



June 23, 2014

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

Attention:

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Me. Anne-Marie Beaudoin
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Re: Request for Comments – Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*

We are writing in response to the Canadian Securities Administrators (CSA) request for comments on Proposed National Policy 25-201 *Guidance for Proxy Advisory Firms*.¹ NEI Investments commends the CSA for continuing efforts to enhance corporate governance in Canada, for taking on a convening role in efforts to address problems in the proxy voting system, and for seeking stakeholder input.

¹ Canadian Securities Administrators. *Proposed National Policy 25-201 Guidance for Proxy Advisory Firms*. [Online] 2014. http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140424_25-201_rfc-proxy-advisory-firms.htm

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With approximately \$6 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders and provide higher risk-adjusted returns to shareholders. We participate in this consultation as an investment institution undertaking engaged proxy voting. At NEI Investments, wherever we are legally permitted to do so, we vote every one of our proxies according to a detailed set of proxy voting guidelines that are updated regularly and are publicly available.² While we use a proxy advisory firm to facilitate research and voting, in-house staff members are responsible for analyzing and executing every vote.³ We also solicit opinions from our external portfolio managers in addition to engaging directly with issuers and our proxy advisors.

In the following pages we set out our comments and recommendations on the issues raised in Proposed National Policy 25-201. Since our initial submission to the CSA on the topic in 2012, we submitted comments in 2013 to the Governance Research Providers Group's public consultation on new international Best Practice Principles (BPP) for proxy advisory firms, which stemmed from the previous consultation by the European Securities and Markets Authority (ESMA). In light of our understanding that these best practices principles have been adopted and implemented by key proxy advisory firms⁴ across all of their operations, we provide general comments on several matters raised in the Proposed Policy, as well as specific feedback on our experience as end-users of the services provided by the proxy advisory firms, linking this input to the questions posed by the CSA as far as possible.

Does the Guidance meet a priority need?

In our view, it would not be helpful for CSA to issue its own guidance for proxy advisors at this time. Although we have some concerns about proxy voting advisory services, we would question whether this is the biggest priority for regulatory reform within the proxy voting system. We are more concerned about other issues: being able to vote at all in the international context; enhancing the assignment of voting rights so that it is not only more accurate, but also supports and rewards a long-term sustainable value perspective among investors; and creating a system that provides assurance that our shares are being voted in accordance with our instructions. We have no control over these challenges at present, while the extent to which we rely on proxy advisors does lie within our own control. Furthermore, we believe the issues covered by these proposals are of more concern to issuers than to institutional investors. Proxy voting advisors provide important services for investment institutions: proxy voting platform and vote disclosure services are essential to us, and proxy research is extremely useful, especially for international holdings.

Fundamentally, we believe that the international nature of the proxy advisory firms, their clients and the companies covered by the research, necessitates the adoption of international best practices. From our perspective, BPP is a step toward an international good practice framework and should be given the opportunity to evolve before overlaying country-by-country guidance. Such guidance could increase compliance costs for advisors, potentially reducing the number of firms willing or able to serve the Canadian market. Once proxy providers have published compliance statements regarding their BPP responsibilities then a more thorough assessment of any gaps in best practice could be conducted. In the meantime, we believe that the CSA should prioritise addressing problems related to the proxy voting infrastructure. Once the core

² NEI Investments. *Proxy Voting Guidelines*. [Online] 2012. [2014 version forthcoming.]

<https://www.neiinvestments.com/Pages/ESGServices/EngagingCompanies/ProxyVoting.aspx>

³ Responsible Investment Association. *Canadian Mutual Fund Proxy Voting Survey*. [Online] 2014. <http://riacanada.ca/canadian-mutual-fund-proxy-voting-survey/>

⁴ Institutional Shareholder Services Inc. (ISS). *ISS Compliance Statement for Best Practice Principles of Shareholder Voting Research & Analysis*. [Online] 2014. <http://www.issgovernance.com/compliance/due-diligence-materials/>

structural issues have been addressed then country specific guidance for proxy advisory firms could proceed, as long as it built on and strengthened the current principles and practices embodied in BPP.

While the CSA has been diligently engaging with key stakeholders involved in capital markets, the purpose of the Proposed Policy and its intended outcomes have become difficult to ascertain, challenging the notion that the CSA should provide guidance on the business conduct of service providers contracted by institutional investors, and raising a broader issue regarding the CSA's possible jurisdiction over service providers to other stakeholders, such as corporate issuers. Since corporate issuers utilize third-party executive compensation and recruitment consultants, might the CSA also be expected to provide guidance to those service providers? In the case of executive compensation consultants, the pay structures they recommend for senior executives play a key role in incentivizing performance and risk-taking, which can have a far more significant material impact on a company than any voting advice provided by proxy advisory firms to investors. Executive recruitment firm fees are often based upon a percentage of the final salary of the new hire, potentially incentivizing those firms to promote more expensive candidates over more competent ones, again with significant impacts for long-term value creation.

We firmly believe that providing guidance for proxy advisory firms should be a lower priority than resolving proxy voting infrastructure problems. If, after resolving these problems, the CSA has capacity to develop guidance for service providers, then the scope of this effort should include firms that provide services to investors *and* issuers.

Specific Comments

Q1. Do you agree with the recommended practices for proxy advisory firms? Please explain.

We are not convinced that any material concerns exist with regard to proxy advisory firms' operations, therefore, we do not believe that the Proposed Policy is needed at this time. As noted above, we believe the basic premise that the CSA should be providing guidance to service providers of institutional investors is largely invalid. The CSA should pend this premature effort in light of the progress made at the international level through the publication of BPP. Once the effectiveness of BPP has been tested, the CSA could publicly support it, or if necessary offer limited additional guidance for the Canadian context to address any weaknesses in the framework. We suggest the CSA should analyze the proxy advisory firms' BPP compliance statements and conduct a gap analysis to ensure that any country-by-country guidance builds on and strengthens BPP.

Q2. Are there any material concerns with proxy advisory firms that are not covered in the Proposed Policy? Please explain.

As noted above, we do not believe the Proposed Policy fulfils a need at present.

Q3. 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?

As not all the first BPP compliance statements of the international proxy advisory firms had been published as of mid-June 2014, it is premature to comment on this question.

Q4. 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?

We support efforts to address potential conflicts of interest but consider this guidance to be overly prescriptive. The question of how proxy advisors structure these efforts is a day-to-day business operations matter for individual firms to determine.

Q5. 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?

We believe engagement with issuers is the responsibility of investors, not proxy advisory firms. Proxy advisory firms may choose to limit or avoid contact with issuers as a matter of principle or for day-to-day business operations reasons. Where dialogue does take place as part of the proxy advisory firm's research processes, we believe it should be disclosed, and that it should be restricted to fact-checking, as other forms of engagement may create potential for conflict of interest. We note that advisors would need to undertake less fact-checking dialogue if issuers provided clearer disclosure for proxy analysts.

Q6. 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?

We develop our own proxy voting guidelines, which are implemented by our proxy advisor. It is clearly incumbent upon us to understand our own guidelines. Additional guidance on obtaining confirmation is moot where an investment institution that has contracted with an advisor for implementation of its own proxy voting guidelines.

Where a client is using the proxy advisor's house guidelines and the automatic voting service, the consequences of failure to obtain confirmation are not articulated in the Proposed Policy. Should a proxy advisor suspend voting on behalf of a client that has not provided the required confirmation? How would a proxy advisory firm be sanctioned if it failed to obtain confirmation from a client? How would confirmation be actualized in a meaningful way? As this proposal raises more questions than it answers, we question its practicality and relevance, either as a one-time or annual procedure.

Conclusion

While we appreciate the complicated context in which CSA is seeking to enhance proxy advisory firms' operations, we suggest that reforming the proxy voting infrastructure is a far more important priority. We recommend postponing further consultation on the Proposed Policy until the proxy advisory firms have published compliance statements under BPP, allowing a more comprehensive and accurate assessment of any gaps in good practice that require further guidance.

Should you have any questions with regard to this submission, please do not hesitate to contact Michelle de Cordova, Director, Corporate Engagement & Public Policy (mdecordova@NEIinvestments.com, 604-742-8319).

Sincerely,
NEI Investments

A handwritten signature in black ink, appearing to read "Robert Walker", followed by a long horizontal line extending to the right.

Robert Walker
Vice President, ESG Services & NEI Ethical Funds

CC:
Ms. Michelle de Cordova, Director, Corporate Engagement & Public Policy, NEI Investments
Mr. Randy Evans, Senior ESG Analyst, NEI Investments