

February 3, 2020

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
rule-comments@sec.gov

Dear Ms. Countryman,

Re: SEC File Number S722-19 - Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

The Canadian Coalition for Good Governance (CCGG) welcomes the opportunity to comment on the proposed rule amendments to exemptions from the proxy rules for proxy voting advice published by the U.S. Securities and Exchange Commission.

CCGG's members are Canadian institutional investors that together manage approximately \$4 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. A list of our members is attached to this letter as Appendix A. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada's regulatory framework to strengthen the efficiency and effectiveness of the Canadian capital markets. Because a significant portion of our members' assets are invested in U.S. companies, our members also have an interest in the U.S. capital markets and their regulation.

CCGG has in the past provided comments to Canadian regulatory authorities when the matter of proposed regulation of proxy advisors arose in Canada¹. In September 2016, we also provided comments to the U.S. Senate Committee on Banking, Housing and Urban Affairs regarding proposed legislation relating to proxy advisory firms, which comments included as an appendix our earlier comments to Canadian regulators². Most recently, we submitted comments in May 2019 in response to the SEC Staff Roundtable on the Proxy Process³.

¹ [CCGG Submission](#), Canadian Securities Administrators, September 19, 2012

² [CCGG Submission](#), U.S. Senate Committee on Banking, Housing and Urban Affairs, September 16, 2016

³ [CCGG Submission](#), Securities Exchange Commission, May 19, 2019

In all of these submissions we take the general position that substantial changes to the regulation of proxy advisors would be ill-advised and we continue to hold that view in respect of the rule amendments proposed by the SEC.

OVERVIEW/GENERAL COMMENTS

CCGG does not believe that proxy advisors should be subject to a prescriptive regulatory regime. Proxy advisors play an important role in assisting institutional investors with carrying out their fiduciary obligations to their clients by voting proxies. Institutional investors are themselves subject to regulation and, increasingly, are voluntarily adhering to Stewardship Codes. CCGG's Stewardship Principles, for example, acknowledge that institutional investors cannot delegate their fiduciary duties or abdicate their stewardship responsibilities to third parties. Investors are responsible for the activities of the third parties they retain, including proxy advisors, and have a responsibility to monitor those service providers to try to make sure such providers are acting in the best interests of their clients and beneficiaries⁴.

To the extent that there may be concerns among issuers and their advisors with respect to whether institutional investors are appropriately delegating their voting responsibilities to proxy advisors, this is an issue to be taken up with investors.

SPECIFIC COMMENTS

1. Proposed Codification of the Commission's Interpretation of "Solicitation" Under Rule 14(a)-1(I) and Section 14(a)

CCGG does not agree with the SEC's proposal to codify that a person furnishing proxy voting recommendations, research and analysis, is considered to be engaging in a "proxy solicitation".

Substantial changes to the regulation of proxy advisors risks significantly impairing the ability of proxy advisors to provide independent, decision-useful information to inform investors' proxy voting decisions and, correspondingly, impairing investors' access to such information.

The proposal to prescriptively regulate proxy advisors is premised on a misunderstanding of the role of proxy advisors. Critics of proxy advisors posit that shareholder votes are cast in accordance with the recommendation of a proxy advisor such that proxy advisors are "controlling" the shareholder vote and becoming de facto standard setters in corporate governance matters.

This claim is not supported by the actual voting practices of institutional investors. For example, according to the Council of Institutional Investors, in 2018, ISS recommended voting against say-on-pay (SOP) proposals at 12.3% of Russell 3000 companies, but just 2.4% of those companies received less than majority shareholder support on SOP proposals. In 2019, Glass Lewis recommended in

⁴ [CCGG Stewardship Principles](#), May 2017, at 2.

favour of 89% of directors and 84% of SOP proposals. In contrast, directors received average support of 96% and SOP proposals garnered average support of 93%⁵.

This criticism also does not consider that the governance policies of proxy advisors are developed and updated each year in consultation with institutional investors and other market participants⁶. In addition, institutional investors develop their own custom policies which proxy advisors then apply⁷ and some proxy advisors allow institutional investors to choose from “specialty policies” such as guidelines for faith-based, sustainable, or socially responsible investing⁸.

In CCGG’s view, proxy advisors are not the corporate governance “standard-setters”, rather they reflect the evolving corporate governance standards of their institutional investor clients and the jurisdictions in which they operate.

The SEC’s proposal would subject proxy advisors to liability for materially misleading misstatements and omissions. CCGG is of the view that if reports of proxy advisors routinely contained material errors of fact, omissions, poor analysis or unsupported recommendations, institutional investors would not continue to retain their services. We believe that market forces are the most effective regulation of the quality of services provided by proxy advisors.

Finally, increased regulation and exposure to liability has the potential to create a chill on new entrants to the business. It may also inhibit the growth of smaller firms and negatively impact the creation of new models of proxy advisory firms, which may have the unintended consequences of solidifying market share and stifling a robust competitive marketplace.

2. Proposed Amendments to Rule 14a-2(b) (Conflicts of Interest Disclosure)

The SEC is proposing that proxy advisors must disclose to investors, in a prescribed manner, material conflicts of interest. CCGG recognizes that the potential for conflicts of interest within some proxy advisors and the perception that those conflicts are not appropriately managed is an on-going issue. We agree that as a matter of best practice it is appropriate for proxy advisors to have policies and procedures designed to identify and manage any conflicts of interest that arise in connection with the issuance of a vote recommendation. We understand that proxy advisors already have such policies in place and disclose them publicly. Accordingly, we do not think that prescriptive regulation in this regard would add more value.

⁵ Investor Rights Forum, [Council of Institutional Investors: Fact Sheet on Proxy Advisory Firms and Shareholder Proposals Nov. 5, 2019](#)

⁶ See for example, [Glass Lewis Statement of Compliance for the Period of 1 January 2016 through 31 December 2016](#), Best Practice Principles of Shareholder Voting Research and Analysis, at 11; and [ISS Compliance Statement, 19 April 2017](#), Best Practice Principles of Shareholder Voting Research and Analysis see “ISS benchmark policies” [hereinafter, ISS 2017 Compliance Statement].

⁷ For example, ISS applies over 400 custom policies and discloses that 75% of its top 200 clients subscribe to at least one custom research policy from ISS, ISS 2017 Compliance Statement, *Ibid.*, see “Client custom policies”.

⁸ *Ibid.*, see “ISS specialty policies”.

In addition, codes of conduct already exist for proxy advisors and other providers of services to investors. Such codes require signatories to have and publicly disclose general conflicts of interest policies, and also to have in place procedures for identifying and disclosing to clients, both actual and potential conflicts of interest, on a case by case basis. Examples include the *Best Practice Principles for Shareholder Voting Research Providers* which were most recently updated in 2019 following an extensive independent review process which referred to the European Securities and Markets Authority (ESMA) Follow up Report on the Development of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis, to the Requirements of the EU's Shareholder Rights Directive II and to the latest global Stewardship Codes⁹. Again, such codes are preferable to prescriptive regulation, especially in an era focussed on reducing regulatory burden.

3. Registrants' and Other Soliciting Persons' Review of Proxy Voting Advice and Response

CCGG does not agree with the SEC's proposal to require proxy advisors to share reports with issuers (twice), in accordance with restrictive, predetermined review timelines, prior to sharing reports with their institutional investor clients.

The proposed amendments would require that a proxy advisor provide a draft report to the issuer and permit a review period of five business days if the company files its statement 45 calendar days before a meeting, and three business days if the company files between 45 and 25 days before a meeting (with no requirement for a review period if the company files 25 days or less before a meeting). In addition, a further opportunity for issuers to review a final report no later than two business days before distribution to the proxy advisor's investor clients would be required. Finally, issuers would be provided with an option to request that the proxy advisor include a hyper-link to the issuer's response in the final proxy advisor report.

CCGG is of the view that proxy advisors should not be required to provide drafts or copies of the final report to issuers or to provide issuers with a certain minimum amount of time to review a report.

The SEC's proposed disclosure framework will compress the time frames within which proxy advisors can collect, review, verify and synthesize issuer information and provide reports to their clients. This will increase the resources and cost of providing services, which costs will ultimately be passed on to clients. In addition, the time that shareholders will have to review the proxy advice, analyse it and make their own informed decisions prior to voting their shares will be compressed. This time pressure could have the unintended consequence of exacerbating the problem the SEC is trying to address by minimizing the time available to institutional investors to analyse, process and form an opinion on the information received from proxy advisors prior to voting. Finally, there is the risk that management's influence over proxy advice will be increased (or be perceived to be increased) which undermines the independence of proxy advisory firms and potentially the relevance of the research that investors purchase. Taken together, these factors jeopardize the

⁹ The BPP Group *Best Practice Principles for Shareholder Voting Research* <http://bppgrp.info/>; Also see the *Best Practice Principles for Shareholder Voting Research and Analysis 2019, Review and Update of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis, July 2018* at Part 3, Principle Two: Conflicts-of-Interest Avoidance or Management pg. 11.

ability of institutional investors to leverage proxy advisory service providers to help them discharge their fiduciary duties.

Finally, the requirement for proxy advisors to disclose reports to issuers is inconsistent with the existing rules governing stock analyst reports, which prohibit prepublication review of a research report by a subject company for purposes other than verification of facts. Factual verification of sections of a research report is permitted, provided that research summaries, ratings or pricing are not included in the sections of the report provided to the subject company. In addition, the sections of the report are only provided to the subject company after a complete copy of the report has been provided to the analyst's legal or compliance department. Recommendations for any post disclosure changes to advice are also subject to internal legal and compliance approvals and documentation to guard against issuer influence on analyst independence¹⁰. This approach reflects the fact that the market relationship is between the analyst and its client and a similar 'hands off' approach should be taken with respect to the proxy advisory/client relationship.

As a matter of best practice, CCGG recommends that proxy advisors should have a clear policy and process to deal with any comments received from issuers during proxy season or at any other time, but such policies and procedures should be developed by the proxy advisor in a way that best reflects their business model, not through prescriptive regulation.

CONCLUSION

Proxy advisory firms conduct the important and necessary work of providing high quality, impartial analysis of corporations, including their management of environment, social and governance issues and link this analysis to voting recommendations based on institutional investors' stated priorities. Proxy advisors help their clients monitor the policies and practices of the companies in which they are invested, and this enables institutional investors to fulfill their ownership obligations and discharge their fiduciary duties at a manageable cost.

We do not support prescriptive regulation as a mechanism for exercising oversight over proxy advisor service providers. We advocate for non-prescriptive guidance, such as that issued by the Canadian Securities Administrators ("CSA") following a multi-year review of the issue¹¹. An alternative model is, as has been mentioned above, codes of best practices such as the *Best Practices for Providers of Shareholder Voting Research and Analysis*¹². Such non-prescriptive approaches allow proxy advisors to adapt guidelines and best practices to their particular circumstances without prescribing specific behaviours and are more consistent with the general approach to corporate governance regulation of market participants in North America and globally.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Catherine McCall,

¹⁰ FINRA, [Rule 2241 Research Analysts and Research Reports](#), see (b)(1)(N) and Supplementary Material .05

¹¹ CSA Notice of Publication National Policy 25101 [Guidance for Proxy Advisory Firms](#)

¹² The BPP Group, [Best Practices for Providers of Shareholder Voting Research and Analysis 2019](#)

at [REDACTED] or [REDACTED] or our Director of Policy Development, Sarah Neville at [REDACTED]
[REDACTED] or [REDACTED]

Yours truly,



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CCGG MEMBERS 2020

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- Aviva Investors Canada Inc.
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Mackenzie Financial Corporation
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OPSEU Pension Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- State Street Global Advisors, Ltd. (SSgA)
- Sun Life Institutional Investments (Canada) Inc.

- TD Asset Management Inc.
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board- Alberta
- York University Pension Fund