To:
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, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

For delivery via:

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Re: Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*

Thank you for this opportunity to respond to your invitation to comment on your proposed policy relating to proxy "advisors".

By way of background, Manifest was formed in December 1995 to provide independent, objective and insightful corporate governance research and shareholder vote management services. We started with UK coverage and since then have extended our scope to cover global companies in our client portfolios. Manifest covers the Canadian securities market and has also under taken work with the Canadian Society of Corporate Secretaries and Carol Hansell to support proposals to reform the Canadian proxy plumbing system to create an open standards, open access system which works for the benefit of issuers and shareholder alike and which would facilitate closer dialogue and mutual understanding.

From the outset, our mission has been to be a faithful agent of our clients, to research the issues that they feel are important to them and warrant further investigation and to navigate the complexities of the broken proxy plumbing system world-wide. We do not, and never have, seen ourselves as an "Investment Fiduciary"; we are a research and investment administration services vendor which happens to have developed a particular expertise in a highly complex and technical area.

The issue of being a fiduciary, or not, is important yet rarely discussed. Our clients, asset managers and asset owners, acquire our services on the basis of contract law. We are not operating within a trust-law based relationship, we have no "control" over anything as would be expected from a fiduciary mandate such as that of asset owner to asset

manager. In this regard the issuer community has failed to do any due diligence on the nature of the commercial relationships that exist between service providers and clients.

Rather they focus on a nebulous term “Advisor” which implies elements of discretion as might be expected from an investment advisor. This is simply not correct. Advisors may advise, it is the principals who decide - they are the fiduciaries. Issuers and their lobbyists also assume that all proxy advisors “make recommendations”, they do not, nor should they in an openly competitive market for goods and services. Even if recommendations are made, and our competitors are entitled to provide services in whatever way they deem appropriate, they are not binding. As your April policy notice wisely stated:

> *We wish to remind issuers that they may engage with their shareholders, who have the ultimately responsibility of determining how to exercise their right to vote, to explain why they have adopted a given corporate governance practice. Where appropriate, issuers may discuss corporate governance and proxy voting matters with institutional investors to address their concerns. If issuers have practices that are different from the standards set out in the proxy advisory firms' proxy voting guidelines, these practices can be discussed with institutional investors. Source: http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140424_25-201_rfc-proxy-advisory-firms.htm*

Assertions of proxy advisor influence are typical of the political grandstanding we have come to expect on this important subject. So-called academic ‘evidence’ is cherry-picked while ignoring many alternative view points which contradict. We say ‘evidence’ because unless a paper has been subject to a vigorous peer review and all conflicts of interest declared, it is only an opinion piece. We highly doubt that the industry’s critics will have sent you some of the more recent papers on the role of proxy analysts and which present a different point of view:

Dent, George W.,
A Defense of Proxy Advisors (2014). Case Western Reserve University School of Law, Case Legal Studies Research Paper No. 2014-13. Available at SSRN: http://ssrn.com/abstract=2451240 or http://dx.doi.org/10.2139/ssrn.2451240

> **Abstract:**
> Proxy advisors have dramatically transformed shareholder voting. Traditionally, even large institutional investors tended to follow the Wall Street Rule — vote with management or sell your stock — because the economics did not justify incurring any expense in deciding how to vote. The emergence of proxy advisors who perform proxy research for a modest fee paid by each of thousands of institutions now enables these investors to vote intelligently. New laws and rules have also expanded the range of matters on which shareholders vote. Because of these developments, business managements can no ignore but must cater to shareholder interests.
>
> **However, corporate managers resent being dethroned. They are mounting a campaign to press the SEC to impose new regulations to hobble proxy advisors and, thereby, to neutralize institutional shareholders.**
>
> This article reviews the charges leveled against proxy advisors and the new regulations proposed by their critics. It finds the complaints mostly unwarranted. Institutional investors are sophisticated and market forces minimize any problems with proxy advisors. With a few minor exceptions, new regulations are not needed and would be counterproductive.

Aggarwal, Reena and Erel, Isil and Starks, Laura T., Influence of Public Opinion on Investor Voting and Proxy Advisors (June 6, 2014). Georgetown McDonough School of Business Research Paper. Available at SSRN: http://ssrn.com/abstract=2447012 or http://dx.doi.org/10.2139/ssrn.2447012

> **Abstract:**
> We examine the evolution in voting patterns across firms over time. We find that investors have become more independent in their voting decisions, voting less with the recommendations of management or proxy advisors. Even when the proxy advisor recommends voting against a proposal, we find that over time investors are more likely to ignore the recommendation. Moreover, we also find that proxy advisory recommendations have become more supportive of shareholder proposals. **Our main contribution is to examine the role of public opinion in influencing institutional voting. We show that public opinion on corporate governance issues, as reflected in media coverage and surveys, is strongly associated with investor voting, particularly mutual fund voting.**

Edelman, Sagiv, Proxy Advisory Firms: A Guide For Regulatory Reform (Vol 62, Issue 5 (2013))
Available: http://www.law.emory.edu/fileadmin/journals/elj/62/62.5/Edelman.pdf [Accessed 25 June 2014]

Abstract (Abbreviated):

> ….this Comment dispels the notion that proxy advisory firms wield too much influence over institutional investors and shareholder voting, and it explains that the fears of conflicts of interest are likely overstated. Utilizing Anthony Downs's research on the application of economic theory to democratic voting, this Comment demonstrates that **proxy advisory firms are vital in facilitating the rational, efficient exercise of the shareholder franchise.**

The CSA's intervention in this debate is therefore most welcome and timely. Shortly before the publication of the request for comment, Manifest and a number of other industry participants concluded the development and publication of a series of industry best practices for service providers to adopt. The Principles (available at http://bppgrp.info) are designed to be global in their scope and application. The industry is global in scope and demands a global approach.

The Principles have evolved from a suggestion from ESMA, the European Securities & Markets Authority that stakeholders would benefit from greater understanding of the work we do. We agreed and hence the Principles were developed under the independent chairmanship of Dr Dirk Zetzsche of Heinrich Heine University Duesseldorf - Faculty of Law. His independent report of the proceedings of the Best Practice Principles Group can also be found on SSRN

Zetzsche, Dirk A., Report of the Chairman of the Best Practice Principles Group Developing the Best Practice Principles for Shareholder Voting Research & Analysis (May 12, 2014). Available at SSRN:http://ssrn.com/abstract=2436066 or http://dx.doi.org/10.2139/ssrn.2436066 Do you agree with the recommended practices for proxy advisory firms?

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

We strongly support the best practice principles approach already elaborated above. This underpins understanding of the role of service providers in the shareholder research and voting space. In recent years we have witnessed the unwelcome unintended consequences of embedding service providers or intermediaries into financial regulation, be that custodian banks, auditors, credit rating agencies or even proxy advisors, as the US SEC has discovered.

The contractual relationship between a service provider and their principal does not remove the need for the principal to be in compliance with their own fiduciary responsibilities or relevant securities regulations. We question the ability of a service provider to regulate its clients when they are already regulated entities.

The Principles outlined in the proposals follow the themes that we proposed in the industry developed Principles. There are some challenges raised by the CSA's proposed practices as they stand. For example, they appear to embed particular business models such as "Voting Recommendations". Why recommendations? Recommendations are not a reflection of control over a voting process and there are many other ways of raising concern flags on issuer practices other than a For or Against recommendation – a red or green flag says just as much, so does a grading letter.

A recommendation or analysis is simply a subjective viewpoint, it cannot possibly be said to be an accurate recommendation. Yes, it can be based on accurate analysis or accurate data, but subjective matters will always remain subjective. Issuers may not like the separation of chair/CEO proposals from investors, however those are views that investors are not only entitled to, in other global jurisdictions they are an accepted norm by standards setters. Regrettably, suppression of diversity of view appears to be a constant theme running through the anti-proxy advisor rhetoric, which in reality is anti-corporate governance rhetoric.

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

We regret a missed opportunity in the proxy advisor debate more generally not to address the highly bunched nature of global AGM seasons. The artificial compression of workloads has a severely negative impact on shareholders' ability to engage with their companies. A typical well-diversified global investor may own over 3,000 securities. It simply isn't rational for companies to hold 200 meetings a week and expect a high level of quality dialogue, either from investors or proxy advisors

The entire proxy system is highly manual with minimal automation opportunities. XBRL is shown to contain significant errors. Corporate disclosures are extremely varied in terms of standard content and layout. They suffer from extreme bloat and legalese which can drive even the most educated and experience analyst to distraction. The UK has

embarked on a “Cutting Clutter” campaign, this is most welcome and should, in time, encourage meaningful disclosures rather than standard compliance boiler-plate.

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?

Manifest and other BPP signatories have undertaken to monitor signatories’ disclosures and market feedback very closely. Our next planned meeting in September will set out a work plan for ongoing governance of the Principles and ESMA itself will be monitoring the outcomes within the next 24 months. We therefore urge CSA to give the Principles time to become established and better understood. For the smaller industry participants reacting to multiple regulatory approaches is a significantly constraining factor and reduces our ability to do what more market participants are asking us to do – provide effective competition to what has become widely regarded as a monopoly service provider market.

Many of the CSA’s proposed principles, and indeed in the industry’s own Principles and associated statements address matters that have been long-disclosed either to clients specifically (as they are the ones that are paying our invoices) or to stakeholders more generally. At this point we wish to stress that service providers, be they not for profit industry associations or commercial bodies, are not public utilities, we receive no government subsidies and so our lines of accountability are not to the issuer community. We agree that there are societal benefits deriving from well-governed, accountable and sustainable corporations, our role as analysts is akin to that of the media, reporting to our readers matters which are of concern to them at a point in time.

Again, it is highly regrettable that so much energy has been diverted from the real task at hand of removing unnecessary intermediation in the shareholder voting system. Had more issuers spoken directly with their owners they might have had a better understanding, much sooner, of what investors actually do rather than what their advisors infer they do. To that end we hope that securities regulators will be focusing their attention on the wide range of issuer advisors including headhunters, remuneration consultants, proxy solicitors, lawyers and investment banks to ensure that the advice they provide is subject to greater scrutiny on accuracy, relevance, knowledge etc.

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?

This is addressed in the Best Practice Principles and associated guidance, which is integral to the disclosures expected.

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?

This is addressed in the Best Practice Principles and associated guidance, which is integral to the disclosures expected.

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?

This is a very welcome question and possibly unique in the regulatory debate so far.

In the first instance, it may be appropriate to note that clients will most probably have their own custom guidelines rather than vendor “house guidelines”. That aside, from Manifest’s perspective, the confirmation approach laid out in the question is the one that we already follow. At our inception, we took legal advice and were counseled to ensure that client confirmation of vote instructions was a built-in requirement otherwise we would stray from being a “voting agency” to a “voting principal”.

We are aware that vote confirmation before execution polarizes the market place. Despite that, and however uncomfortable it may be, there is an important, valid, indeed ethical question that needs to be aired over bargain-basement or “zombie voting” i.e. automated voting without oversight at the cheapest possible price.

Nobody really wants to admit to it in public, however it is clear that there are asset owners and managers who feel compelled to vote and so treat shareholder voting as a compliance exercise rather than one integral to the investment process. That devalues the entire process for the considered owners who do put considerable effort, resources and thoughtfulness into their engagement programs.

The question which possibly should be asked is whether an annual review of policy questions is sufficient? Governance practices change all year round and companies are not one size fits all, their circumstances change too. The right to vote and the right to sell are the same in corporate law, although we would agree that in securities law there are differences in the regulation and enforcement approach. We do not believe, for example, that it would be considered appropriate for an asset manager to simply let their broker buy or sell according to the recommendations of their analysts. If votes are an asset of the fund (they are inextricably linked to the underlying security) should voting be treated differently?

The historic undue reliance on credit rating agencies is a clear and understandable concern for global regulators. As a result of the discussion and debate about excessive intermediation in the investment chain we are beginning to see a greater role for the compliance and internal audit function in monitoring shareholder voting and decision making processes.

If we wish to see higher standards of governance and engagement between companies and their owners, is a hands-off approach which assumes that a computer is doing the right thing a sufficient response? Are there cost concerns on the part of asset managers and asset owners? Does this mean that the governance research process is under-invested? These are very valid questions and they go beyond the anti-proxy advisor lobbying. However, we do believe that root cause issues about how sustainable, long-term governance is tackled in a fully holistic sense will serve the markets well in the long-term rather than short-term fixes.

We would therefore request that the CSA defers this particular question in order to undertake a more detailed legal review of the implications of the proposal in the context of fiduciary responsibility, not just in the Canadian environment but elsewhere globally as fiduciary duty concepts with regards to what can be outsourced are highly varied.

In conclusion, we welcome the CSA's principles-based approach. A principles-based approach promotes and respects personal principles and integrity rather than mere compliance, it allows an evolutionary and responsive approach to an important topic which is proportional and respectful of the proper reporting lines in the share ownership process. They also respect individual business models which promotes diversity and competition. Hard-wired regulations or laws once made can be very difficult to unwind and can have unforeseen and unintended consequences that are later regretted.

Sincerely and respectfully,

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