June 17, 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, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Re: CSA Notice and Request for Comment – Proposed National Policy 25-201 – *Guidance for Proxy Advisory Firms*

Dear Sirs/Mesdames:

This letter is submitted in response to the Canadian Securities Administrators ("**CSA**") Notice and Request for Comment on Proposed National Policy 25-201 – *Guidance for Proxy Advisory Firms* (the "**Proposed Policy**").

Trinidad Drilling Ltd. ("**Trinidad**") appreciates the opportunity to provide comments on the Proposed Policy. Trinidad is a Calgary based oilfield contract drilling company with extensive operations in both Canada and the United States, together with significant operations in Mexico and the Middle East. Trinidad is traded on the Toronto Stock Exchange (the "**TSX**") under the symbol "TDG", and has a current market capitalization of approximately $1.7 billion.

We feel compelled to comment as a result of our recent negative experience with Institutional Shareholder Services Inc. ("**ISS**") during the 2014 proxy season. We believe that the lack of

accountability and lack transparency in the ISS process should not remain unchecked; instead, we are of the view that proxy advisory firms should be subject to binding regulation. The summary below of our recent dealings with ISS evidences how, in a vacuum of regulation, proxy advisory firms are able to act capriciously and wantonly to the detriment of issuers and their shareholders.

Summary of Recent Experience with ISS

The following is a chronology of Trinidad's recent interaction with ISS:

- On April 4, 2014, Trinidad SEDAR filed its information circular (the "**Circular**") for the 2014 annual meeting of shareholders (the "**AGM**") to be held on May 8, 2014.
    - Matters for consideration at the AGM included the customary three year shareholder re-approval of Trinidad's stock option plan (the "**Option Plan**"), as required by the TSX.
- On the morning of April 22, 2014, Trinidad's Vice President, Investor Relations, received the following email from ISS:
    - "Attached please find for your review a courtesy preliminary draft of ISS' proxy analysis for your company's upcoming annual meeting. Your comments must be submitted by 4:00 PM Eastern, Wednesday, April 23, 2014. If we do not receive your comments by this deadline, the proxy analysis will be finalized and disseminated without your input."
    - The preliminary ISS Report recommended an AGAINST vote in respect of the re-approval of the Option Plan. In particular, ISS identified the following two issues:
        - Non-employee directors' participation was not acceptably limited; and
        - The Option Plan's amendment provision did not adequately restrict the board's ability to amend the Option Plan without shareholder approval.
- Trinidad reviewed the comments in the preliminary ISS Report and determined to amend the Option Plan to satisfy the concerns of ISS.
    - An email confirming the same was sent to ISS by our legal counsel on April 23, 2014 at 3:22 PM ET.
    - At 3:29 PM ET, ISS confirmed receipt with the following email: "Thank you very much for your time and attention in reviewing this draft analysis. We will carefully consider your comments, and incorporate as warranted. We will let you know if we have any further questions."
- On April 24, 2014, Trinidad was provided with a copy of ISS' final, issued report, which completely ignored Trinidad's response and recommended an AGAINST vote in respect of the approval of the Option Plan.

- Assuming a mistake had been made, Trinidad's Vice President, Investor Relations placed phone calls and emails to ISS to discuss. Representatives of ISS advised by email that they refused to consider Trinidad's proposed amendments as they had not been SEDAR filed.
    - It was patently unreasonable to expect Trinidad to SEDAR file a revised Option Plan on SEDAR within that timeframe for the following reasons:
        - Trinidad was given one business day to capitulate to ISS' demands – if there were valid reasons for Trinidad to object, ISS was not prepared to enter into discussions;
        - Amendments to the Option Plan require directors' approval – as with most public companies, 48 hours' notice is required to convene a board meeting;
        - Amendments to the Option Plan require the prior consent and approval of the TSX, a process involving dialogue and filings with the TSX; and
        - SEDAR filings are available to the public – to the extent the revisions to the Option Plan as proposed were not satisfactory to ISS, multiple drafts would be posted on SEDAR, thereby causing potential confusion in the market.
    - It is our view that the consultation process was artificial so as to result in ISS publishing an AGAINST recommendation, in spite of Trinidad's bona fide intentions to meet ISS' demands.
- As the loss of the Option Plan would have a potentially significant adverse impact on Trinidad's compensation program, over the following days Trinidad obtained Compensation Committee, Board and TSX approvals for an amended Option Plan, and, on April 29, 2014 filed the same on SEDAR, together with a press release describing the amendments.
- Since the publication of the ISS Report, the scrutineers' reports on ballot were showing that the Option Plan would not be approved at the AGM.
- On April 29, 2014, ISS published a Proxy Alert wherein they reversed their AGAINST recommendation to a FOR recommendation in respect of the Option Plan.
- The AGM was held as scheduled and the Option Plan was approved.

Obvious questions arise from the scenario described above:

- Why is ISS not required to provide a reasonable timeframe for comment on their draft reports (particularly in circumstances where prior board and regulatory approval is required before an issuer can commit to a resolution of the issue)?
- Why is ISS not required to engage in dialogue with an issuer to receive and genuinely consider the issuer's reasoning behind the drafting of a compensation plan?

The results of the above process are unacceptable:

- Management and the board had to immediately dedicate resources in order to intervene and prevent the loss of a compensation plan – actions which were both stressful and costly.

- ISS got to "look good" with their subscribers, as the public record reflected ISS going to battle with Trinidad over a compensation plan and winning, although Trinidad was immediately amenable to addressing ISS' issues from the outset.

Incidentally, we also have concerns respecting the process followed by Glass Lewis. Unlike ISS, who at least provided us with a copy of their recommendation, Glass Lewis required Trinidad to pay $5,000 to get access to their report. We fail to see how this promotes either transparency of process or meaningful dialogue.

Our comments below are provided with the above as context.

Comments

1. Do you agree with the recommended practices for proxy advisory firms? Please explain.

We have significant concerns regarding the lack of regulatory oversight of proxy advisory firms and we are of the view that the Proposed Policy and recommended practices therein constitute a very "light touch" response. A policy-based approach is simply not an appropriate or sufficient regulatory response for the governance of the practices of proxy advisory firms and will not ensure transparency in their practices or the integrity of the Canadian capital markets. In particular, the Proposed Policy does not adequately address our concerns (or the concerns of various market participants and their advisers) regarding the following issues: (a) inappropriate and significant influence on corporate governance practices; (b) inaccuracies and limited engagement with issuers; and (c) lack of transparency and conflicts of interest.

In our opinion, these significant concerns, which are detailed below, warrant a more prescriptive, rules-based regulatory response that includes mandatory compliance.

(a) Inappropriate and significant influence on corporate governance practice

Proxy advisory firms wield significant influence over the voting process. Given the relatively low turnout at shareholder meetings in Canada, the votes held by institutional investors can have a significant impact on the voting results, and therefore any recommendations made to institutional investors by proxy advisory firms can have a profound effect on voting results. As corporate governance standards evolve (due in large part as a direct result of the increasingly complex best practices developed and recommended by the proxy advisory firms themselves), the clients of proxy advisory firms increasingly rely on the expertise and advice of proxy advisory firms. This is patently obvious where institutional investors have signed up for automatic vote services provided by proxy advisory firms, but even where such services are not provided, the clients of proxy advisory firms rely heavily on their assessments and recommendations.

Given their significant influence over the proxy voting process, proxy advisory firms have become "quasi regulators" and standard-setters of corporate governance practices, and yet they are not held to any discernible standards in such regard.

(b) Inaccuracies and limited engagement with issuers

In our experience, proxy advisory reports often contain factually incorrect information, upon which vote recommendations are based. Such errors can have a number of significant, negative results for issuers. Incorrect information and analysis may lead to inappropriate advice on an important decision, negative reputational implications for individuals or affect

other aspects of corporate governance, which affects all shareholders of an issuer, not just those which engage the services of proxy advisory firms.

Often, these inaccuracies are detected only after a proxy advisory report has been published, and there are no requirements to retract or correct such incomplete or inaccurate information. Inaccuracies can be detected if a draft is provided to the issuer in advance (which we note is often not the practice of proxy advisory firms), but when drafts are provided in advance, issuers are typically provided an inadequate amount of time to review and respond. Furthermore, proxy advisory firms do not have a duty to engage with issuers, therefore there is no obligation on proxy advisory firms to respond to any requests to correct misinformation, to review any response submitted by an issuer, or to allow the issuer any opportunity to address concerns of the proxy advisory firm. This one-way consultative approach compromises the ability of shareholders to make informed decisions and weakens the integrity of capital markets in Canada.

We understand that proxy advisory firms are under pressure to produce many reports in a short timeframe; however, this does not negate the need for thorough, accurate reports. Prior issuer review of draft proxy advisory reports and mandated engagement by proxy advisory firms with issuers would lead to fewer inaccuracies in published reports and help to preserve the integrity of the proxy voting system.

(c) Lack of transparency and conflicts of interest

Proxy advisory firms should be required to disclose their methodologies, sources of information, assumptions used to prepare reports and rationales for their voting recommendations. The adoption and application by proxy advisory firms of internal and unpublished policies creates an unpredictable regime in which policies are misunderstood and inconsistently applied and voting recommendations cannot be linked to previously published guidelines. This lack of transparency does not promote a clear and responsible voting system and leads to shareholders blindly relying upon the recommendations of proxy advisory firms.

Additionally, this lack of transparency creates an environment in which issuers feel compelled to buy the services offered by proxy advisory firms, as this is the only practical way an issuer can determine whether there will be a favourable proxy advisory recommendation, which may be critical to determining levels of possible approval, which in turn is necessary for corporate decision-making as to matters to be put forward to shareholders for approval.

A business model based in part upon fee-based proxy review services benefits from a lack of transparency, fuelled by the practices of the proxy advisory firms, which creates an inherent conflict of interest.

The issues identified above need to be addressed by a regulatory regime that consists of more than recommended practices; it needs to be rule-based and compel mandatory compliance in order to ensure transparency, appropriately address conflicts of interest and preserve the integrity of the proxy voting system. Proxy advisory firms play an ever-increasing role in the voting process and in shareholder communications regarding corporate governance practices. While issuers are held to strict, prescribed disclosure requirements so as to best assist shareholders in assessing an issuer's practices, a policy-based approach for proxy advisory firms will do little to assist market participants, including shareholders, in assessing the proxy advisory firms' compliance with such policies.

2. *Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.*

The Proposed Policy does not include specific guidance regarding engagement with issuers or the provision of draft proxy advisory reports to issuers in advance of issuing vote recommendations.

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?*

We do not feel that the Proposed Policy, which by its nature is guidance only and does not mandate compliance therewith by proxy advisory firms, is a sufficient regulatory response to this matter. Given our experience with proxy advisory firms and their reluctance to correct errors or participate in an open exchange of information and dialogue, we do not believe a policy-based regulatory response will promote meaningful change. Please see our response to question 1 for further details.

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?*

Yes, in our view, proxy advisory firms should designate a specific person to be responsible for these matters. This person's contact information should be made available to the public to promote greater transparency and engagement with issuers. This should be a requirement, rather than a recommended practice.

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?*

In our view, proxy advisory firms should be required to engage with issuers during the process to ensure that incorrect information is not included in proxy advisory reports and to give issuers an opportunity to explain their rationale for certain practices or decisions, or to otherwise address the issue. This should be a requirement, rather than a recommended practice.

There are many reasons why such engagement with issuers is beneficial to the proxy voting process. The one-size-fits-all approach adopted by proxy advisory firms in their analysis is often inappropriate in the circumstances. Issuers may be able to provide insight without which proxy advisory firms are ill-equipped to make recommendations. In other situations, as was our experience in the 2014 proxy season, issuers may be prepared to make revisions or otherwise address the recommendations of proxy advisory firms in order to satisfy their concerns. Trinidad made the recommended changes of the proxy advisory firm, however such changes were not recognized resulting in inaccurate information being published by the proxy advisory firm. This provided no benefit to any of the market participants.

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?*

In our view, automatic vote services do not promote responsible voting and we do not believe such services should be offered. To the extent these services continue to be permitted, not only should proxy advisory firms be required to obtain confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines, but they should be required to do so both on an annual basis and following any amendments. In addition, proxy advisory firms should be required to annually publish all proxy voting guidelines and notify the marketplace upon any amendments to such guidelines.

We thank you for the opportunity to submit these comments and would welcome an opportunity to discuss them with you.

Yours very truly,

TRINIDAD DRILLING LTD.

"*Ken Stickland"*

By: _____

Name: Ken Stickland
Title: Lead Director and Chair,
Corporate Governance &
Nominating Committee