enerPLUS

July 22, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Me Anne-Marie Beaudoin
Corporate Security
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

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

---

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

Enerplus Corporation ("**Enerplus**") appreciates the opportunity to provide comments on the Proposed Policy. Enerplus is traded on the Toronto Stock Exchange (the "**TSX**") under the symbol "**ERF**", and has a current market capitalization of approximately $5 billion.

ENERPLUS CORPORATION
The Dome Tower, Suite 3000
333 - 7th Avenue SW
Calgary, Alberta T2P 2Z1

T. 403-298-2200 F. 403-298-2211
www.enerplus.com

We feel compelled to comment as a result of our recent experience with Institutional Shareholder Services Inc. ("**ISS**") during the 2014 proxy season. During our interactions, we noticed both a lack of accountability and transparency in ISS' process. This was concerning to us and we believe that proxy advisory firms should be subject to some form of binding regulation. Below is a brief summary of our recent dealings both with ISS and Glass Lewis and evidences how the lack of regulation allows proxy advisory firms to act without any accountability which, we would submit, acts as a detriment to both issuers and shareholders, alike.

***Summary of Recent Experience with ISS***

On Monday, April 21, 2014 at 9:19 am (MST), Enerplus received an email from ISS which was entitled "Preliminary Review of ISS' Proxy Analysis – Enerplus Corporation". In the email, Enerplus was requested to review and provide comments on the attached draft ISS proxy analysis on the Corporation's 2014 proxy circular. The email went on to request that such commentary be submitted to ISS by 4 pm (EST), Tuesday, April 22, 2014, or 29 hours from receipt of the email.

The ISS proxy analysis provided that ISS was recommending a vote "FOR" all matters coming before the shareholders, save for the vote on the proposed amendment of the Corporation's bylaws related to the addition of an advance notice provision wherein they recommended a vote "AGAINST".

In an email to ISS, Enerplus outlined the relative positions of the parties and issues of concern. Below is an excerpt of that email:

> *"Enerplus and its advisors engaged ISS representative Anna Wong extensively with respect to the ISS Proxy Analysis on Enerplus' upcoming annual meeting of shareholders. In particular, we have had significant discussions regarding the ISS recommendation regarding the meeting vote related to the Advance Notice Provision addition to the Corporation's bylaws. Currently, ISS is* ***in favor*** *of the by-law amendment and has even stated in the Proxy Analysis that:*
>
> ***"the requested advance notice policy is not objectionable as it will help ensure that all shareholders, regardless of whether they are voting by proxy or in person at the meeting, will have adequate time to evaluate the potential nominees to the board of directors, with sufficient information to determine their suitability for that position."***
>
> *However, despite admitting to be in favor of the amendment to the by-laws as proposed in the meeting circular, ISS has issued a recommendation that their clients vote* ***AGAINST*** *the by-law amendment. Obviously, we were both concerned, and frankly, confused with regard to the ISS recommendation. As such, we reached out to Ms. Wong on two separate occasions in an effort to better understand why ISS would not recommend their clients vote in favor of something that ISS admits is beneficial to their clients.*
>
> *After much discussion, it became very apparent that ISS was manipulating this vote recommendation to open up a dialogue on matters which are wholly and completely unrelated to the subject matter of the vote at the meeting. For the record, the issue that Ms. Wong expressed concern about was with regard to the quorum requirement in the*

*current by-laws. To be clear, the current quorum requirement in the Enerplus by-laws has never been amended. Further, it is not the subject of any vote at the upcoming meeting of shareholders on May 9, 2014, nor any previous meeting of shareholders of Enerplus.*

*As such, it appears that ISS is willing to counsel their clients to vote against something that is actually, and admittedly, beneficial for their clients in a colourable attempt to gain leverage against an issuer and force the issuer to address other corporate governance practices of that issuer that doesn't reflect ISS' agenda. I can only hope that ISS discloses to its clientele that it engages in these sorts of activities and that they provide full disclosure to those same clients that ISS vote recommendations may not necessarily be made with the client's best interests in mind."*

As evidenced by the email text above, Enerplus believes that ISS was improperly using their position as a proxy advisor as leverage to force the issuer into addressing other matters that are completely unrelated to the shareholder vote.

We would offer that this is inappropriate in the circumstances and could lead to more serious future abuses of influence by ISS if allowed to continue unchecked.

***Summary of Recent Experience with Glass Lewis***

Incidentally, we also have similar concerns respecting the process followed by Glass Lewis. Unlike ISS, who provided us with a copy of their recommendation, Glass Lewis required Enerplus to pay $5,000 prior to gaining access to their analysis report on the Corporation. Further, they did not consult with the Corporation to ensure the accuracy of their analysis report, which contained significant errors. Our experience with both Glass Lewis and ISS in this regard has been similar. Both firms have produced reports with material errors.

Our comments below are provided with the above as context.

***Comments***

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

We have significant concerns regarding the lack of regulatory oversight of proxy advisory firms. Enerplus is of the view that the Proposed Policy and recommended practices therein do not appropriately address many of the concerns voiced by public issuers and the investing market. A policy-based approach is an insufficient regulatory response to govern the practices of proxy advisory firms and will not ensure the necessary transparency in their practices. In particular, the Proposed Policy does not adequately address our concerns (or the concerns of various market participants and their advisers) regarding the following issues: (a) inappropriate influence on corporate governance practices; (b) factual inaccuracies and untimely engagement with issuers; and (c) lack of transparency and conflicts of interest.

As such, Enerplus would favour a more prescriptive, rules-based regulatory response that includes some type of mandatory compliance, not unlike the compliance required of the entities proxy advisors freely comment on.

(a) Inappropriate influence on corporate governance practice

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

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

(b) Factual inaccuracies and untimely engagement with issuers

In our experience, proxy advisory reports often contain factually incorrect information, upon which vote recommendations are based. Such errors can create significant problems for issuers. It appears they do not have enough qualified staff nor the controls in place to ensure quality control. Furthermore, because of the lack of any repercussions regarding the publishing of inaccurate reports, nor the requirement to re-issue amended reports, these firms are allowed to act with impunity. Incorrect information and analysis may lead to inappropriate advice on an important vote and, potentially, have negative reputational implications for issuers. In turn, these errors affect all shareholders of an issuer, not just those which engage the services of proxy advisory firms.

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

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

(c) Lack of transparency and conflicts of interest

Proxy advisory firms should be required to disclose their methodologies, sources of information, assumptions used to prepare reports and rationales for their voting recommendations. The adoption and application by proxy advisory firms of internal and unpublished policies creates an unpredictable regime in which policies are misunderstood and inconsistently applied. As such, voting recommendations from year to year and from issuer to issuer need not be consistent. This lack of transparency increases the risk of confusion in the public markets.

Additionally, this lack of transparency creates an environment in which issuers feel compelled to engage proxy advisory firms to assist them in the preparation of proxy materials to ensure a favourable proxy advisory recommendation. This business model of both advisory services coupled with fee-based proxy review services benefits from a lack of transparency and creates an inherent conflict of interest.

The issues identified above need to be addressed by a regulatory regime that consists of more than merely 'recommended' practices. It requires a rule-based standard that compels mandatory compliance in order to ensure transparency and one that appropriately addresses conflicts of interest. Proxy advisory firms play an ever-increasing role in the voting process and in shareholder communications. While issuers are held to strict, prescribed disclosure requirements so as to best assist shareholders in assessing an issuer's governance practices, a policy-based approach for proxy advisory firms will do little to address some of the long standing issues related to proxy advisory firms that market participants have been concerned about.

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

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

3. *Will the Proposed Policy promote meaningful disclosure to the proxy advisory firms' clients, market participants and the public? If not, what additional information should be disclosed?*

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

4. *We encourage proxy advisory firms to consider designating a person to assist with addressing conflicts of interest. Should we also encourage proxy advisory firms to have the person assist with addressing determination of vote recommendations, development of proxy voting guidelines and communication matters?*

Yes, in our view, proxy advisory firms should designate a specific person to be responsible for these matters. This person's contact information should be made available to the public to

promote greater transparency and engagement with issuers. This should be a requirement rather than a recommended practice.

5. *We expect proxy advisory firms to disclose their approach regarding dialogue or contact with issuers when they prepare vote recommendations. Should we also encourage proxy advisory firms to engage with issuers during this process? If so, what should be the objectives and format of such engagement?*

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

There are many reasons why such engagement with issuers is beneficial to the proxy voting process. The one-size-fits-all approach adopted by proxy advisory firms in their analysis can be inappropriate in certain circumstances. Issuers may be able to provide insight without which proxy advisory firms are ill-equipped to make recommendations. In other situations, issuers may be prepared to make revisions or otherwise address the recommendations of proxy advisory firms in order to satisfy their concerns.

6. *A proxy advisory firm may provide automatic vote services to a client based on the proxy advisory firm's proxy voting guidelines. Should we encourage proxy advisory firms to consider obtaining confirmation that the client has reviewed and agreed with the proxy advisory firm's proxy voting guidelines leading to vote recommendations? If so, should we encourage proxy advisory firms to consider obtaining such confirmation annually and following any amendments to the proxy advisory firm's proxy voting guidelines?*

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

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

Yours very truly,

**ENERPLUS CORPORATION**

David A. McCoy
Vice-President, General Counsel & Corporate Secretary