Me Anne-Marie Beaudoin and the Secretary of the OSC:

John Budreski sent me a copy of his response to the April 24, 2014 "CSA Notice and Request for Comment – Proposed National Policy 25-201 - Guidance for Proxy Advisory Firms", copy attached. I circulated that the Notice and Mr Budreski's response to members of our firm's Corporate Finance Group. I note that the OSC site indicates that the Notice is open for comment until July 24, 2014.

Members of our Group met to consider the CSA Notice and Mr Budreski's response.

Some of Mr Budreski's comments under the heading "Challenges" are factual in nature and we have not done any due diligence to confirm his statements. However, we are in general agreement with points he raises.

Many of our public company clients currently do not have a large institutional investor base and so they do not feel the impact of the recommendations of proxy advisory firms as much as other issuers do. However, we agree with the statements in the CSA Notice that "proxy voting is an important feature of our capital markets" and "proxy advisory firms play an important role in the voting process".

Given the importance of proxy voting and the role played by proxy advisory firms in the voting process, we are in agreement with the four part regime recommended by Mr Budreski in his response under the heading "Recommended Action"

Regards,

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Dear Me Beaudoin and the Secretary of the OSC;

RE: Proxy Advisory Firms

I am writing in response to the CSA/AVCM Notice and Request for Comment regarding National Policy 25-201 *Guidance for Proxy Advisory Firms*. This submission is directed to all members of the CSA. I am writing this submission as an individual and as an active and experienced participant in Canada's capital markets.

I am vehemently opposed to your Proposed Policy. This policy as currently envisioned falls far short of what is required for the proper and healthy functioning of Canada's public corporations and publically traded markets. The system, as it currently functions, is creating serious problems and needs to be fixed. While there are simple and effective remedies for these problems, it will take more than a prescription for "guidance" from the securities regulators.

The Proposed Policy can be summarized as follows:

i) identify and disclose conflicts of interest; establish policies to deal with conflicts of interest;
ii) develop proxy voting guidelines and disclose these guidelines; and,
iii) communicate with the various stakeholders.

It is explicitly stated that the guidance in this Policy is not intended to be prescriptive or exhaustive.

It is abundantly clear to any capital markets participant that this Proposed Policy is about as light and unobtrusive as it could be. Much more is required.

Overview

It is apparent that there is a business opportunity for proxy advisory firms. The volume of proxy materials distributed to shareholders is overwhelming. Fund managers could disserve their beneficial investors if they devoted too much time to studying the wide array of proxy materials. Even if a fund manager chose to read all of the proxy circulars for the companies in

his/her portfolio, that fund manager would not have the benefit of all the materials published by all of the public corporations. Thus, the fund manager could miss out on specific trends, industry sector practices, comparisons of good governance amongst larger populations of corporations and the identification of misbehavior that could occur in a company not in the portfolio but having an effect on the particular portfolio. Proxy advisory firms, with their ability to analyze, compare and expeditiously process large volumes of proxy information, can serve a valuable role. Further, by using economies of scale, these firms can often conduct the task at a lower cost than a collection of fund managers, each of which is partially duplicating the efforts of others.

If the proxy advisory business is to play a role in the capital markets, it should follow that proxy advisory firms should meet the standards adhered to by the other capital markets participants.

Challenges

The challenges in the current environment are those of lack of alignment, industry regulation, professional certification, product quality, staff qualification, business concentration and conflicts of interest. These individual challenges are discussed separately in the paragraphs that follow.

Lack of Alignment

Investor clients of proxy advisory firms pay these firms for their analysis of the proxies issued by third parties – public corporations. This business model seems simple enough, except that the corporations have little role in the creation of the specific research but yet can suffer from any harmful effects emanating from that research. The proxy advisory firms have fewer clients in the corporate world and thus have little obligation or loyalty to the corporations. In other words, one can create the damage, but suffer no harm. The subject company can suffer the damage, but have no method to defend from, or prevent, the damage. Situations possessing this kind of non-alignment demand a higher level of oversight and regulation.

Industry Regulation

The securities markets in Canada are highly regulated with a comprehensive set of rules, regulations, prescriptive forms and procedures along with enforcement capabilities. All involved in the securities market are held to high standards by the various provincial securities commissions. When the oversight of the provincial securities does not apply, other regulatory organizations, such as IIROC or the TMX, take over. It is virtually impossible for a corporation to publish a document that has not been reviewed by an oversight body and signed / attested to by its primary author. There is no such standard for proxy advisory firms, yet the information they convey and the impact that it has can be every bit as powerful as a prospectus, financial statement or accredited research report.

Professional Certification and Governance

Most of the participants in Canada's capital markets have professional training and have professional associations that govern their profession. Much of the work that drives businesses forward, regulates industries and builds wealth in the capital markets is conducted by well trained and well established lawyers, accountants, engineers, chartered business valuators, chartered financial analysts, scientists and the like. They practice in their respective professions because

they are qualified and certified to practice their profession. Enforcement of standards is meted out by various Law Societies, Accounting Professions, Chartered Financial Analyst Associations and the like. There is no parallel system or professional certification for those working for proxy advisory firms. It is incongruent that the efforts and output of the former, structurally qualified group are judged and opined on by a group without any prescription for industry or professional qualifications.

Product Quality

Proxy advisory firms process a significant amount of information in a very short amount of time. It is my understanding that a number of temporary employees are hired to complete this task. Even at normal error rates, a significant number of errors will occur. Errors in proxy advice can be every bit as damaging as errors in other capital markets communications. The standards and regulation for proxy advisory errors should be no less than the standard for prospectuses, financial statement and research reports.

Staff Qualifications

Proxy advisory firms are asked to opine on a wide variety of proxies. While much of these are fairly standard annual meeting items such as Director nomination, auditor selection and compensation matters, there are still several very weighty issues such as votes for major acquisitions or take-overs, proxy battles for alternative management and change of business plans. The skills required to assess the annual meeting type of proxies are very different than the skills required to assess the larger corporate and business items. Corporations access the skills of both internal and external experts in the fields of valuation, law, accounting, engineering, and other professions when undertaking such ventures. If a second corporation is involved, it too will access pools of expertise, most often completely independent of those used by the primary corporation.

It would be a substantial challenge to a proxy advisory firm to have all the required expertise and experience to properly advise on the wide array of situations encountered.

Business Concentration

The CSA/AVCM in its request for comment have noted that the proxy advisory business in Canada is dominated by two firms. This level of concentration, and inherent lack of competition, can easily lead to a lower standard of care and diligence. Further, domination by two firms would not allow for the diversity necessary for properly founded self-regulation.

Conflicts of Interest

Proxy advisory firms effectively create the rules for proxy matters and then sell this product to institutional investors. These firms also make an effort to sell consulting services to the corporations to help them understand and navigate the “rules”. There is a very clear conflict of interest in that the establishment of more rules and complexity, as driven by the institutional investors and proxy advisory firms, creates a larger opportunity to increase consultancy billings to corporations.

Current Effects and Consequences

The current business environment for proxy advisory firms is yielding many unintended and negative consequences. Provided below are a number of examples where the capital markets are being poorly served.

Proxy advisory firms have established guidelines for senior management and Director compensation. These are mostly based on a comparative analysis using a peer group of companies. A problem arises here in that corporations and their executives construct compensation plans over many years, utilizing expert consultants and addressing individual motivational needs and specific performance metrics. These plans are typically ongoing discussions involving much effort and reason by all and evolving to adapt to changing circumstances. Recommending the alteration of components to these finely crafted plans based on a simple comparable company analysis is a major intrusion into corporate governance and the smooth operation of a corporation. There are many examples where their rules and direction are not comprehensive. Proxy advisory firms will place a limit on the number of options issued, but give no guidance on the allowable amount of cash compensation. Such an action forces the corporation to reduce the option incentive but then to increase the cash incentive to an executive to maintain the current rate of overall compensation!

Proxy advisory firms have a developed a concept of being "over-boarded". Over - boarding occurs when a Director is deemed to be serving on too many Boards and it is deemed that the particular Director does not have the capacity for the multiple roles. One determination is a limit of one CEO/Director role and two outside Board roles. Above this, one is over-boarded. The determination does not take into account the nature of the organization, the time requirements or the capacity of the Director. Thus, a CEO of a Canadian Schedule A Bank could be a Director of Google and General Motors and not be over-boarded whilst a CEO of a $5 million single asset mining company who is on the Boards of three similar entities in the same city would be over-boarded. These simple determination criteria do not make sense yet they are currently being applied.

Proxy advisory firms do not speak with, or build an understanding of, the individuals upon whom they recommend votes. Without direct knowledge of workload, individual contribution or travel, how can a recommendation be made on compensation or over-boarding? If a proxy advisory firm does not know that a particular Director spent two weeks in a developing country where an armed escort was required, how can it opine on compensation for that Director? Many Directors make extraordinary contributions that save, catapult or otherwise enhance their companies and none of this may be seen by outsiders.

On June 21, 2012, the CSA published for comment Consultation Paper 25-401 Potential Regulation of Proxy Advisory Firms (the Consultation Paper). Some issuers, issuer associations and law firms have raised concerns that proxy advisory firms may have become de facto corporate governance standard setters and that, as a result, issuers are compelled to adopt certain "one-size-fits-all" standards which may not be entirely suitable for their specific circumstances.

Unfortunately, the "one-size-fits-all" approach continues to be employed. Proxy advisory firms appear to be loath to change from this practice and do not appear to be willing to accept the need for a more rigorous methodology to understand a particular company's unique attributes and needs. Further, the CSA'a suggestion that companies can engage directly with institutional shareholders is not practical on a wide basis. Institutional shareholders hire proxy advisory firms

precisely to avoid these in-depth and prospectively mind numbing discussions; corporations will not access, or have the time to access, their wide array of institutional shareholders.

The Canadian securities industry has used a careful process when it comes to corporate governance. Say on pay and women on Boards have been carefully and effectively evolving with much input from all involved. It is wrong to allow for a single commercial interest to establish rules and guidelines on equally weighty matters.

Recommended Action

The actions and recommendations by proxy advisory firms can have effects on public companies that are no less meaningful than the materials issued by public companies. Inappropriately forcing the resignation of a Director could be much more material than the issuance of a quarterly financial statement. Voting to not conduct a takeover can be more much more significant than raising new issue equity. If proxy advisory firms can have this much power, then they should be subject to the same rules and regulatory oversight as the issuers, underwriters, advisors and other participants.

A four part regime is proposed.

The first part would have proxy advisory firms attest to their information to the same degree as other public information. This would amount to statute or certificate attesting that the published material meets the standard of "full, true and plain". It is not enough that proxy advisory firms can rely on "full true and plain" disclosure. These firms can cherry pick, manipulate or ignore parts of this information to reach an ill-founded conclusion. Deep conclusions cannot be drawn from shallow analysis. The test for these firms is that they have properly factored all relevant information in reaching their conclusions and recommendations. This is a much higher standard.

The second part of the regime would prescribe a much higher level of disclosure. There are two precedents for this: (i) form type requirements such as those used for valuations and fairness opinions where both the credentials of the author(s) and the methodology used must be disclosed, and (ii) certifications of the nature of the product, disclosure of conflicts and other relevant information as seen on the back pages of research reports.

As an example, knowing that the proxy advisory firm spoke to a particular Director before recommending a "withhold" vote would be very important to the shareholder. As discussed above, it is unconscionable that currently "withhold" recommendations are given according only to the number of Boards served on without any regard to the particular Director's individual capacity, expertise or the complexity and time requirements of the issuers.

The third part would be a requirement for the proxy advisory firm to provide the issuer with both draft and final copies of their reports. With this much higher level of disclosure, issuers could then better discuss and debate the conclusions. Further, provision of these more detailed reports would allow issuers to speak with their shareholders or use press releases (or other media) to provide balance to the items under review in the event that the proxy advisory firm holds a view different than the issuer.

The fourth element would be an outright prohibition on proxy advisory firms working for both institutional investors and issuers. There are clear conflicts that disclosure would not resolve.

It is my prediction that in absence of a higher standard and effective regulation, the differences between an issuer's objectives and the recommendations of proxy advisory firms will be aired in the public arena. One can envision proxy advisory firms issuing a recommendation, only to have their work challenged, errors exposed and animosity expressed by issuer produced press releases, newspaper advertisements and media interviews. This, in my view, would be harmful to Canada's capital markets.

My qualifications

These comments and recommendations come from extensive experience and expertise. Spending 25 years in the financial brokerage industry took me from as an associate Investment Banker to the position of CEO of an investment dealer. I have worked for both bank-owned and employee-owned firms. Working locations included Calgary, New York and Toronto. I have worked as an Investment Banker, managed and participated in institutional sales and trading, and have written company research reports. I wrote the very first 61-501 valuation report back when it was called OSC Draft policy 9.1. Historical assignments included hostile takeovers, takeover defense, restructuring and reorganizations, shareholder solicitations and fairness opinions – all areas where proxy advisory firms now have a role. I was the Ultimate Designated Person for Orion Securities and was a member of the Fairness Opinion and Valuation Committee for Scotia Capital Markets. I have previously served on the Boards of five public companies or partnerships and currently serve on the Boards of five public companies including the role of Chairman for one and CEO for another. This service includes roles on audit, compensation and governance committees.

Please contact me at your convenience for further clarification and discussion. My contact information is provided on the covering email to this submission.

This is an important component to the smooth function of Canada's capital markets and it certainly needs your attention and oversight. I would be pleased to travel, at my own expense, to meet with you and further review my views, experience and recommendations in this area.

Yours truly,

"John P. A. Budreski"

John P A Budreski