

July 22<sup>nd</sup>, 2014

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

**Attention:**

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
Toronto, Ontario  
M5H 3S8  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22 etage  
C.P. 246, tour de la Bourse  
Montreal, Quebec  
H4Z 1G3  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Dear Secretary and Me Beaudoin:

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

This letter is in response to the CSA's Notice and Request for Comments related to the proposed policy on proxy advisory firms. Shorecrest group appreciates the opportunity to offer our comments on the proposed policy. Shorecrest is a proxy advisory and shareholder communication firm that assists issuers and activist investors achieve the desired level of support for a shareholder meeting or plan of arrangement. We are a subscriber to both ISS and Glass Lewis, and are very familiar with the impact of these reports and the process.

We agree with the CSA statement that proxy advisory firms play an important role in the voting process by assisting institutional investors in exercising their voting rights at shareholder's meeting. There is an increasing amount of disclosure required each year with annual meetings, special motions and transactions. Without the assistance of proxy advisory firms, a large segment of institutional investors would not feel they had adequate resources to make an informed decision on important shareholder matters. Most issuers would agree that they want their shareholders to participate in the voting process and that vote participation is having an increasing importance in the public markets. While the proposed policy is a good step in the right direction, it does not address a number of concerns and difficulties encountered by issuers.

**Conflict of Interest:**

The impact that proxy advisory firms have on the outcome of a meeting, can be substantial for certain issuers. While the proposed policy recommends adequate disclosure to the proxy advisory firm's client, it does not extend that disclosure to the issuer.

For instance, there is no disclosure if the dissident or activist shareholder is also a client of the proxy advisory firm. This information can have significant impact on all shareholders voting decision, not only to the advisor's clients but to other non-subscribers. In a proxy contest or contested motion, routinely, the proxy advisor's recommendations and comments are communicated to all shareholders, not just subscribers via press release. It would be beneficial for both sides to be aware of any conflict or perceived conflict in making the recommendation public.

### **Transparency and accuracy of vote recommendations:**

The financial information that is used for these reports and recommendations come from various sources. While our experience is that they are generally accurate, there are occasions when the accuracy of the information has been questioned.

However, often the issuer is not aware of the report or its contents, and therefore unaware of any inaccurate information being disseminated to the advisor's subscribers. ISS may provide, a copy of their draft report to issuers on the TSX Composite. The issuer is then provided 24 to 48 hours to review the material and to point out any material inaccuracies. The majority of issuers do not get to see a draft copy of the report and will not receive a copy of the final report unless they obtain it from a service provider.

In our experience, there have been a number of issuers that have received large withhold or against vote on a motion and are unaware of a negative recommendation. On occasion, the negative recommendation was the result of a small oversight, which the issuer can quickly correct. For example, we have encountered issuers that have received withhold votes on the governance committee because the breakdown of director elections was not filed on SEDAR with the voting results. An issuer may feel they have met this requirement because they issued a press release with the results as required by the TSX. However, Glass Lewis is looking for this information in the voting results filed via SEDAR, and since they are missing from this report, determine they have not disclosed the information. Once the issuer is advised of the oversight, they have an opportunity to correct this and refile their voting results. Thus obtaining a favourable recommendation. However, the issuer is often not aware of the problem, and therefore cannot resolve it. Given that more and more issuers are adopting majority voting guidelines, it is essential that the withhold votes they receive are justified and not the result of a technical deficiency.

### **Development of proxy voting guidelines:**

We would agree with the statement that the potential influence, proxy voting guidelines developed by proxy advisory firms may have an impact on the corporate governance practices of issuers and proxy advisory firms should avoid a "one size fits all" approach. They can also effect the issuer's ability to have a stock option plan, executive compensation approved.

The required approval to implement effective compensation, can effect an issuer's ability to attract and retain key employees. It is difficult for many issuers to predetermine if their plan will receive the required approval from the advisory firms. It can be a challenge to determine if a plan will fall within the share value transfer and annual cost analysis calculations done by the proxy advisory firms. It is easy to determine by reviewing the advisor's guidelines, if a particular plan contains the minimum absolute numerical and amendment provisions requirements to meet the advisor's approval. However, despite meeting these guidelines, and issuer may run into a problem because of the determination of the svt and cost analysis calculation. It is difficult for an issuer to determine if they are meeting the expectations of the advisory firm, since the calculation includes a number of assumptions and also contain a component that is based on a comparison to an issuer's peer group. The peer group is determined by the advisory

firm and the bench mark target changes throughout the year as the peer group files their most current information. It is essential that the analysis be fully disclosed for an issuer to make a more informed decision when designing their plans. Also, it is important that the proxy advisory firm are open to considering additional information to take into account key factors that may cause an issuer to deviate from peer group bench mark. As the assumptions made in these analysis, can effect whether or not the issuer falls into an acceptable range.

**Communications with clients, market participants, the media and the public:**

It is difficult for an issuer to determine the extent of their exposure of a negative recommendation as they are often unaware which of their holder's subscribers to the proxy advisory firms and to the extent to which the holder automatically follow recommendation or have their own guidelines. To assist an issuer in making the determination on how much weight to give to the proxy advisory firm, we would suggest that at the time a holder discloses annually their voting decisions that they include additional information regarding the influence of the proxy advisory firm. Holders would disclose which proxy advisory firm, if any, they subscribe to and to what extend they followed their recommendations.

Thank you for the opportunity to comment on the proposed policy.

Sincerely,

"signed"

Penny Rice  
Managing Director  
Shorecrest Group