Coulson at 250-387-7559 or [jennifer.coulson@bcimc.com](mailto:jennifer.coulson@bcimc.com) or Barb MacDonald at 250-356-6641 or [barb.macdonald@bcimc.com](mailto:barb.macdonald@bcimc.com).

Yours Sincerely,

A handwritten signature in blue ink, appearing to read "D Pearce".

Doug Pearce  
Chief Executive Officer & Chief Investment Officer