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Dear Me Beaudoin,

Proposed National Policy 25-201 Guidance for Proxy Advisory Firms

Thank you for providing us with the opportunity to comment on the proposed National Policy 25-201 *Guidance for Proxy Advisory Firms* (Guidance).

The Australian Institute of Company Directors (Company Directors) is one of the two largest member-based director association worldwide with over 35,000 members, including individual members from a wide range of corporations: publicly-listed companies, private companies, not-for-profit organisations, charities, and government and semi-government bodies. As the principal professional body in Australia representing a diverse membership of directors, we offer world class education services and provide a broad-based director perspective to current director issues in the policy debate.

While we are based in Australia, we believe that it is important to comment on the proposals set out in the Consultation Document as there is a tendency for Australian regulators to look to the regulations that are in place in other jurisdictions when developing regulation for Australia.

We are also a member of the Global Network of Director Institutes (GNDI), of which we are currently the Secretariat. GNDI brings together member-based director associations from around the world with the aim of furthering good corporate governance. It is the international network for leading membership organisations of directors in Australia, Brazil, Canada, Europe, Hong Kong, Malaysia, Mauritius, New Zealand, South Africa, Thailand, the United Kingdom, and the United States. This submission has been informed in part by members of GNDI, including the Institute of Corporate Directors in Canada.

We have attached a copy of the global perspective paper of the GNDI in relation to **Board-Shareholder Communications** and hope that this will be of assistance when considering submissions on the draft Guidance.

You may also find it useful to refer to an independent research report that Company Directors commissioned in 2011, **Institutional share voting and engagement**[1], which explores the effectiveness of the engagement between directors, institutional shareholders and proxy advisers and provides a map of the institutional share voting process in Australia. While the report was limited to looking at companies in Australia, we expect that many of the findings of the report will be relevant to the issues that the Canadian Securities Administrators (CSA) is seeking views on.

Additionally, while we do not intend to comment specifically on all of the issues raised by the Notice and Request for Comment, Company Directors would like to take this opportunity to make some general comments relating to some of these issues.

General comments

In our view, it is important for proxy advisors to be governed by a set of "good practice" principles and guidance. The exercise of voting rights by shareholders is a critical component of corporate governance and proxy advisory firms play an important role in this. In order for shareholders to make informed voting decisions, the information that they are provided with must be accurate and not misleading, whether the information is provided by the issuer, its directors or from some other intermediary, such as proxy advisory firms.

Despite proxy advisory firms playing such an important role and, in our view, exerting significant influence over their clients with respect to the exercise of voting rights, they are currently not held to any standard with respect to the communications that they make to shareholders. Some but not all proxy advisory firms may be registered as investment advisors, however the full scope of their work extends well beyond those specific advisory areas that are regulated. This relatively light regulatory burden is to be compared with the obligations of issuers and their directors who, in most jurisdictions, must comply with a number of regulations with respect to shareholder communications, and have potential liability in the event the materials that they send to shareholders contain inaccuracies, misrepresentations and/ or misleading statements.

There is clearly a disconnect between the influence and the accountability of proxy advisory firms. We believe that this disconnect undermines the exercise of voting rights by shareholders and impacts on the integrity of capital markets. In our view, this disconnect needs to be addressed. While the draft Guidance represents a useful step towards this, there are still a number of areas of concern that have not, in our view, been adequately addressed. These are set out in more detail below.

Voluntary approach – the need for accountability

We do not agree that the Guidance should apply to the proxy advisory industry on an entirely voluntary basis. Unlike corporate governance principles, where retaining a certain amount of flexibility is necessary, a code of practices that is intended to govern the professional conduct of an industry and hold participants accountable does not require similar flexibility, as complying with such practices should not involve matters of judgement.

Currently, proxy advisory firms are relatively unregulated, even though, as noted above, one of their key activities (ie shareholder communications) is subject to a number of regulations when undertaken by an issuer or its directors or, to a lesser extent, by a

[1] A copy of this research report can be located at: http://www.companydirectors.com.au/~/media/Resources/Director%20Resource%20Centre/Research/AICD%20%20ISVotingWeb_FINAL.ashx

broker or analyst. While we do not necessarily think legislative intervention is required at this stage, we do think that proxy advisory firms should, at a minimum, be required to meet the standards set by the Guidance. Our view is that the proxy advisory industry should be regulated by an industry body that could set and enforce professional standards, investigate complaints and administer discipline to ensure the integrity of the services being provided by proxy advisory firms.

Conflicts of interest

Having an appropriate conflicts of interest policy in place to manage potential and actual conflicts is essential to ensure the integrity of the advice that proxy advisory firms provide to their clients. It is also essential that proxy advisory firms publicly and comprehensively disclose all conflicts on any matter in respect of which they are issuing a voting recommendation. Proxy advisory firms should also set up "Chinese walls" and adopt other structural solutions to further reduce the likelihood of bias in the advice that they provide.

Currently, 2.1 of the Guidance does not go far enough to ensure that conflicts of interest will be appropriately dealt with. Where the management and disclosure of a potential or actual conflict will not be sufficient to ensure the integrity of the advice given, proxy advisory firms should be required to refrain from providing the particular service. One such circumstance will be where a proxy advisory firm is asked by a client to make recommendations with respect to an issuer that it has provided consulting services to.

To address these issues and to strengthen the proposed conflicts of interest requirements under 2.1 of the Guidance, at a minimum we believe that 2.1 should be expanded to include requirements that:

- proxy advisors avoid conflicts of interest with their clients. The proxy advisor should adequately disclose any conflict and the steps which it has taken to mitigate the conflict in order that the client can make a properly informed assessment of the proxy advisor's advice;
- where a conflict actually or potentially arises with respect to a voting recommendation that the proxy advisory firm will be issuing, the conflict be publicly and comprehensively disclosed;
- "Chinese walls" and other appropriate structural solutions be adopted and set up to further reduce the risk of bias in the advice provided by the proxy advisory firms; and
- voting recommendations not be issued on matters where the proxy advisory firm has provided consulting services to the issuer or, if applicable, where the proxy advisory firm's owner or significant investor has a material interest.

While the above amendments are required to strengthen the Guidance, there is one area where we believe the Guidance does in fact go too far. In particular, the expectation under 2.2(4) of the Guidance that the board of directors of a proxy advisor preserve the culture of compliance respecting conflicts of interest and also ensure that individuals acting on behalf of the proxy advisory firm are made aware of its policies and procedures and code of conduct. These expectations are, in our view, inappropriate, unreasonable and not practicably achievable by the board of directors. It places too high a burden on the board (particularly non-executive directors who are not part of management) and blurs the roles and responsibilities of the board with those of senior management.

As overseers of compliance, the board is not in a position to "preserve" or "ensure" the matters that it is expected to under the Guidance as they are either matters that are

outside their purview or they are matters that are not really capable of being determined with the requisite degree of certainty. The role of the board of a company is one of monitoring, oversight and strategy. Management, on the other hand, is responsible for the day-to-day operations of the company and for the implementation of strategy set by the board. The expectation for the board to "preserve" a culture of compliance and to "ensure" that individuals acting on the proxy advisory firm's behalf are made aware of its policies and procedures and code of conduct are unreasonable standards that would require boards to become intimately involved, akin to management, in the compliance systems of the company, rather than taking an oversight role, setting the compliance culture and satisfying itself that the compliance framework is sound. For this reason, 2.2(4) of the Guidance should be amended to remove these expectations from the board.

Transparency and accuracy of voting recommendations

Where proxy advisory firms provide clients with information that is intended to influence or assist in deciding how to exercise their voting entitlements, it is crucial that the information provided is meaningful, accurate and not misleading.

Company Directors and a number of the other GNDI member organisations are aware of circumstances in their relevant jurisdictions where the voting recommendations of proxy advisory firms have contained, or have been based on, mistakes and inaccuracies. This could be addressed by requiring that all voting recommendations be "fact checked" by the relevant issuer before the recommendation is finalised – especially where the recommendation is to vote against a resolution.

It is essential that proxy advisory staff be sufficiently experienced and have appropriate expertise and knowledge to understand the drivers of shareholder value creation in companies. Globally, directors and issuers have expressed their concerns about the quality and inexperience of proxy advisory staff who are required to analyse and opine on complex subject matter but who are unable to form a proper understanding of the issues. This is particularly an issue where the recommendations relate to remuneration resolutions (for example, to approve a remuneration policy or to approve a director or executive's remuneration arrangements) as understanding these matters often requires a high level of financial and legal expertise and/or experience. In our experience, the proxy advisory staff who are analysing these issues do not necessarily possess this.

We do not think that 2.3 of the Guidance goes far enough to address these concerns to provide assurance and accountability with respect to the quality of the services being provided by proxy advisory firms.

At a minimum, 2.3 should be expanded to include requirements that:

- before voting recommendations are finalised, that an opportunity be provided for them to be "fact checked" by the relevant issuer;
- proxy voting guidelines not be applied rigidly as a "one size fits all" by allowing flexibility to take into account local market and other regulatory conditions as well as the particular circumstances of the issuer where its corporate governance practices do not strictly conform with the guidelines;
- proxy advisory staff possess appropriate qualifications and experience to analyse or advise on the relevant issues. Details of the qualifications and experience of the staff should be disclosed, as well as the resources that the proxy advisory firm allocates to the analysis of meeting resolutions and outsourcing arrangements for the purposes of making voting recommendations; and

- sufficient time, resources and expertise must be allocated to analysing the issues necessary to make informed and accurate voting recommendations.

Communications with clients, market participants, the media and the public
We do not agree that it is appropriate for proxy advisory firms to be able to decide whether or not to engage with issuers.

Where a proxy advisory firm intends to issue a contrary voting recommendation, the firm should be required under the Guidance to share its report with the issuer and discuss its proposed contrary recommendation **before** the recommendation is finalised and published. In the event that the proxy advisory firm still intends to recommend a contrary voting recommendation after this engagement, the proxy advisory firm should be required to include the company's response to the firm's analysis and conclusions together with the proxy advisor's voting recommendation.

In our view, by requiring this engagement and disclosure, the likelihood of contrary recommendations being made that are based on inaccuracies or are misleading will be greatly reduced. It will also mean that proxy advisory firms will be able to present a more fully considered view in their final recommendations and, importantly, that their clients will be able to make more informed voting decisions based on these recommendations.

Accordingly, as a minimum, we believe that the 2.4 of the Guidance should be expanded to include requirements that:

- where a proxy advisory firm intends to issue a contrary voting recommendation with respect to an issuer, they must take active steps to engage with the issuer by sharing a copy of its draft report with the issuer and discussing the proposed contrary recommendation **before** the recommendation is finalised and published to voters; and
- if, following this engagement, the proxy advisory firm still intends to make a contrary recommendation, the issuer should be provided with sufficient time and opportunity to provide a response to the proxy advisory firm which must be included as part of the analysis in the materials that is provided to the proxy advisory firm's client.

If you would like to discuss any aspect of our views please contact our Senior Policy Advisor, Gemma Morgan on (02) 8248 6600.

Yours sincerely,

John H C Colvin
Chief Executive Officer &
Managing Director

GLOBAL NETWORK OF DIRECTOR INSTITUTES

PERSPECTIVES PAPER

Board-Shareholder Communications

December 2013

The Global Network of Directors Institutes (GNDI), founded in 2012, brings together member-based director associations from around the world with the aim of furthering good corporate governance. Together, the member institutes comprising the GNDI represent more than 100,000 directors from a wide range of organizations. This paper describes the global perspective of the GNDI in relation to **board-shareholder communications.**[1]

Background on Board-Shareholder Communications

As a matter of law, boards are required to act in the best interests of the company as a whole. It follows then that directors should take the interests of all relevant stakeholders into consideration when making board decisions. A focus limited to shareholders may not serve any constituency well, not even shareholders themselves considered as a whole. At the same time, however, board engagement with the company's shareholder body (both institutional and retail) forms a key part of how boards determine what is in the company's best interest. Therefore, director institutes around the world favour regular, direct communications between directors and shareholders.

Board-shareholder communications in the modern public company are rooted in the board's responsibility to ensure sustainable corporate performance through transparency. In many global corporations today, ownership is broadly dispersed. This widening separation of ownership and control means that, more so than ever, board-shareholder communications are both an imperative and a challenge. This perspective paper offers observations on what boards and shareholders can do respectively to improve their communications.

GNDI Recommendations for Boards and Shareholders

Companies and their boards should have the flexibility to engage with investors and analysts in ways that serve their mutual goals in building long-term corporate value. Boards should be encouraged to be innovative in how they engage with investors, even though their primary responsibility remains to oversee the communications handled by management on behalf of the company. Boards and investors can take certain steps to improve communications between them, and this paper offers suggestions intended to inspire improvements on both sides of the dialogue between corporate fiduciaries and shareholders.

It is the view of the GNDI that board-shareholder communications should not be mandated through adoption of new legislation or regulation (except in those jurisdictions where current

[1] This discussion focuses on companies with widely dispersed ownership. GNDI recognizes that this discussion may not apply to all public companies. In many developing economies, large block holders typically have significant stakes in major listed companies. This has major implications for the board-shareholder dialogue. In such companies, the big shareholder can dominate the board and the management, and minority shareholders are left fighting to have their voice heard—much as they may in private companies, where minority shareholder oppression is explicitly prohibited by law or legal precedent.

legislation or regulation prevents such communications) —voluntary action is the key. In those countries where there are laws or regulation that prevent this communication, it may be necessary to change existing legislation to allow dialogue between the board and the shareholders.

What Boards Can Do

Boards play an important role in bridging the actions of the company to the interests of shareholders. Although directors must always exercise their judgment to represent the interests of the company as a whole, not merely its current shareowners, the board still needs to engage in shareholder communications, and can do so in a number of different ways.

Primarily, board-shareholder communications will occur through ***board oversight of important company and board disclosures*** to shareholders, including but not limited to prospectuses for securities offerings and periodic financial statements such as the annual report. Although these focus predominantly on financial information, there is a growing trend to report on nonfinancial issues, drawing guidance from organizations such as the Global Reporting Initiative (GRI) and the International Integrated Reporting Council (IIRC).[2] Good governance also requires the board to be closely involved in disclosures made by the company regarding the board itself. In this way directors have the opportunity to educate shareholders on the importance of their work as representatives of all shareowners and the standards of governance that they uphold.

Directors can also make use of the ***notice of the annual general meeting or proxy statement*** as an important vehicle for shareholder communication. Shareholders need to be provided with sufficient information in relation to proposed proxy resolutions—whether proposed by the company or a shareholder—so that they are able to make informed decisions on how they vote on those resolutions at the general meeting.

Another important aspect beyond these outgoing communications is the ***board's receipt of and response to incoming communications from shareholders,*** typically addressed to the board leader (chairman, presiding director, lead director, or equivalent) or committee leaders. Increasingly, shareholders want their letters to go directly to members of the board, rather than being screened by management. To be proactive, boards can provide contact information for the board member/s who should receive certain types of communications, while at the same time identifying issues that would more appropriately be addressed to management.

Regular dialogue between significant investors and the company's leaders should also be encouraged, not only around the annual general meeting, but also throughout the course of the year. Directors can work with management to identify the respective duties of management and the board with respect to regular communications with certain investors, for example long-term, major institutional shareholders.

Furthermore, boards can remain open and responsive to ***requests for face-to-face meetings*** with shareholders, both in the lead up to the annual general meeting (to discuss and to clarify proposed resolutions to be voted on at the meeting) and throughout the year. This is

[2] For the GNDI perspective on integrated reporting, visit GNDI.org.

particularly the case with large institutional shareholders. To be sure, there are various national regulatory barriers to such meetings (notably Regulation FD in the United States, prohibiting selective disclosure of material non-public information to shareholders and French laws restricting to the CEO the power to commit the company). Nonetheless, these meetings are increasingly important for effective relations between those who govern companies and those who own them. While in most circumstances it will be more appropriate for shareholders to meet with a member of management, there are likely to be occasions where it will be most effective for a particular member of the board (for example the board chairman or the chair of a particular board committee) to engage directly with shareholders, depending on the issue being discussed. In any case, such communication must follow the positions defined collectively by the board, taking into account, among other things, the views of management.

In a company with a concentrated ownership, the key role of the board with respect to shareholders is to heed the interests of all of them—not just the dominant one/s —as issues pertaining to equal treatment and selective disclosure may arise. For example, shareholders with representatives on the board do enjoy access to more information, but they are still bound by the fiduciary duty of directors to all shareholders. Boards of such companies will need to ***ensure that shareholder communications reach all shareholder groups, using the same means of communication***, but with appropriate attention to specific needs of each shareholder group.

Member organizations of the GNDI support effective board-shareholder communications in all of the above respects, and agree that such communications are more likely to succeed when shareholder voting occurs in an informed and transparent manner, as recommended in the next section of this paper.

What Shareholders Can Do

Effective board-shareholder communications cannot depend on the board alone. Shareholders, too, have a responsibility to communicate effectively with the company. Shareholders can fulfil their role as owners of the company's shares and monitor the value of their assets by taking a regular interest in the life of the company and its strategy.

In some cases, an individual shareholder may wish to engage with the company (or board) independently or, alternatively, in concert with other shareholders (where such concerted engagement by shareholders is permitted[3]). In the view of the GNDI, it is beneficial for both the company and shareholders for shareholders to be able to pool resources through collective engagement, especially at times when the company is facing difficult times (subject however to applicable laws relating to 'acting in concert', and to disclosure of their policy on collective engagement[4]) as this can allow for more effective and efficient engagement.

[3] For example, in the United States, following significant proxy reforms of 1992, shareholders may communicate with each other in planning a proxy vote. Prior to 1992, such communications were illegal. Recent research suggests that this reform had a beneficial effect on company performance. Vya Cheslav, 'The Disciplinary Effect of Proxy Contests', September 9, 2013. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1705707

[4] See U.K. Stewardship Code, Principle 5: 'Institutional investors should be willing to act collectively with other investors where appropriate. At times collaboration with other investors may be the most effective manner in which to engage. Collective engagement may be the most appropriate at times of significant corporate or wider economic stress, or when the risks posed threaten to destroy significant value. Institutional investors should disclose their policy on collective engagement, which should indicate their readiness to work with other investors through formal and informal groups when this is necessary to achieve their

With respect to shareholders that are institutional investors, they may look to the U.K. Stewardship Code of the Financial Reporting Council in the United Kingdom as a model.[5] Another model is *the ICGN Code of Institutional Investor Responsibilities* published by the International Corporate Governance Network.[6] These codes address the need for ***investor transparency***, a value fully supported by the GNDI.

As stated in recent commentary by one of our GNDI member organizations,[7] effective board-shareholder communication could be enhanced by institutional investors disclosing, amongst other things:

- the full text of the investor's voting policy / guidelines;
- whether or not the investor engages the services of proxy advisors;[8]
- to what extent the investor conducts its own analysis of resolutions before voting; and
- to what extent the investor follows / diverges from the recommendations of proxy advisors.[9]
- Such increased disclosure would help the beneficial owners of the shares held by institutional investors to understand how investment and voting decisions are made on their behalf. Beneficial owners would then be able to make investment decisions on the basis of whether they want to invest in a fund that brings an independent mind to bear on voting decisions or, alternatively, in a fund that effectively outsources this function to proxy advisors.

objectives and ensure that companies are aware of concerns. The disclosure should also indicate the kinds of circumstances in which the institutional investor would consider participating in collective engagement'.

[5] *The U.K. Stewardship Code*. September 2012. http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Stewardship-Code-September-2012.pdf

[6] *ICGN Statement of Principles for Institutional Investor Responsibilities* (2013) https://www.icgn.org/images/ICGN/files/icgn_main/Publications/best_practice/SHREC/ICGN_Principles_Investor_Responsibilities_Guidance_Sept_2013_print.pdf

[7] See letter of October 22, 2012, to Mr. Andrew Bragg, Senior Policy Manager, Financial Services Council, from the Australian Institute of Company Directors. http://www.companydirectors.com.au/Director-Resource-Centre/Policy-on-director-issues/Policy-Submissions/2012/~/media/Resources/Director%20Resource%20Centre/Policy%20on%20director%20issues/2012/FSC%20Standard%20No%2013%20%20Proxy%20Voting%20Policy.ashx

[8] See, e.g., Financial Services Council, 'FSC Standard No 13: Proxy Voting Policy' (Draft Standard No 13, Financial Services Council, 28 August 2012) [6.2(a)(ii)], [8.4], [4(b)].

[9] For example, AMP Capital discloses in AMP Capital, *Corporate Governance: 2010 Full Year Report* (January 2011) AMP Capital, the extent to which votes lodged by it match those of the proxy advisor. It is reported that a comparison between votes cast by AMP Capital and proxy advice shows: 61 per cent of AMP Capital's votes matched advisor recommendations, 21 per cent were voted 'more strongly' (either abstain or against, rather than 'for'), 18 per cent were voted 'more loosely' (e.g. in favour rather than against, and usually based on further discussions held with companies). http://www.ampcapital.com.au/AMPCapitalAU/media/contents/Articles/ESG%20and%20Responsible%20Investment/corporate-governance-report-full-year-2010.pdf

Key Board-Shareholder Communications Developments and Resources

GNDI recommends that directors continue to engage in dialogue with their shareholders as appropriate, and to monitor issues specific to their own countries, as listed below:

Australia

The Australian Institute of Company Directors (AICD) has noted growing concerns in Australia amongst some directors that the recommendations on 'how to vote' made by proxy advisory firms have gone beyond mere 'influence'. Many AICD members believe that the decision-making function for how an institutional shareholder will vote is effectively being outsourced by the institutional shareholder to the proxy advisory firm. In response, these concerns were outlined in the research report of the AICD titled 'Institutional Share Voting and Engagement', which was released on 12 October 2011.

The following year, the Australian Government requested that the Corporations and Markets Advisory Committee (CAMAC) consider a number of issues concerning annual general meetings and how shareholders engage with companies in Australia. CAMAC then released a discussion paper, 'The AGM and Shareholder Engagement', in September 2012. In this paper, CAMAC invited submissions in relation to, (amongst other issues):

- The role of institutional shareholders throughout the year, including the period leading up to the annual general meeting. In particular, whether there is a problem with having a peak annual general meeting season and, if so, how might this be resolved; and whether at least some institutional investors should be required or encouraged to report on the nature and level of their engagement with the companies in which they invest (for example in a similar manner as provided for in the UK Stewardship Code, referenced above); and
- The role of the proxy advisor, including standards for investors using proxy advisors, including the extent to which these investors should be entitled to rely on the advice of proxy advisors in making voting decisions or, alternatively, whether those investors should have some obligation to bring an independent mind to bear on these matters; and standards for proxy advisors themselves.

The AICD's submission in response to this discussion paper *(see Appendix A)* noted that the AICD:

- Does not support changes being made to the timing of the annual general meeting season;
- However, some of the problems caused by the peak annual general meeting season could be alleviated through early engagement between companies and institutional shareholders outside the peak season. This could be encouraged through non-binding guidance on engagement practices;
- Supports the introduction of principles and guidance to promote reporting by institutional shareholders on the nature and level of their engagement with the companies in which they invest; and
- Supports the introduction of 'good practice' principles and guidance for proxy advisors.

Submissions closed in December 2012. CAMAC has stated that it will periodically update the information in the discussion paper until its report is published.[10]

Brazil

The *Instituto Brasileiro de Governanca Corporativa* (IBGC), the Brazilian Institute of Corporate Governance, has addressed board-shareholder communications through its Code of Best Practice. According to this Code, 'The Board is the link between the shareholders and the rest of the organization, and must oversee the organization's relationship with its other stakeholders. In this context, the Chairman should establish a dedicated channel of contact with the shareholders, not restricted to General Meeting or Partner Meeting situations. The Board must account for its activities to the shareholders, to allow them a full understanding and assessment of the Board's actions. The main vehicles in this communication are the Annual Report, the organization's website, the Proxy Statement, and the General Meeting. A direct contact between Directors and shareholders is also allowed, and even desirable, provided secrecy and fairness rules in treating information are observed'.[11]

IBGC's recommendations support voluntary action rather than mandates. In Brazil there is no specific legal provision on board communication with shareholders. Communication should be primarily held by the investor relations officer (IRO) but with no restriction to board members. The applicable rules require considering fair treatment to all shareholders in providing information as well as avoiding the disclosure of insider non-public information.

Canada

The Institute of Corporate Directors (ICD) has had significant engagement with the topic of board-shareholder communications in recent years. The focus of the ICD's 2013 annual conference was shareholder activism. This is possible in part because Canada enjoys a healthy framework for dialogue among institutional investors and directors, as promoted by a variety of organizations.

From the investor side of the table, the Canadian Coalition for Good Governance (CCGG), whose members comprise Canada's leading institutional investors, have developed a protocol for shareholder engagement with directors. The protocol puts CCGG in the role of a representative for the concerns of its membership. To fulfil that role, CCGG will typically schedule a meeting with the board chair and/or relevant committee chair to discuss governance and executive compensation related issues. CCGG will then generally prepare a summary report of the meeting for review and comment by the company's board prior to circulation to CCGG's members. The CCGG's co-ordinated approach to shareholder-director communication is efficient and results in a healthy dialogue among institutional investors and the board. As can be seen from the Model Policy *(see Appendix B),* to avoid concerns about

[10] See the AICD Research Paper, 'Institutional Share Voting and Engagement: Exploring the links between directors, institutional shareholders and proxy advisors'. October 2011. http://www.companydirectors.com.au/Director-Resource-Centre/Research-reports/~/media/Resources/Director%20Resource%20Centre/Research/AICD%20%20ISVotingWeb_FINAL.ashx. See also the AICD Submission in response to the Corporations and Markets Advisory Committee's paper 'The AGM and Shareholder Engagement'. December 21, 2012 http://www.companydirectors.com.au/Director-Resource-Centre/Policy-on-director-issues/Policy-Submissions/2012/Submission-on-AGM-and-Shareholder-Engagement

[11] Code of Best Practice of Corporate Governance, *Instituto Brasielero de Governanca Corporativa*. Sao Paulo, Brasil. 2010. Available at wwww.ibgc.org. See also http://www.ecgi.org/codes/documents/ibcg_sep2009_en.pdf

selective disclosure the discussions focus on governance and disclosure matters in the public domain.

Meanwhile, the Canadian Securities Administrators (CSA) is currently developing policy guidance on the role of proxy advisory firms in Canada. In its submission to the CSA, the ICD recommended that proxy advisory firms be required to:

- Expressly disclose their conflicts on any matter in respect of which they are issuing a voting recommendation;
- Set up 'walls' and adopt other structural solutions to eliminate bias in the advice they provide;
- Refrain from issuing a voting recommendation on a particular matter where they have provided consulting services to the issuer, or their investor client or owner has a material interest;
- Where the proxy advisory firm intends to issue a contrary voting recommendation to discuss this with the issuer and share its report with the issuer before its completion to ensure fairness and accuracy and enable the advisory firm to present a more fully considered view;
- If the outcome of this process is still an intended contrary recommendation, to provide the issuer with sufficient time and opportunity, if it wishes to do so, to include a response in the materials that are ultimately provided to the proxy advisory firm's clients;
- Consult with issuers and directors in the development of proxy voting guidelines along with other stakeholders and develop guidelines that are not cast in stone.

The CSA is currently expected to issue its policy guidance on proxy advisory firms for comment in the first quarter of 2014.

Europe (see also United Kingdom and France)[12]

Within the European Confederation of Directors' Associations (ecoDA) there is shared concern about board-shareholder communications and a strong commitment to sharing leading practices on the topic. In 2013, ecoDA joined with the Institute of Business Ethics to write a Review of the Ethical Aspects of Corporate Governance Regulation and Guidance in the EU. This paper addresses the European Commission's 2012 Corporate Governance Action plan, which includes among other topics the issue of shareholder and proxy advisor disclosures about their activities.

The issue of shareholder and proxy advisor transparency has been an important one for Europe. Within the private sector, the European Fund and Asset Management Association (EFAMA) have developed a 'Code for External Governance: Principles for the Exercise of Ownership Rights in Investees' companies'.[13] The European Sustainable Investment Forum (Eurosif) has also issued a report on 'Shareholder stewardship: European ESG Engagement Practices 2013'.

[12] Final Report: Feedback statement on the consultation regarding the role of the proxy advisory industry http://www.esma.europa.eu/system/files/2013-84.pdf

[13] http://www.efama.org/Publications/Public/Corporate_Governance/11-4035%20EFAMA%20ECG_final_6%20April%202011%20v2.pdf

Proxy advisors have been an important subject in Europe. In 2011, in a green paper on the EU Corporate Governance Framework (May 2011), the EU contemplated the possibility of an EU 'law to require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct'[14]. The European Commission stated in its Action Plan that in 2013 it would launch a legislative initiative on the disclosure of voting and engagement policies as well as voting records by institutional investors. As of late 2013, it appears that having a publicly disclosed policy on engagement may eventually become mandatory in the EU.

In February 2013, the European Security Markets Authority (ESMA) issued a 'Final Report: Feedback Statement on the Consultation Regarding the Role of the Proxy Advisory Industry' requesting that proxy advisors develop a code of conduct. It stated that 'there are several areas…where a coordinated effort of the proxy advisory industry would foster greater understanding and assurance among other stake holders in terms of what they can rightfully expect from proxy advisors'.[15] Areas covered included identifying, disclosing, and managing conflicts of interest; fostering transparency to ensure the accuracy and reliability of the advice (including disclosing general voting policies and methodologies, considering local market conditions, and providing information on engagement with issuers. Furthermore, the Drafting Committee of the Best Practice Principles for Governance Research Providers has launched a public consultation on the draft principles which concern activities associated with the provision of shareholder voting and analytical services. The Committee – which is independent from ESMA – has drafted the principles following ESMA's Final Report stating that the proxy advisory industry would benefit from increased disclosure and transparency regarding how it operates.[16] The group has six members — *Glass, Lewis* & Co, *Institutional Shareholder Services*, *Ivox*, *Manifest*, *Pensions and Investment Research Consultants (Pirc)* and *Proxinvest* — which plan to work on a comply-or-explain basis.

France

In 2005, *Institut Français des Administrateurs*, the French Institute of Directors, published a paper entitled 'Proposals for a Better Relationship between Directors and Shareholders' containing general recommendations for the improvement of corporate governance. More specifically, *Autorité des Marchés Financiers* (AMF), the financial markets regulator, published in 2011 a Recommendation relating to the proxy advisors, with approximately the same contents as those covered by the ESMA recommendation mentioned above. In 2012, AMF published the report of a working group on shareholders meetings, a substantial part of which was devoted to the 'permanent dialogue' between shareholders and issuers. AMF requests the companies to discuss their compliance with the report's recommendations in their annual report.[17]

[14] http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf

[15] *Final Report: Feedback Statement on the Consultation Regarding the Role of the Proxy Advisory Industry* February 19, 2013. http://www.fundspeople.com/system/media/3601/original/informeproxy.pdf?1361298603

[16] The draft Principles can be found on the website of the Committee. http://www.esma.europa.eu/news/Proxy-Advisors-launch-consultation- best-practice-principles?t=326&o=home The deadline for submitting responses to the consultation is 20 December 2013 at 12.00 CET

[17] http://www.amf-france.org/en_US/Actualites/Communiques-de-presse/AMF/annee_2012.html?docId=workspace%3A%2F%2FSpacesStore%2F7c56cc0e-bbd8-4910-9d98-fdabc1af4443

Malaysia

MACD (Malaysian Alliance of Corporate Directors) was an active participant in the Securities Commission-initiated Malaysian Corporate Governance Blueprint 2011 initiative that led to the Malaysian Code on Corporate Governance (MCCG 2012), which urged boards to facilitate the exercise of ownership rights by shareholders and to communicate more effectively with them, stating as follows:

- The board should take reasonable steps to encourage shareholder participation at general meetings, which are important avenues through which shareholders can exercise their rights. The board should take active steps to encourage shareholder participation at general meetings such as serving notices for meetings earlier than the minimum notice period, direct the company to disclose all relevant information to shareholders to enable them to exercise their rights, and consider adopting electronic voting to facilitate greater shareholder participation. The board can demonstrate their commitment to shareholders by ensuring that the company publishes these measures on its corporate website.
- The board should promote effective communication and proactive engagements with shareholders. Direct engagement with shareholders provides a better appreciation of the company's objectives, quality of its management and challenges, while also making the company aware of the expectations and concerns of its shareholders. This will assist shareholders in evaluating the company and facilitate the considered use of their votes. Board members and senior management are encouraged to have constructive engagements with shareholders about performance, corporate governance, and other matters affecting shareholders' interests.

New Zealand

The Institute of Directors in New Zealand (IoDNZ) has advocated for transparent board-shareholder communications since its founding years. As stated in a recent communication, boards work as a 'dynamic, high-performing team in pursuit of the goal of improving shareholder value'.[18] Clearly board-shareholder communications can help to advance that cause. New Zealand public companies have greater flexibility to communicate with shareholders electronically and conduct virtual shareholder meetings as a result of amendments to the Companies Act of 1993 under the Companies Amendment Act (No 2) 2012, which was effective 31 August 2012.[19]

[18] "The CEO's Report: Effective Directors Need to be Good Leaders". .https://www.iod.org.nz/News/TheCEOsreport.aspx Accessed December 6, 2013.

[19] http://www.legislation.govt.nz/act/public/2012/0060/latest/DLM4443901.html

South Africa

South Africa's King Code on Governance issued 2009 (King III) contains practice recommendations to boards and directors on how to execute their legal duties towards the companies that they serve. Subsequently a Code for Responsible Investing by Institutional Investors in South Africa (CRISA), similar to the UK Stewardship Code and the UN Principle for Responsible Investment, was issued in 2011. This investors' Code provided principles along which the institutional investor should execute investment analysis and investment activities and exercise rights so as to promote sound governance. Interaction between shareholders and companies should take place in accordance with King III and CRISA. As read together, these provide the full framework for board-shareholder interaction that constitutes good governance.

Specifically, King III recommends that shareholders be afforded the right to cast an advisory vote on the remuneration policy of the company. In light of the fact that public companies listed on the Johannesburg Stock Exchange are obliged in terms of the listings rules to apply King III or explain if they do not, this is a practice recommendation that is followed almost without exception by JSE listed companies. To deal with the engagement around this issue a recent position paper by the Remuneration Committee Forum of the Institute of Directors in Southern Africa (IoDSA) includes 'stakeholder communications' as a specific obligation during the year.[20]

As far as CRISA is concerned, it requires that 'an institutional investor should demonstrate its acceptance of ownership responsibilities in its investment arrangements and investment activities'. In terms of CRISA this entails having a policy that deals with 'mechanisms of intervention and engagement with the company when concerns have been identified and the means of escalation of activities as a shareholder if these concerns cannot be resolved'.

Due to the practical difficulty that is often encountered by investee companies that wish to engage with shareholders, CRISA furthermore provides that 'non-disclosure of voting records by an institutional investor and its service providers precludes the investee company the opportunity to engage with the institutional investor or its service providers regarding the vote exercised. Therefore an institutional investor and its service providers should, before agreeing to a proxy or other instruction to keep voting records confidential, carefully consider the reasons put forward to justify confidentiality'.[21]

As in most jurisdictions companies and shareholders should be wary of giving or receiving price sensitive information or acting on such information in a manner that constitutes insider trading in contravention with relevant legislation.

[20] http://c.ymcdn.com/sites/www.iodsa.co.za/resource/collection/57F28684-0FFA-4C46-9AD9-EBE3A3DFB101/Position_Paper_1_A_framework_for_remuneration_committees.pdf

[21] 'CRISA: Code for Responsible Investing in South Africa', http://www.atlanticam.com/pdf/responsible-investing/crisa.pdf

The Companies Act, 2008 (the Act) provides for the shareholders of public and state-owned companies to elect the members of the audit committee. This provision, together with the right of shareholders to elect at least 50% of the directors, has resulted in a need for better communication between the company and shareholders, so that shareholders can exercise an informed vote.

Furthermore, the Act has expanded the scope of directors' accountability beyond the shareholders as has traditionally been the case in the commonwealth. For instance, derivative action is now available to directors, officers, and representatives of employees in addition to shareholders. The King Code is also following a stakeholders-inclusive approach. All of these trends have forced companies to broaden their formal engagement to stakeholders beyond shareholders.

The United Kingdom

The governance system in the UK encourages ongoing shareholder engagement and dialogue with boards and the Institute of Directors (IoD) works to facilitate this dialogue in a variety of channels ranging from multi-stakeholder meetings to the issuance of commentary and guidance.

In the typical UK corporation, although the CEO and CFO may be the main communication conduits in terms of strategy and performance, the board – through the chairman or senior independent director – is a key discussion partner on governance issues. This dialogue should generally aim to be constructive and non-confrontational, and will only escalate to a public conflict as a last resort.

A key basis for governance dialogue is how the company is implementing the United Kingdom Corporate Governance Code. Where provisions are not complied with, the company has a duty to 'explain', and this forms the basis for further discussion. With respect to investors, the recently published United Kingdom Stewardship Code outlines expectations of institutional investors in terms of their role as owners of companies. This encourages them to actively engage with their investee companies. Although many asset managers and asset owners have signed up to this Code, it remains to be seen if it will transform them into genuinely committed stewards of companies rather than simply short-term oriented buyers and sellers of their shares.

The United States

The National Association of Corporate Directors (NACD) supports and promotes proactive board-shareholder communications. One of the ten principles listed in *NACD's Key Agreed Principles to Improve Corporate Governance for US Public Companies* (developed in accordance with Business Roundtable and various shareholder groups) is Shareholder Communications: **'**Governance structures and practices should be designed to encourage communication'. NACD offers many resources for directors wishing to improve their communications with shareholders, including publications and educational events.[22]

[22] See for example 'What's Next in Shareholder Communication?' http://www.nacdonline.org/resources/WebinarDetail.cfm?ItemNumber=7155

The *Report of the NACD Blue Ribbon Commission on Board-Shareholder Communications* offers several key points of advice. *(See Appendix C).*

In the United States, where the investor community is diverse in nature and goals, the legal framework provides channels for some investors such as public pension funds and union pension funds to be 'activist', as measured by prevalence of class action lawsuits against corporate directors and officers and the filing of proposed proxy resolutions—both common experiences for many public company directors in the US. These activities typically showcase in the public arena conflicting views between shareholders and boards about key issues. One purpose of improved communications between the board and shareowners is to inspire and encourage dialogue and positive solutions.

In the US, as elsewhere, shareholders often want their letters to go directly to members of the board, rather than being screened by management. To facilitate this desire, the New York Stock Exchange requires that listed companies disclose contact information for the 'presiding director', defined as the individual who presides over meetings of the independent directors. In addition, the SEC has a rule that requires public companies to disclose the means by which shareholders may communicate with the board.

In recent years, direct communications between boards and shareholders have increased, despite the apparent barriers posed by Regulation FD, a 2000 rule that forbids selective disclosure of material information. At first boards saw Regulation FD as a reason to decline invitations to speak with particular investors. Over time, however, many boards have overcome Regulation FD-related concerns by including general counsel in discussions to ensure that no nonpublic material information is divulged, and being ready to disclose publicly any such information promptly if needed. Also, boards typically designate particular directors to represent the board (such as the independent chair or lead director, or a committee chair as appropriate) on appropriate corporate governance issues.

Meanwhile, despite this progress, directors in the US are concerned about the role that proxy voting advisors can play in shareholder voting decisions—a subject of scholarly research in recent years.[23]

In addition, the US federal government has been looking into the influence of proxy advisors for several years. Landmark events include a Government Accountability Office report on 'Corporate Shareholder Meetings: Issues Relating to Firms That Advise Institutional Investors on Proxy Voting' (June 2007)[24], the Securities and Exchange Commission's 'Concept Release on the Proxy System' (July 2010), and hearings by the House Financial Services Capital Markets Subcommittee (June 2013).[25] In October 2013, the general counsel of the Nasdaq

[23] For example, the following related U.S. studies shed important light on key themes in board-shareholder relations: 'The Board, Social Media, and Regulation FD', by David Katz, Wachtell Lipton Rosen and Katz, *New York Law Journal,* March 28, 2013 (discussion of how social media impacts corporate disclosures to shareholders);
'Voting Decisions at U.S. Mutual Funds: How Shareholders Really Use Proxy Advisors', by Robin Bew and Richard Fields, Tapestry Networks and the IRRC Institute, June 2012 (findings based on review of the academic literature, plus interviews with 19 asset management firms with total assets of $15.4 trillion in assets under management, or more than half of the assets under management in the United States)'.

[24] http://www.gao.gov/new.items/d07765.pdf

[25] The following links were provided from the Shareholder Communications Coalition:

Stock Market petitioned the SEC to take action related to proxy advisor disclosure transparency and conflicts of interest.[26] Also, over the past decade, the SEC has held a series of roundtables to discuss shareholder voting and communication issues, most recently in December 2013.[27]

The private sector in the US is mobilizing to address concerns as well—notably the Shareholder Communications Coalition, currently composed of Business Roundtable, the National Investor Relations Institute, and the Society of Corporate Secretaries. This coalition, with a dedicated website at shareholdercoalition.com, has issued several comment letters on emerging issues in proxy voting.

(*For more on proxy voting issues in the United States, see Appendix D).*

Global

The Organization of Economic Cooperation and Development (OECD), which has 29 members from around the world, included board-shareholder communications in its original and updated Principles of Corporate Governance *(1999, 2004—see Appendix E)* and its more recent guidance on implementing these (2012).

In addition, the OECD has published a white paper on the 'Role of Institutional Investors in Promoting Good Governance'. [28] The paper notes in particular that "the proposition that shareholders can best look after their own interests subject to having sufficient rights and access to information is basic to the OECD Principles and domestic law in many jurisdictions.

http://www.shareholdercoalition.com/SCCTestimony_House_Financial_Services_Subcommittee_on_Capital_Markets_FINAL_652013.pdf

Society of Corporate Secretaries and Governance Professionals: http://financialservices.house.gov/uploadedfiles/hhrg-113-ba16-wstate-dstuckey-20130605.pdf

National Investor Relations Institute testimony: http://financialservices.house.gov/uploadedfiles/hhrg-113-ba16-wstate-jmorgan-20130605.pdf

Business Roundtable press release on the hearing: http://businessroundtable.org/news-center/u.s.-business-leaders-continue-to-press-the-securities-and-exchange-co/

A webcast of the hearing can be viewed through the following link: http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=335917

[26] http://www.sec.gov/rules/petitions/2013/petn4-666.pdf

[27] The most recent Roundtable occurred December 5, 2013, http://www.sec.gov/spotlight/proxy-advisory-services.shtml. Issues discussed in these Roundtables and in the proxy voting concept release include: broker over-voting and under-voting of the shares they hold on behalf of clients (less a problem now due to broker no-vote rules); the possibility of allowing some means of confirming a shareowner's vote was actually cast as instructed; the possibility of helping institutions who have loaned shares recover those shares in time to be allowed to vote; proxy distribution fees charged by brokers; the limited ability of corporations to communicate with their shareowners (due to non-objecting vs. objecting beneficial owners', aka NOBO vs. OBO rules that prevent companies from knowing the identity of their shareholders); approaches for promoting retail investor participation; data tagging of proxy materials; dual record dates, empty voting, and, notably, proxy advisory firms. http://www.shareholdercoalition.com/roundtables.html

[28] *The Role of Institutional Investors in Promoting Good Corporate Governance*, Corporate Governance, OECD Publishing. OECD (2011),

Nevertheless, at the time of the last revision of the OECD Principles of Corporate Governance in 2004, the need to deal with the emerging reality of large institutional shareholders was already apparent and led to several new principles being agreed by consensus, especially covering disclosure of voting policies, managing conflicts of interest and co-operation between investors".[29]

GNDI, ICGN, and the GNIA

At the collective level, directors and shareholders can strive for closer communication through their respective associations. In many countries, the leading director association is in communication with the leading investor association in that country. Globally, directors and shareholders have communicated through the International Corporate Governance Network (ICGN). Recently (June 2013), ICGN announced the creation of a Global Network of Investor Associations modelled after GNDI. Cooperation between GNDI and ICGN will continue, and cooperation with the forthcoming GNIA is likely and desirable.

GNDI Conclusion

Director institutes around the world favour regular, direct communications between shareholders and directors, and have published guidance on this topic. GNDI recommends that directors continue to engage in dialogue with their shareholders as appropriate, and to monitor issues specific to their own countries, as listed above.

[29] http://www.oecd-ilibrary.org/governance/the-role-of-institutional-investors-in-promoting-good-corporate-governance_9789264128750-en

Appendix A

Institutional Share Voting and Engagement: Exploring the links between directors, institutional shareholders and proxy advisors – Top-Level Findings from the Australian Institute of Company Directors

Finding 1: The institutional share voting environment is characterised by high volume decision making in a compressed time, and this has an impact on how institutional shareowners (both managed funds and superannuation funds) conduct share voting – in particular what functions they do themselves, and what functions they outsource.

Finding 2: That institutional share voting is a high volume, compressed time business, shapes how the parties in the institutional share voting process communicate with each other.

Finding 3: Institutional share owners have been increasingly active in voting their shares and are increasingly willing to vote 'against' company resolutions if it is in their interests to do so – there is also some evidence (from interviews) that superannuation funds are becoming more active in voting and that they are doing more of the voting themselves rather than leaving this function with managed funds.

Finding 4: When directors think of institutional shareowners, they think of managed funds rather than superannuation funds. Although this is changing, directors tend to underestimate the importance of superannuation funds.

Finding 5: Share voting policies of institutions, proxy advisors and industry groups are important influences on institutional share voting.

Finding 6: Proxy advisory firms are an important influence on institutional share voting in Australia.

Finding 7: A significant minority of company directors think proxy advisors are improperly influential. They believe too much has been outsourced by institutional investors, making proxy advisory firms de facto decision makers.

Finding 8: Companies and directors are often not communicating with the real decision makers in institutional investors.

Finding 9: There are basic problems with the share voting process and machinery which lead to 'lost' and miscounted votes.

The AICD believes that 'good practice' principles and guidance for proxy advisors would be useful. By way of example, such principles and guidance could include:

- Disclosure requirements, including as regards the qualifications and experience of proxy advisors, their voting policy/guidelines, the resources they allocate to analysis of meeting resolutions and outsourcing arrangements;
- A requirement that sufficient time and resources be allocated to considering the issues involved in voting decisions in order to make appropriate voting recommendations; and

- Where a proxy advisory firm intends to issue a contrary voting recommendation, to discuss this with the company and share its report with the company before its completion to ensure fairness and accuracy and enable the advisory firm to present a more fully considered view.[30]

[30] See, e.g., comment letter submitted by the ICD to the CSA on potential regulation of proxy advisory firms. Stan Magidson, Canadian *Securities Administrators Consultation Paper 25-401 Regarding Potential Regulation of Proxy Advisory Firms Dated June 21, 2012* (20 August 2012) Institute of Corporate Directors, 4.6 www.icd.ca/Content/Files/News/2012/20120820_CSA_Comment_EN_Final.pdf .

Appendix B

Model Policy on Engagement with Shareholders – from the Canadian Coalition for Good Governance

Policy of the Board of Directors on Engagement with Shareholders on Governance Matters

The board of directors believes that it is important to have regular and constructive engagement directly with its shareholders to allow and encourage shareholders to express their views on governance matters directly to the board outside of the annual meeting. These discussions are intended to be an interchange of views about governance and disclosure matters that are within the public domain and will not include a discussion of undisclosed material facts or material changes.

The board will develop practices to increase engagement with its shareholders as is appropriate for its shareholder base and size. Examples of engagement practices include meeting with the company's larger shareholders and organizations representing a group of shareholders, as well as creating conduits for communication with smaller shareholders on an ongoing basis.

The board recognizes that shareholder engagement is an evolving practice in Canada and globally, and will review this policy annually to ensure that it is effective in achieving its objectives.[31]

[31] Source: http://www.ccgg.ca/site/ccgg/assets/pdf/model_policy_on_engagement_with_shareholders.pdf

Appendix C

NACD Advice on Board-Shareholder Relations

The *Report of the NACD Blue Ribbon Commission on Board-Shareholder Communications,* from the National Association of Corporate Directors in the United States, offers several key points of advice, including the following:

- The governance committee should have oversight of board-shareholder communications, making efforts to ensure that they are open, candid, and productive;
- Directors should make a special effort to stay 'communications-ready' on the topics that are most appropriate for board-shareholder communications— including emerging 'hot issues';
- The board should consider creating a policy statement that reflects the board's communications with shareholders. The board's policy statement should clearly state the legal boundaries surrounding communications;
- The board should consider taking the initiative to communicate with shareholders when desirable, and not limit itself to responding to shareholder requests for communications;
- Requests deemed appropriate by the board should be answered directly and promptly by a director—ideally the chair or lead director (or equivalent);
- When the board approves a proposed change in economic control or governance policy (e.g., a major merger, acquisition, or an amendment to its bylaws), it should consider describing the processes it followed in reviewing and approving the change;
- All directors should prepare to become more active members in the annual meeting. Boards should consider having the chairs of the three key committees answer questions directed to the respective committee at the annual meeting, and by request throughout the rest of the year;
- The subject of board-shareholder communications should be a regular agenda item at governance committee and board meetings, and should therefore appear in the board's annual work plan;
- In general, boards should accept meeting requests regarding issues that could have a material impact on company performance or stock price. Based on the most recent NACD Public Company Governance Survey, approximately half of boards surveyed in mid- 2013 had a representative of the board meet with institutional investors in the past 12 months. The most common board representative was the chairman; and
- Boards should consider using new and alternative approaches to reach a broader shareholder audience.[32]

[32] *Report of the NACD Blue Ribbon Commission on Board-Shareholder Communications* (Washington, DC: NACD, 2008; 2014 edition pending).

Appendix D

Background on Proxy Voting and the Role of Proxy Advisors in the United States

In the United States, one occasion for communications between shareholders and directors is to convey views on potential or proposed resolutions in the proxy statement coming up for a vote—re compensation, governance, director re-election, or other subjects permitted for proxy voting—a list expanding over time to include more issues as shareholders exercise greater influence over corporate governance and policies.[33] Sometimes shareholders withdraw a resolution following communications, because the board has explained or changed a policy. When boards and shareholders lack communication, or fail to reach agreement, shareholders take to the proxy, and qualified resolutions go to a vote. More often than not, management will recommend a vote against the shareholder resolution and explain its views. Therefore, proxy votes often are seen as referendums on management and boards, as shareholders choose between competing resolutions from management and from their own ranks.

In some cases, shareholders do their own analysis of the situation and vote accordingly. However, large institutional investors with widespread holdings cannot analyze the many issues needing a vote (in the thousands for major holders) so they turn to proxy advisors for a number of services, including data aggregation, voting recommendations, and voting platforms. The dominant providers of this service are Institutional Shareholder Services and Glass Lewis, both headquartered in the United States (although Glass Lewis is owned by the Ontario Teachers' Pension Plan Board). As of mid-2013, ISS claimed more than 1,700 clients, and Glass Lewis more than 900.

Both ISS and Glass-Lewis have voting guidelines, which they can use as the basis of their recommendations to their clients. In some cases, however, the advisors implement the voting policies of their clients. For ISS, the balance of voting is about half ISS-policy-driven and half client-policy-driven.[34] Many of their clients' voting policies closely follow ISS policies.

Although sometimes proxy advisors recommend voting with management it is also common for them to side with shareholders against management, and when they do, their influence appears to heighten, at least with the votes of mutual funds.[35]

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[33] In the U.S., under Section 14(a)8 on shareholder proposals, resolutions must meet certain criteria to be included for a shareholder vote. For example, they may not be about 'ordinary business'. Note however, that the so-called ordinary business exclusion has been narrowing over the years, with more and more topics being considered appropriate for a proxy vote. Examples in the U.S. include the famous Cracker Barrell decision regarding employee policies, and the more recent addition of proxy access bylaw resolutions. For actual rule as it now exists see http://www.law.cornell.edu/cfr/text/17/240.14a-8

[34] '400+ client-specific custom [voting] policies', which in aggregate account for more than '50 percent of ballots that flow through ISS' voting system' Patrick McGurn, Martha Carter, Carol Bowie, and Debra Sisti, 'Twelve for 2012: Notable Changes to the ISS Benchmark Voting Policy for the Upcoming Proxy Season', December 7, 2011, 3, cited in note 17 of Bew and Field, op. cit., note 24.

[35] In one closely watched proxy season (2006), a negative ISS recommendation on a management proposal was associated with a 28.7% reduction in 'for' votes across all shareholders, but a 63.8% drop in the support of mutual funds. When both management and ISS opposed a shareholder proposal, shareholder support dropped by 33.3% across all shareholders and by 53.1% for mutual funds. Source: James Cotter, Alan Palmiter, and Randall Thomas, 'ISS Recommendations and Mutual Fund Voting on Proxy Proposals', *Villanova Law Review* 55, no. 1 (2010), 3, cited in Bew and Field, op. cit. note 24.

Causality is difficult to prove, but there is both anecdotal and research evidence of a correlation between proxy advisor recommendations and shareholder voting trends. For example, anecdotally, one director has stated, 'when institutional investors follow ISS en masse, directors of public corporations can expect to see 20%, 30%, even 50% of their company's shares being voted not as the directors recommend, but as ISS recommends.' Other estimates, factoring in general governance trends that may impact votes, place the correlation at much lower levels,

For directors who prefer communications to referendums, any correlation is too high. Boards want shareholders to vote for solutions that are the best for the company, and become concerned when shareholder votes are swayed by proxy advisor recommendations—especially if those recommendations are based on misinformation and/or bias, as some have charged.

In March 2013, the Center for Capital Markets Competitiveness of the US Chamber of Commerce has released the following 'Best Practices and Core Principles for the Development, Dispensation, and Receipt of Proxy Advice', seeking to improve corporate governance by ensuring that proxy advisory firms:

- Are free of conflicts of interest that could influence vote recommendations;
- Ensure that reports are factually correct and establish a fair and reasonable process for correcting errors;
- Produce vote recommendations and policy standards that are supported by data driven procedures and methodologies that tie recommendations to shareholder value;
- Allow for a robust dialogue between proxy advisory firms and stakeholders when developing policy standards and vote recommendations;
- Provide vote recommendations to reflect the individual condition, status and structure for each company and not employ one-size-fits all voting advice; and
- Provide for communication with public companies to prevent factual errors and better understand the facts surrounding the financial condition and governance of a company.[36]

[36] http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/Best-Practices-and-Core-Principles-for-Proxy-Advisors.pdf

Appendix E

The OECD Principles of Corporate Governance – Summary and Highlights

The main areas of the *OECD Principles,* in summary[37], are:

- Ensuring the basis for an effective corporate governance framework;
- The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities;
- The rights of shareholders and key ownership functions;
- The corporate governance framework should protect and facilitate the exercise of shareholders' rights;
- The equitable treatment of shareholders;
- The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights;
- The role of stakeholders in corporate governance;
- The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises;
- Disclosure and transparency;
- The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company;
- The responsibilities of the board;
- The corporate governance framework should ensure the strategic guidance of the company, the effective; and
- Monitoring of management by the board, and the board's accountability to the company and the shareholders.

[37] The full text of the Principles can be found at http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf