CCGG Canadian Coalition for Good Governance
THE VOICE OF THE SHAREHOLDER

June 1, 2021

Market Conduct Division/Retirement Income Policy Division
The Treasury
Langton Crescent
Parkes, ACT 2600

Via email: MCDproxyadvice@treasury.gov.au

Dear Madam/Sir,

Re: *Consultation Paper – Greater Transparency of Proxy Advice*

The Canadian Coalition for Good Governance (CCGG) thanks you for the opportunity to provide feedback on the Consultation Paper.

CCGG's members are Canadian institutional investors that together manage approximately $5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

OVERVIEW/GENERAL COMMENTS

Canada does not regulate proxy advisors

By way of background, Canada does not regulate corporations or capital markets at the national level. Each of Canada's ten provinces and three territories regulates its own capital markets, although efforts are made to align regulation and avoid duplication through an organization called the Canadian Securities Administrators (CSA)[1]. Each province and territory, as well as the Federal government, administers its own corporate law statute. No Canadian jurisdiction currently regulates the advice or business practices of proxy advisory firms operating or incorporated in

[1] Canadian Securities Administrators | Who we are | Overview (securities-administrators.ca).

Canada and there is no national or sub-national regulatorily mandated stewardship code applicable to proxy advisors or other market participants.

In 2015, following a multi-year review of the role proxy advisors play in the Canadian capital markets, the CSA expressly rejected a prescriptive regulatory approach and opted instead to issue guidance to proxy advisory firms focusing on identification, management and mitigation of actual or potential conflicts of interest, transparency and accuracy of vote recommendations, development of proxy voting guidelines and communication with clients, market participants, other stakeholders, the media and the public[2]. The issue has not been revisited by the CSA since the guidance was issued[3]. The non-prescriptive approach allows proxy advisors to adapt guidelines and best practices to their particular circumstances without prescribing specific behaviours.

Investors as stewards

Proxy advisors play an important role in assisting institutional investors with carrying out their fiduciary obligations to their clients.

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 asset managers, investment consultants and proxy advisors, and have a responsibility to monitor those service providers to make sure such providers are acting in the best interests of their clients and beneficiaries in accordance with the spirit of the Principles[4].

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.

In CCGG's view, this claim is not supported by the actual voting practices of institutional investors. For example, in the US context, 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 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].

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[2] CSA Notice of Publication National Policy 25-101 Guidance for Proxy Advisory Firms.
[3] A recent report from an independent, provincial government appointed panel, the Ontario Capital Markets Modernization Taskforce, did recommend providing issuers with a "right to rebut" in situations where proxy advisors are recommending a vote against management. To date the Ontario government has not commented on this recommendation or taken any steps to implement this recommendation. Ontario Capital Markets Modernization Taskforce: Final Report, January 2021, Her Majesty the Queen in Right of Ontario.
[4] CCGG Stewardship Principles, May 2017, at 2.
[5] Investor Rights Forum, Council of Institutional Investors: Fact Sheet on Proxy Advisory Firms and Shareholder Proposals Nov. 5, 2019

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 participants[6]. In addition, some institutional investors develop their own custom or bespoke policies which proxy advisors then apply[7], and some proxy advisors have, through extensive consultation, developed "specialty policies" such as guidelines for faith-based, sustainable, or socially responsible investing, which institutional investors can choose to adopt or to further customize[8].

Proxy advisor recommendations, based on the various custom, specialty and even baseline policies, often differ on a given proposal. Some institutional investors subscribe to more than one advisor's services. Recommendations on issues such as shareholder proposals often differ between advisors, highlighting the fact that institutional investors must and do apply subjective analysis to proxy advisor recommendations.

In any event, consistency between voting patterns and proxy advice can be explained by the fact that investors and proxy advisors share common views on what constitutes good governance.

Material environmental, social and governance issues (ESG) inform "financial best interests"

CCGG believes that good governance practices underpin a company's ability to effectively address risks of all kinds and create long-term value for shareholders. CCGG further believes that integrating environmental and social matters into corporate governance is a part of the fiduciary duty of investors. In 2018, CCGG released its publication *The Directors' E&S Guidebook* (the "Guidebook") in response to growing shareholder emphasis on environmental and social (E&S) factors. The Guidebook approaches E&S issues from a governance perspective and speaks specifically to the board's oversight of E&S factors that are, or may become, material to a company's long-term value. It also addresses the disclosure of those factors to investors.

Institutional investors' stewardship responsibilities include engagement with investee companies, monitoring a company's strategy, performance, governance practices, approach to compensation, and risk oversight including with respect to material environment, social and governance risks in addition to financial risk[9]. Institutional investors take their stewardship responsibilities seriously. A significant number of CCGG's Members, including both asset owners and asset managers, have publicly endorsed CCGG's Stewardship Principles[10].

ESG integration is increasingly being used by institutional investors to inform investment decisions driven by expected financial returns. This is the core rationale underpinning the governance-based E&S oversight and disclosure recommendations to corporate boards that CCGG has in its E&S Guidebook and why investors see integrating E&S into corporate governance considerations as part

[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".
[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".
[9] CCGG Stewardship Principles, May 2017, at 2
[10] See CCGG's website: Stewardship Principles & Endorsers - CCGG

of their fiduciary duty. With respect to their own investment analysis and decision-making, institutional investors are increasingly integrating assessments of enterprise risks including material environmental, social and governance risks, which are investment considerations with the potential to impact analysis of risk, strategy and expected financial performance.

We highlight this because the consultation references that as proxy advisors are not subject to the same fiduciary and regulatory framework as superannuation trustees, they may have "broader objectives" than those that a trustee is required to consider. We are inferring that this may be a reference to the increase in ESG integration into proxy voting advice that is occurring in many jurisdictions around the world. In our view, investors are driving the requirements for more and better information and advice on such issues from third parties such as proxy advisors because these issues are financially material to investors, not because proxy advisors have a vested interest in achieving "broader objectives".

Conversely, given that investors have an obligation to monitor third party service providers, including proxy advisors, to ensure alignment with the best interests of investor clients and beneficiaries, any third parties acting outside the scope of their respective mandates to achieve an independent objective would quickly lose investors as clients.

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 data do not support the need for a new regulatory right of review

Prior to embarking on new regulation related to proxy advisory firms, regulatory bodies should examine credible evidence to determine whether concerns reported about the influence of proxy advisors' influence on voting outcomes or errors in their reports have materialized to a meaningful extent[11]. No regulatory body should rely on anecdotal evidence or presumptions when considering a change that could have substantial costs for market participants, costs which will ultimately be borne by retirees and other investment beneficiaries. We note that the Australian Treasury consultation does not appear to outline harms and we would encourage the Australian Treasury to gather and publish the empirical evidence supporting the assertions of harms related to influence or factual inaccuracies prior to embarking on the establishment of a new regulatory regime[12].

[11] See for example, Hazzel Bradford, *SEC probing letters backing proxy advisor reforms*, Pensions&Investments, Dec. 11, 2019 which describes a letter writing campaign purportedly from retail investors, in support of the US SEC's initiative to regulate proxy advisory firms, which was discredited as connected to the interests of large corporations and corporate advocacy groups.

[12] For example, in its May 19. 2021 response to the consultation, proxy advisor Ownership Matters, provides detailed evidence with respect to the effects of proxy advice on the outcomes of meeting resolutions which does not support the premise that proxy advice has a significant influence on the voting/outcomes of company resolutions; see pages 10-11. [Ownership Matters, *Submission to Treasury Consultation on Greater Transparency of Proxy Advice: May 2021*, dated May 19, 2021, available online at: Submission to Treasury on Proxy Advice Reforms | Ownership Matters].

No significant evidence of faulty advice: only advice that some companies may not agree with

We have seen no separate Canadian or Australian data on this question, but when investigating similar considerations, the U.S. Securities Exchange Commission (SEC) noted that in 2018 there were 17 "factual errors" and 28 "analytical errors" cited by companies regarding proxy advisory firm advice related to companies regulated by the SEC. The Commission did not evaluate whether the "factual errors" and "analytical errors" cited by companies were actually errors at all, or just differences of opinion or problems with the company's own disclosures. But even if they were *actual* and not just *alleged* errors, given that proxy advisors typically produce many thousands of reports each year with tens of thousands of data points, the statistical significance of that number of alleged errors is nil. A separate review conducted by the U.S. Council of Institutional Investors (a non-profit association representing pension funds and other members with more than US$4 trillion in assets under management, and associate members with more than US$35 trillion in AUM) found a factual error rate on a report basis of between 0.057 to 0.123%, leading the Council to conclude: "We believe an error rate of that magnitude does not provide a reliable basis for imposing a costly new regulatory framework that will constrain competition." In our experience, the number of controversial resolutions is typically also very small, given the number of resolutions in the overall market which suggests that regulatory intervention would be disproportionate[13].

There is no evidence that any alleged errors affected voting decisions

We have seen no evidence to suggest that these rare errors, if they are even confirmed to be errors and not just disagreements in interpretation, were actually material to investors' voting decisions. If the alleged errors had little or no effect either on the actual vote recommendation provided, the rationale for intervening in proxy advisory processes would be completely unfounded. And even if the alleged errors in question affected the vote recommendation, investors remain highly discerning in their review of proxy voting recommendations.

RESPONSES TO SPECIFIC OPTIONS AND QUESTIONS:

Option 1: Improved disclosure of trustee voting:

Superannuation funds would be required to disclose more detailed information about their voting policies and actions for each financial year. The details to be disclosed could include how votes were exercised, whether any advice was received from a proxy advisor and who provided the advice.

If proxy advice is received disclosure could include whether the voting actions taken were consistent with the advice.

[13] For example, in Canada in 2020, there were 77 shareholder proposals and 38 were withdrawn after discussion between the issuer and the shareholder. See CCGG Submission Re: Consultation – Modernizing Ontario's Capital Markets, Sept. 7, 2020 at 24.

Option 2: Demonstrating independence and appropriate governance

Proxy advisors would be required to be meaningfully independent from superannuation funds they are advising to ensure that proxy advice is provided to and used by superannuation funds on an 'arm's length' basis.

Trustees could also be required to outline publicly how they implement their existing trustee obligations and duties around independent judgement in the determination of voting positions.

Responses to Consultation Questions Options 1 and 2:

1. **How would the proposed options affect superannuation fund members?**

   CCGG believes superannuation fund members are better positioned to answer this question.

2. **What impact would the proposed options have on superannuation funds in complying with these regulatory requirements?**

   CCGG believes superannuation fund members are better positioned to answer this question.

3. **What should be the regularity and timing of reporting? For example, should trustees be required to provide their proxy voting policy to members ahead of an AMM?**

   Principle 3 of CCGG's voluntary Stewardship Principles, recommends that institutional investors should adopt and publicly disclose proxy voting guidelines and how they exercise voting rights. CCGG's guidance does not prescribe a specific timeline for such disclosure but does support periodic disclosure. Periodic reporting to beneficiaries and clients in respect of voting activities should disclose, among other things, specific instances when they will not vote; and any potential conflicts of interest related to the exercise of voting rights and how these were resolved and their approach to stock lending and recalling lent shares for voting purposes[14]. We would defer to superannuation fund trustees to comment with respect to what may be an appropriate period for such reporting.

4. **What other information on how voting is informed by proxy advice should be disclosed by superannuation funds and why?**

   CCGG does not support the suggestion in the consultation that if proxy advisor advice is received disclosure should include whether the voting actions taken were consistent with the advice. Investors consider many factors and sources when determining how to vote in accordance with their stewardship obligations, including their own voting policies, case by case assessments and the presence or absence of dialogue or response to engagements. CCGG's Stewardship Principles highlight that investors, consistent with their fiduciary duty should:

[14] CCGG's Stewardship Principles, Principle 3 – Reporting on voting activities, at 5.

- Make informed and independent voting decisions in the best interests of beneficiaries and clients;
- Not automatically support management and the board but consider the circumstances of each company, avoiding a 'tick the box' approach; and
- If they are using proxy advisors or third parties to assist with voting decisions, investors should assess the advice received and not automatically follow it and should ensure that there are systems and processes in place to make sure votes are cast consistently with voting policies[15].

In our view, disclosure that draws a direct line between proxy advice and a voting decision to the exclusion of an articulation of other considerations is not helpful in providing transparency as to how an investor assesses that advice in the context of other decision-relevant factors. We would question whether the benefits of such disclosures (i.e. narratives in relation to each voting decision) would be outweighed by the costs and would recommend that the appropriate cost/benefit analysis be performed prior to implementing such recommendation. Such disclosure also has the potential to be misleading because if the proxy advice and vote align it may imply a causal relationship that does not accurately reflect what is happening within the investor. As noted in the consultation, some proxy advisors are provided with bespoke mandates aligned with their investor clients voting policies and preferences; where such mandates exist there should be close alignment between advice and voting and the implication that such alignment could lead to an adverse inference that institutional investors are not making decisions independently is not appropriate.

Institutional investors take their stewardship responsibilities seriously.

5. What level of independence between a superannuation fund and a proxy advisor should be required?

CCGG is not of the view that regulation is needed to require independence between an investor (superannuation fund) and a proxy advisor as there is not necessarily a conflict in the relationship. Proxy advisors provide advice to their investor clients in accordance with either individual mandates, or in the case of the member driven Australian Council of Superannuation Investors, principles based on independently developed, publicly available Governance Guidelines[16]. Investors/ACSI members are not bound by the advice nor required to act on it.

Where we have observed a need for independence in other jurisdictions and where there is potential for conflicts of interests to arise is in instances where a proxy advisor provides voting advice to investors and also provides advice to the same companies with respect to their corporate governance and other practices. In such situations, if permitted to occur, robust conflicts of interest policies and practices are required within the proxy advisors to ensure that

[15] Ibid., Principle 3, at 5.
[16] ACSI, Governance Guidelines: October 2019.

advice to one party is not influenced by advice or relationships with another party on different sides of the same issue.

6. **Which entity should the independence requirement apply to (superannuation fund or proxy advisor)?**

See response to Q5.

Option 3: Facilitate engagement and ensure transparency.

Proxy advisors would be required to provide their report containing the research and voting recommendations for resolutions at a company's meeting, to the relevant company before distributing the final report to subscribing investors. For example, a period of five days prior to the recommendation being made publicly available would give enough time for both the company and proxy advisor to comment and for the proxy advisor recommendations made publicly available and provide enough time for a proxy advisor to amend the report in response if warranted.

Option 4: Make materials accessible

Proxy advisors would be required to notify clients on how to access a company's response to the report. This could be through providing a website link or instructions on how to access the response elsewhere.

Proposed responses to Consultation Questions Options 3 and 4:

7. **How would the proposed options affect the level of engagement by proxy advisors with companies?**

See answer to Q8.

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 companies 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.

8. **Would the proposed options mean that investors are more likely to be aware of a company's position on the proxy advice they are receiving?**

CCGG has concerns with the premise of this question, as it implies an information asymmetry that in our view does not exist. Regulation of proxy advisors is unwarranted in the name of redressing any informational imbalance/asymmetry.

The consultation proposes to introduce a securities regulatory framework for proxy advisors to ensure that proxy advisor's institutional investor clients are provided with the company's perspective concurrent with the proxy advisor's recommendation report. Proxy advisor's institutional clients are already provided with the company's perspective on the issues covered by the proxy advisor reports: the management information circular or other public documents upon which advisor's base their recommendations are sent to investors prior to any proxy

advisor report and companies have all of that documentation available in which to present their perspective on any matter subject to a shareholder vote. Companies that do not like the proxy advisor response are free to publish additional documents, including through filing public disclosures, postings on their website or through the media, and to communicate with their investors to the extent they wish. It is not the role of a proxy advisor to facilitate engagement between the investor and the company.

It should also be pointed out that investors retain the services of proxy advisors to hear the advisor's perspective and not the company's, which they already are privy to through public filings. In addition, where there is a complex issue a summary of the company's perspective is typically included in the advisory report. Proxy advisor reports are the result of a contractual commercial agreement between proxy advisors and the institutional investors that are their clients. Any purported problems with the quality or accuracy of the proxy advisor's work should be a matter to be taken up by the clients for which the work is intended. Because companies may have concerns or disagree with a proxy advisor's analysis or recommendations, this should not create an opportunity to intervene in the advisory relationship between an investor and the proxy advisor. If companies believe that investors' standards are not high enough or that investors are blindly following proxy advisor's recommendations, companies should take that up with their investors through robust engagement and ongoing dialogue

9. **What is the most appropriate method for proxy advisors to notify their clients as to where the company's response to its report is?**

In the event that proxy advisors are required by regulation to notify clients on how to access a company's response to the report, providing a link to a website or instructions on how to access securities filings would be appropriate.

10. **If proxy advisors were required to provide their reports to companies in advance of their clients, what would an appropriate length of time be that allows companies to respond to the report and for the report to be amended if there are any errors.**

CCGG does not agree with the proposal to require proxy advisors to share reports with companies, in accordance with predetermined review timelines, prior to sharing reports with their institutional investor clients.

CCGG is of the view that proxy advisors should not be required to provide drafts or copies of the final report to companies, provide companies with a certain minimum amount of time to review a report or integrate feedback or commentary from companies into their reports.

A requirement for proxy advisors to provide companies with copies of their reports prior to sharing such reports with their investor clients 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 and beneficiaries. In addition, the time that investors 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 constraining the ability of investors to scrutinise proxy advice 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 issuers' influence over proxy advice will be increased (or be perceived to be increased) which undermines the independence of proxy advisory firms from the companies they are analysing and potentially the relevance of the research that investors purchase. Taken together, these factors jeopardize the ability of institutional investors to efficiently leverage proxy advisory service providers which helps them discharge their fiduciary duties in the best interests of their clients and beneficiaries. In our view, an alternative model whereby investors bring the services otherwise provided by proxy advisers in house would create inefficiencies and disproportionally drive-up costs.

The tight timelines between when proxy circulars are filed by companies and when investors receive information and advice from proxy advisors should not be further constrained by additional demands that further squeeze those timelines. During the annual proxy voting season in particular, the number of meetings being held means that investors need the maximum amount of time to evaluate the proxy circular and advice provided by the proxy advisor, and to register their voting decisions. Any rule that reduces the time available for decision-making ironically could constrain thoughtful deliberation on the part of investors and promote over-reliance on received advice.

11. Are there any requirements that should be placed on companies during this period, such as confidentiality? Are there any requirements that should be placed on proxy advisors during this period, such as not making their recommendation otherwise publicly known?

CCGG does not agree that proxy advisors should be required to provide companies with copies of their reports prior to the advice being shared with their investor clients. We note that recently introduced and highly contested SEC rules in this area do not require that companies have the right to view and comment on proxy advisor recommendations before they go to the proxy advisors' investor clients or that the company's positions be included in the proxy advisors' material going to clients[17].

CCGG does not have any views on the licensing questions posed in the consultation.

[17] Securities Exchange Commission, 17 CFR Part 240 Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-89372; File no. S7-22-19.

CONCLUSION

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, at cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville at sneville@ccgg.ca.

Yours truly,

Marcia Moffat
Chair, Canadian Coalition for Good Governance

CCGG MEMBERS 2021

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépot 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
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial 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
- 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)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
- TD Asset Management Inc.
- Teachers’ Pension Plan Corporation of Newfoundland and Labrador
- 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