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

The Secretary
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Me Anne---Marie Beaudoin,
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Dear Secretary and Me Beaudoin:

We are writing to provide comment on proposed National Policy 25-201 (the "Proposed Policy").

Our own experience with the impact of proxy advisory firms on shareholder meetings indicates that the approach by Canadian Securities Administrators ("CSA") as contained in the Proposed Policy <u>is inadequate</u>. Specifically, by providing only 'recommendations' and 'guidance' to proxy advisory firms, the CSA appears to be relegating oversight of these firms to 'market forces', which is an anomalous result bearing in mind the CSA's regulatory mandate and the significant impact these firms now have on Canadian capital markets.

<u>It is our experience that factual inaccuracies in proxy advisory reports are not uncommon.</u> Inaccuracies are currently only (belatedly) addressed by proxy firms on an ad hoc basis, if at all and after proxies may be executed. Requiring proxy advisors to seek comment on draft reports from issuers prior to publication, and to include such comments in the proxy report, is a modest prescriptive step that would address the bulk of these inaccuracies going forward.

In addition, <u>the standards adopted by proxy advisory firms are subjective, shifting, and frequently different between firms</u>. Moreover, such standards are often adopted from jurisdictions outside Canada with different capital market dynamics, and applicable provincial laws ignored by the advisory firms. Proxy reports do not disclose to subscribers the subjective or shifting standards applied by such firms, leading to confusion to shareholders as to the applicable standard and the extent to which it deviates from applicable law. By way of example, independence standards have been applied differently between advisory firms, leading to inconsistent recommendations between firms, and leaving issuers to guess how standards would be applied in their particular circumstances.

The CSA appears to be suggesting that issuers should provide greater commentary in their circulars to address *potential* or *perceived* issues raised by proxy advisory firms, but this does not address the problem when institutional shareholders do not fully read the circular and/or simply follow the recommendations contained in a report (which is an understandable result given the breadth and number of circulars such shareholders would need to review, particularly in the spring 'meeting season').

Of course, shareholder engagement is a remedy for many of the issues caused by the current dynamic with proxy advisory firms, however as the CSA well knows, it is not always possible for issuers to identify particular shareholders with whom it can engage. A mismatch therefore arises, where objecting beneficial owners ('OBOs') (who have not exceeded early warning report ('EWR') thresholds) receive 'information' regarding an issuer without providing an opportunity for the issuer to respond. Issuers are forced to hire firms to assist in shareholder identification in furtherance of shareholder engagement, an expensive undertaking for often imprecise results.

In summary, we suggest that prescriptive standards are necessary for this currently unregulated sector in the Canadian capital markets. Mere guidance or recommendations for proxy advisory firms leads to uncertainty and problematic results for issuers and shareholders alike.

At a minimum, requiring proxy advisors to seek comment on their reports prior to issuance, and to include such comments in their reports, should be mandated. Additionally, steps should be taken to permit fulsome engagement with shareholders receiving reports from proxy advisory firms, for instance by requiring OBOs who receive reports from proxy advisory firms to 'self-identify' with issuers, or reducing the EWR threshold to 5% from 10%.

We thank the CSA for the opportunity to comment on this draft policy and would be pleased to discuss in detail issues encountered in our most recent annual shareholder meeting that support our recommendations.

Sincerely,

Timothy Rorabeck
Vice President, Corporate Affairs
and General Counsel