

CSA Notice of publication National Policy 25-201 *Guidance for Proxy Advisory Firms*

April 30, 2015

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are adopting National Policy 25-201 *Guidance for Proxy Advisory Firms* (the **Policy**).

The text of the Policy is published with this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

www.gov.ns.ca/nssc

www.fcnb.ca

www.osc.gov.on.ca

www.fcaa.sk.ca

www.msc.gov.mb.ca

Substance and Purpose

The Policy provides guidance on recommended practices and disclosure for proxy advisory firms. The guidance contained in the Policy is intended to: (i) promote transparency in the processes leading to vote recommendations and the development of proxy voting guidelines; and (ii) foster understanding among market participants about the activities of proxy advisory firms.

The Policy addresses the following areas:

- identification, management and mitigation of actual or potential conflicts of interest;
- transparency and accuracy of vote recommendations;
- development of proxy voting guidelines;
- communications with clients, market participants, other stakeholders, the media and the public.

We suggest certain steps that proxy advisory firms may consider taking in relation to the services they provide to their clients and their activities. We also expect proxy advisory firms to publicly disclose their practices to promote transparency and understanding among market participants.

Although the Policy applies to all proxy advisory firms, the guidance contained in the Policy is not intended to be prescriptive. Instead, we encourage proxy advisory firms to consider this guidance in developing their own practices and disclosure.

Background

On June 21, 2012, the CSA published for comment Consultation Paper 25-401 *Potential Regulation of Proxy Advisory Firms* (the **Consultation Paper**).

The purpose of the consultation was to provide a forum for discussion of certain concerns raised about the services provided by proxy advisory firms and the potential impact on Canadian capital markets. The consultation process also allowed the CSA to determine if, and how, it should address these concerns.

The Consultation Paper, along with other international initiatives,¹ brought a renewed focus on the activities of proxy advisory firms. In light of the comments received during the consultation and the recommendations arising from the international initiatives, the CSA concluded that guidance was an appropriate response under the circumstances.

On April 24, 2014, the CSA published for a 60-day comment period proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*. We extended the comment period from June 23, 2014 to July 23, 2014, to give additional time to market participants to properly review the Policy and prepare comments.

Summary of Written Comments Received by the CSA

During the last comment period, we received 58 comment letters from various market participants. We have reviewed the comments received and wish to thank all of the commenters for contributing to the consultation. The names of commenters are contained

¹ The initiatives reviewed by the CSA included the following:

- the French Autorité des marchés financiers issued *AMF Recommendation 2011-06 of 18 March, 2011 on Proxy voting advisory firms*;
- the Best Practice Principles Group published in March 2014 a set of *Best Practice Principles for Providers of Shareholder Voting Research & Analysis*;
- the U.S. Securities and Exchange Commission published on June 30, 2014 *Staff Legal Bulletin No. 20 (IM/CF) Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms*.

in Annex A of this notice and a summary of their comments, together with our responses, are contained in Annex B of this notice.

Summary of Changes since Publication for Comment

After considering the comments received, we have made some changes to the Policy that was published for comment. As these changes are not material, we are not republishing the Policy for a further comment period.

The following is a summary of the key changes that were made to the Policy.

Conflicts of interest

Subsection 2.1(4) of the Policy was revised to provide that the board of directors of a proxy advisory firm or, if the proxy advisory firm does not have a board of directors, the executive management team or a designated committee of the proxy advisory firm, is generally expected to be responsible for overseeing the development of policies and procedures and code of conduct, the implementation of internal safeguards and controls and the effectiveness of those measures instituted to address actual or potential conflicts of interest. The revised responsibilities better reflect good corporate governance practices.

Subsection 2.1(6) was clarified to recommend that proxy advisory firms provide sufficient information to enable their clients to make an assessment about the independence and objectivity of the proxy advisory firms and the services, including any steps taken to address actual or potential conflicts of interest. This clarification is consistent with the recommendations arising from certain international initiatives.

Transparency and accuracy of vote recommendations

Subsection 2.2(5) was revised to recommend that proxy advisory firms generally describe on their websites the practices adopted with respect to the hiring, training and retaining of individuals to ensure that they have the appropriate experience, competencies, skills and knowledge to prepare vote recommendations. This information should assist market participants with evaluating the quality of the research and analysis that underlie vote recommendations.

Development of proxy voting guidelines

Paragraph 2.3(2)(c) was revised to recommend that proxy advisory firms take into account relevant characteristics of the issuers when developing proxy voting guidelines. For example, these characteristics may include the size, industry and governance structure of an issuer. This guidance is consistent with the approach used by proxy advisory firms when developing general corporate governance principles and tailoring the principles to consider the particular circumstances of the issuers, as appropriate.

Subsection 2.3(5) was revised to recommend that proxy advisory firms generally describe on their websites the practices adopted with respect to the hiring, training and retaining of individuals to ensure that they have the appropriate experience, competencies, skills and knowledge to develop proxy voting guidelines. This information should assist market participants with evaluating the quality of the research and analysis that underlie proxy voting guidelines.

Communications with clients, market participants, other stakeholders, the media and the public

Paragraph 2.4(2)(a) was removed to avoid repetition in the guidance. We recognize that subsection 2.1(6) would expect proxy advisory firms to disclose actual or potential conflicts of interest to their clients by appropriate means.

Paragraphs 2.4(2)(b) and (c) were revised to recommend that proxy advisory firms communicate to their clients in their reports how the relevant approaches or methodologies were applied and the sources of information used in preparing vote recommendations. This guidance recognizes that proxy advisory firms are communicating information in accordance with their clients' expectations.

Remarks on the Policy

We recognize that proxy advisory firms have demonstrated a willingness to respond to the concerns raised by market participants and have brought changes to some of their practices. We support initiatives taken by proxy advisory firms aimed at improving their practices, including initiatives that facilitate dialogue or contact with issuers to reduce the risk of factual errors or inaccuracies in vote recommendations.

We intend to continue monitoring market developments in the proxy advisory industry and other international initiatives to evaluate if the Policy addresses the Canadian marketplace's concerns.

Contents of Annexes

The following annexes form part of this notice:

- (a) Annex A, Names of Commenters;
- (b) Annex B, Summary of Comments and CSA Responses.

Questions

Please refer your questions to any of the following:

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Annex A

Names of Commenters

1	John P. A. Budreski
2	Andrew Swarthout
3	Brad Farquhar
4	Bruno Kaiser
5	Dan Barnholden
6	David H. Laidley
7	David Regan
8	Doug Emsley
9	Gary Patterson
10	Jack Lee
11	Jeff Kennedy
12	Ken McDonald
13	Marcel DeGroot
14	Mary Ritchie
15	Suzan Fraser
16	Nolan Watson
17	Peter Aklerley
18	Philip L. Webster
19	Addenda Capital Inc.
20	Agrium Inc.
21	Alaris Royalty Corp.
22	Australian Institute of Company Directors
23	BlackRock, Inc.
24	Blake, Cassels & Graydon LLP
25	Bombardier Inc.
26	British Columbia Investment Management Corporation
27	Caisse de dépôt et placement du Québec
28	Canadian Advocacy Council for Canadian CFA Institute Societies
29	Coerente Capital Management
30	Canadian Coalition for Good Governance
31	Canadian Council of Chief Executives
32	Canadian Investor Relations Institute
33	Canadian Oil Sands Limited
34	Center for Capital Markets Competitiveness
35	CI Financial Corp.
36	Endeavour Silver Corp.
37	Enerplus Corporation
38	Glass, Lewis & Co.
39	Goldcorp Inc.

40	Hansell LLP
41	High Liner Foods
42	Imperial Oil Limited
43	Institute of Corporate Directors
44	Institute of Governance for Private and Public Organisations
45	ISS
46	Magna International Inc.
47	Manifest Information Services Ltd & The Manifest Voting Agency Ltd
48	Mercer
49	NEI Investments
50	Norton Rose Fulbright Canada LLP
51	Pension Investment Association of Canada
52	Placements Montrusco Bolton Inc.
53	Power Corporation of Canada
54	Public Sector Pension Investment Board
55	Shareholder Association for Research and Education
56	Shareholder Communications Coalition
57	Shorecrest Group Ltd.
58	Trinidad Drilling Ltd.

Annex B

Summary of Comments and CSA Responses

Commenters	Summary of Comments	CSA Responses
<p>Issuers and issuer-related associations</p>	<p>The Policy targets the right concerns, but guidance setting out recommended practices and disclosure is not an appropriate approach. Proxy advisory firms should be regulated, subject to a comply or explain framework or at least be required to meet standards in certain key areas.</p>	<p>Based on the comments received from other commenters and our analysis of the concerns raised, we continue to believe that guidance is the appropriate approach in the circumstances. In our view, this approach represents a sufficient and meaningful response to address the different perspectives of the respective market participant groups.</p> <p>The Policy recognizes the private contractual relationship between proxy advisory firms and their clients. The recommended practices and disclosure provide institutional investors or other clients with a framework for evaluating the services provided to them by proxy advisory firms.</p> <p>This approach is supported by our belief that proxy advisory firms will voluntarily adopt our suggested practices and disclosure. Proxy advisory firms have recently demonstrated a willingness to respond to concerns by voluntarily making changes to some of their processes.</p>

Commenters	Summary of Comments	CSA Responses
		<p>We also believe that the Policy is consistent with the recommendations arising from the current international initiatives. We note that no jurisdiction has adopted rules for proxy advisory firms at this time.</p>
	<p>The recommended practices and disclosure will not promote meaningful changes since proxy advisory firms have already implemented most of the recommendations.</p>	<p>We recognize that proxy advisory firms have already implemented most of the recommendations. However, the recommended practices and disclosure will in our view</p> <ul style="list-style-type: none"> • promote transparency in the processes leading to a vote recommendation and the development of proxy voting guidelines, and • foster understanding among market participants about the activities of proxy advisory firms. <p>We believe that this approach has the benefit of conveying some measure of accountability for proxy advisory firms. It has the added benefit of setting minimum standards for proxy advisory firms and potential new entrants in the industry.</p> <p>The current international initiatives appear to be accelerating changes in disclosure practices. We anticipate that proxy advisory firms will continue to evaluate their practices and make other changes to enhance transparency.</p>

Commenters	Summary of Comments	CSA Responses
	<p>The CSA should monitor compliance with the recommended practices and disclosure after their adoption to determine if the policy objectives have been achieved.</p>	<p>We intend to continue monitoring market developments in the proxy advisory industry to evaluate if the Policy addresses the Canadian marketplace’s concerns. We will also monitor other international initiatives that are bringing a renewed focus on the activities of proxy advisory firms.</p>
	<p>To avoid conflicts of interest, a proxy advisory firm should not be allowed to provide vote recommendations to an investor client on corporate governance matters of an issuer to whom the firm provided consulting services.</p>	<p>We have decided not to adopt prescriptive measures regarding the activities of proxy advisory firms. We encourage proxy advisory firms to consider the recommendations in developing and implementing their own practices.</p> <p>There is general agreement amongst market participants of the potential for conflicts of interest in the proxy advisory industry, including those related to the business model or the ownership structure of a proxy advisory firm.</p> <p>We do not believe that it is the responsibility of the CSA to recommend a specific business model for proxy advisory firms. We expect proxy advisory firms to identify, manage and disclose actual or potential conflicts of interest. This approach is in line with the approach adopted for designated rating agencies in Canada.</p>
	<p>The CSA should set out minimal qualifications, experience and training standards for analysts preparing vote</p>	<p>We encourage proxy advisory firms to have the resources, knowledge and expertise required to prepare rigorous and credible vote recommendations.</p>

Commenters	Summary of Comments	CSA Responses
	recommendations.	<p>This includes hiring, training and retaining individuals that have the particular experience, competencies, skills and knowledge to perform their duties in the ordinary course of business.</p> <p>We do not believe that it is the responsibility of the CSA to recommend specific standards in this area. However, market participants could benefit from learning more about the steps taken by proxy advisory firms to ensure that they hire, train and retain qualified individuals.</p> <p>Accordingly, we added guidance in the Policy recommending that proxy advisory firms provide on their websites a general description of the practices adopted to ensure that they hire, train and retain individuals that have the appropriate qualifications to perform their duties.</p>
	Proxy advisory firms should be required to provide draft research reports to issuers for review to avoid inaccuracies and include the issuers' comments prior to sending the final reports to clients.	<p>We expect proxy advisory firms to disclose their policies and procedures regarding dialogue with issuers, shareholder proponents and other stakeholders when they prepare vote recommendations. We also expect proxy advisory firms to include the nature and outcome of such dialogue in their reports.</p> <p>The purpose of such dialogue is to promote the accuracy of vote recommendations. We expect proxy advisory firms to have measures in place, such as</p>

Commenters	Summary of Comments	CSA Responses
		<p>policies and procedures and internal safeguards and controls, to ensure the accuracy of vote recommendations. We believe that those measures will be adequate in ensuring that vote recommendations are accurate. However, to the extent that proxy advisory firms decided to implement such dialogue as a means to further ensure the accuracy of vote recommendations, the CSA will support those initiatives.</p>
<p>Investors and investor-related associations</p>	<p>While a regulatory response to address any perceived concerns with respect to proxy advisory firms is not necessary, the guidance setting out recommended practices and disclosure is an appropriate approach since it is not intended to be prescriptive.</p> <p>The recommended practices and disclosure will not promote meaningful changes since proxy advisory firms have already implemented most of the recommendations.</p> <p>The <i>Best Practice Principles for Providers of Shareholder Voting Research & Analysis</i></p>	<p>We acknowledge that proxy advisory firms play an important role in the proxy voting process. Certain market participants continue to raise concerns about the services provided by proxy advisory firms. We also note that other international initiatives have brought a renewed focus on the activities of proxy advisory firms.</p> <p>Therefore, we are of the view that a CSA response is warranted. We believe that guidance on recommended practices and disclosure will promote transparency in the industry and foster understanding among market participants.</p> <p>See response to issuers and issuer-related associations above.</p> <p>We recognize that the <i>Best Practice Principles for Providers of Shareholder Voting Research</i></p>

Commenters	Summary of Comments	CSA Responses
	<p>already address the issues outlined in the Policy.</p>	<p><i>& Analysis</i> and the Policy address similar issues. However, this international initiative has been developed by industry members. We believe that a CSA response has the benefit of communicating our position to proxy advisory firms and other market participants.</p> <p>The Policy also recommends that proxy advisory firms take into account Canadian market or regulatory conditions when determining vote recommendations and developing proxy voting guidelines.</p>
	<p>The CSA should not encourage proxy advisory firms to engage with issuers when they prepare vote recommendations.</p>	<p>See response to issuers and issuer-related associations above.</p>
<p>Proxy advisory firms</p>	<p>Proxy advisory firms generally agree with the purpose and guidance set out in the Policy. They confirm having appropriate policies and procedures in place to address conflicts of interest, transparency, policy development and communications matters. They are committed to provide high quality and objective services to their clients in a consultative and comprehensive manner. They do not believe that their activities should be regulated and support the use of guidance.</p>	<p>We thank the commenters for their comments.</p>