

Notice and Request for Comments

Proposed Amendments to National Instrument 54-101

Communication with Beneficial Owners of Securities of a Reporting Issuer and Companion Policy 54-101CP Communication with Beneficial Owners of Securities of a Reporting Issuer

Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Companion Policy 51-102CP *Continuous Disclosure Obligations*

Proposed Amendments to National Policy 11-201 *Delivery of Documents by Electronic Means*

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for a 144 day comment period proposed amendments (the Proposed Amendments) to:

- National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and the related forms (NI 54-101),
- Companion Policy 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer* (54-101CP),
- National Instrument 51-102 *Continuous Disclosure Obligations* and Form 51-102F5 *Information Circular* (Form 51-102F5) (collectively, NI 51-102),
- Companion Policy 51-102 *Continuous Disclosure Obligations* (51-102CP), and
- National Policy 11-201 *Delivery of Documents by Electronic Means* (NP 11-201).

The text of the Proposed Amendments is contained in Schedules A through E of 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.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

Certain jurisdictions may include additional local information in Schedule F.

We are publishing the Proposed Amendments for comment for 144 days. The comment period will expire on August 31, 2010. We are providing an extended comment period to accommodate the 2010 proxy season. For more information on the comment process, see below under “How To Provide Your Comments”.

Substance and purpose of the Proposed Amendments

NI 54-101 came into effect on July 1, 2002 (in Québec, on June 27, 2003), replacing its predecessor National Policy Statement 41 *Shareholder Communications*. It is intended to give beneficial owners who hold their securities through intermediaries or nominees a reasonable opportunity to exercise the voting rights attached to those securities. It does so by establishing detailed beneficial owner communication procedures regarding sending of proxy-related materials and solicitation of voting instructions, and imposing obligations on reporting issuers, intermediaries and the Canadian Depository for Securities Limited (CDS).

In the fall of 2007, CSA staff commenced a review of how NI 54-101 currently works in practice. The review comprised both research and consultation with issuers, intermediaries, beneficial owners, a proxy advisory firm, proxy solicitors and service providers. CSA staff also met several times with an advisory group composed of members from most of these stakeholder groups, and obtained input on how to improve NI 54-101.

The Proposed Amendments are intended to improve the beneficial owner communication procedures. We have kept in mind the following fundamental principles of NI 54-101:

- all securityholders of a reporting issuer, whether registered holders or beneficial owners, should have the opportunity to be treated alike as far as is practicable;
- efficiency should be encouraged; and
- the obligation of each party in the securityholder communication process should be equitable and clearly defined.

The Proposed Amendments are also intended to improve communications with registered holders of reporting issuer securities.

Summary of the proposed substantive changes

The following are the key changes that would result from the Proposed Amendments, if adopted. This is not a complete list of all the changes.

(a) Summary of Proposed Amendments to NI 54-101

(i) Notice-and-access – section 2.7.1

Reporting issuers would have the option of sending proxy-related materials for meetings that are not special meetings by:

- posting the information circulars on a website that is not SEDAR; and
- sending a notice informing beneficial owners that the proxy-related materials have been posted, and explaining how to access them. A voting instruction form (Form 54-101F6 or Form 54-101F7 as applicable) would be sent with the notice.

At present, our notice-and-access proposal is limited to meetings that are not “special meetings” as defined in NI 54-101. Special meetings are ones where fundamental changes are being voted on, and we would like to monitor the implementation of notice-and-access before extending it to these types of meetings.

A beneficial owner would be entitled to request that the reporting issuer send a paper copy of the information circular by prepaid mail, courier or the equivalent, at the reporting issuer’s expense. There are restrictions on the reporting issuer’s access to, and use of information associated with the request. These restrictions are intended to maintain the anonymity of objecting beneficial owners (i.e. beneficial owners who do not wish to have their identities disclosed to the reporting issuer, or OBOs).

SEC issuers will be permitted to use the US notice-and-access process to comply with the requirements to send proxy-related materials to beneficial owners.

Differences between the US and CSA proposed notice-and-access models

The Securities and Exchange Commission (SEC) has introduced its own notice-and-access process, which applies to all SEC registrants for proxy solicitations commencing in or after January 2009.

The SEC introduced its notice-and-access process (the US model) as part of a wider focus on finding ways to improve the proxy solicitation process, and to facilitate increased and informed shareholder participation in the proxy process. The US model is also intended to promote the use of the Internet as a potentially reliable and cost efficient way to communicate with shareholders.

Our notice-and-access proposal (the CSA proposal) shares the basic policy objectives of the US model to promote the use of the Internet as a potentially reliable and cost efficient means of shareholder communication. However, there are several differences between the CSA proposal and the US model. The following are some, but not all examples of where the CSA proposal differs from the US model:

- Notice-and-access would not be mandatory for reporting issuers. Posting of proxy-related materials on a non-SEDAR website is required only if the reporting issuer chooses to use notice-and-access to send proxy-related materials.
- The relevant voting instruction form (Form 54-101F6 or Form 54-101F7) must be sent with the initial notice.
- The reporting issuer is responsible for fulfilling requests for paper copies of information circulars, not the intermediary.
- The CSA proposal maintains certain basic differences between the NI 54-101 beneficial owner communication procedures and the US beneficial owner communication procedures. Reporting issuers continue to have the following options:
 - to send proxy-related materials directly to and solicit voting instructions directly from NOBOs; and
 - not to pay for intermediaries to forward proxy-related materials and Form 54-101F7 to OBOs.

We note that the SEC requested comment on various aspects of the US model in the Fall of 2009, and recently adopted several amendments.¹ We will continue to monitor developments in the US, as these may assist in identifying possible enhancements to the CSA proposal.

(ii) Simplification of beneficial owner proxy appointment process – sections 2.18 and 4.5

A beneficial owner who holds securities through an intermediary generally must be appointed proxy holder in respect of those securities if she wishes to attend and vote those securities at a meeting.

NI 54-101 currently prescribes a legal proxy process, by which a beneficial owner can instruct her intermediary using the voting instruction form (or the reporting issuer, if the direct sending procedures in section 2.9 are being used) to appoint her as proxy holder in respect of the securities she beneficially owns. The intermediary must send the beneficial owner a legal proxy, which the beneficial owner in turn must deposit by any relevant proxy cut-off established for the meeting.

¹The proposed amendments are set out in “Amendments to Rules Requiring Internet Availability of Proxy Materials” (October 14, 2009), Release No. 33-9073. Available at <http://www.sec.gov/rules/proposed/2009/33-9073.pdf>. The final amendments are set out in “Amendments to Rules Requiring Internet Availability of Proxy Materials” (February 22, 2010), Release No. 33-9108. Available at <http://www.sec.gov/rules/final/2010/33-9108.pdf>.

We have received feedback from several stakeholders that the legal proxy process is too time-consuming and confusing, and can have the unintended consequence of making it more difficult for beneficial owners to be properly appointed as proxy holders. The Proposed Amendments would require intermediaries and reporting issuers to:

- arrange to appoint the beneficial owner as proxy holder, if she so requests, at no expense to the beneficial owner; and
- deposit the proxy by any relevant proxy cut-off.

However, subject to these basic obligations, reporting issuers and intermediaries would have flexibility as to the specific arrangements used to appoint the beneficial owner as proxy holder. For example, we understand that a number of intermediaries, through their service provider, currently provide an “appointee system” option in addition to the legal proxy on their voting instruction forms. Under the appointee system, the beneficial owner can print the beneficial owner’s name or the name of her appointee in a space provided on the voting instruction form. The name of the beneficial owner or her appointee is then recorded on a cumulative proxy, which is provided to the proxy tabulator or meeting scrutineer. When the beneficial owner or her appointee arrives at the meeting, the scrutineer has all the necessary proxies and information at hand to enable the beneficial owner or other appointees to vote at the meeting. The Proposed Amendments would permit an intermediary to continue to provide the appointee system option.

(iii) Enhanced disclosure regarding the beneficial owner voting process – section 2.16

The Proposed Amendments require certain information to be disclosed in the management information circular in specified circumstances. This disclosure is intended to increase transparency and provide information to assist beneficial owners in the voting process.

First, if the reporting issuer chooses not to pay for intermediaries to send proxy-related materials and Form 54-101F7 to OBOs, the Proposed Amendments require management of the reporting issuer to disclose this fact in the management information circular, and to disclose that it is the OBO’s responsibility to make arrangements with her intermediary to exercise her voting rights.

Second, the Proposed Amendments require management of the reporting issuer to disclose in the management information circular if the reporting issuer is using notice-and-access only in respect of some, but not all beneficial owners. An explanation of this decision must also be provided.

(iv) Stricter rules on use by third-parties of NOBO information and the indirect sending procedures – Part 7

The Proposed Amendments restrict the permitted use of NOBO information and the indirect sending procedures to matters connected to (i) an attempt to influence securityholder voting, or (ii) an offer to acquire securities of the securityholder. The intent is to minimize the potential for misuse of NOBO information and the indirect sending procedures.

(v) Other changes

The Proposed Amendments also make changes to certain technical aspects of the beneficial owner communication procedures in the following areas:

- persons or companies permitted to make requests for beneficial ownership information (subsection 2.5(4));
- the timing for sending proxy-related materials (sections 2.9 and 2.12, and subsection 4.2(2));
- records of voting instructions (subsections 2.17(2) and 4.4(2)); and
- the interaction of depositary and intermediary obligations to beneficial owners under corporate law with the equivalent obligations under NI 54-101 (subsections 2.18(3) and 5.4(2)).

(vi) 54-101CP amendments

We propose to amend 54-101CP to provide guidance in several areas, including:

- permitted delivery methods for proxy-related materials, including notice-and-access (new Part 5); and
- procedures reporting issuers should have in place if they choose to solicit voting instructions directly from NOBOs (new section 3.5).

(b) Proposed Amendments to NI 51-102

We propose to amend Part 9 *Proxy Solicitation and Information Circulars* to introduce notice-and-access for registered holders of reporting issuer securities. The notice-and-access proposal for registered holders is substantially similar to the proposal for beneficial owners. We also propose to amend Form 51-102F5 to require the additional disclosure set out in proposed section 2.16 of NI 54-101.

SEC issuers will be permitted to use the US notice-and-access process to comply with the requirements to send proxy-related materials to registered holders of reporting issuer securities.

We propose to amend 51-102CP to provide guidance on permitted delivery methods for proxy-related materials, including notice-and-access.

(c) Consequential amendments to NP 11-201

We propose to make consequential amendments to NP 11-201 that would be necessary should notice-and-access be adopted.

Anticipated costs and benefits

We think that the Proposed Amendments, if implemented, will yield benefits, with little additional cost to market participants.

(a) Notice-and-access

We expect that there will be costs associated with maintaining a website for the proxy-related materials, fulfillment of requests for paper circulars and other required features of notice-and-access. However, because notice-and-access is voluntary, a reporting issuer will use it only if the benefits outweigh the costs.

We do not expect notice-and-access to impose any material additional costs on intermediaries, as their obligations remain substantially the same.

Beneficial owners and registered holders who print the information circular will incur additional costs. However, beneficial owners and registered holders can elect not to incur these costs as they have an option to request paper copies of the information circular at the issuer's expense.

(b) Simplification of beneficial owner proxy appointment process

We do not anticipate any material costs to be imposed.

Beneficial owners will benefit from having a simpler proxy appointment process with fewer steps.

Reporting issuers and intermediaries will need to make some changes to the relevant voting instruction forms, but we anticipate that the costs will not be significant.

We note that the major intermediary service provider already provides on the voting instruction form two options for a beneficial owner to be appointed as proxy holder. The first option is for the beneficial owner to request a legal proxy, in the manner prescribed by NI 54-101. The second option is for the beneficial owner to indicate on the voting instruction form that she wishes to be appointed as proxy holder, whereupon the intermediary (through the service provider) will make the necessary arrangements, including depositing the proxy with the reporting issuer's transfer agent.

(c) Enhanced disclosure regarding the beneficial owner voting process

Beneficial owners will benefit from having a better understanding of why a reporting issuer is or is not sending particular proxy-related materials to them.

We do not expect reporting issuers to incur any significant additional costs as a result of the additional disclosure in the management information circulars.

Request for comments

(a) The Proposed Amendments

We welcome your comments on the Proposed Amendments, and also invite comments on the following specific questions:

Questions relating to notice-and-access

1. We propose to exclude proxy-related materials relating to special meetings from notice-and-access. Should we expand notice-and-access to include special meetings? Should other types of meetings be excluded from notice-and-access as well?
2. We propose that reporting issuers be able to use notice-and-access to send proxy-related materials to some, but not all beneficial owners, so long as this fact is publicly disclosed and an explanation provided. Should there be restrictions on when a reporting issuer can use notice-and-access selectively?
3. The US model of notice-and-access seems to have resulted in a decrease in voting by retail shareholders. Our notice-and-access proposal has some significant differences from the US model which are intended to minimize the impact on retail shareholders. Does our notice-and-access proposal adequately meet the needs of retail shareholders who wish to vote? Are there any specific enhancements or other ways that notice-and-access can be made more user-friendly?
4. We would appreciate data from issuers, service providers and other stakeholders on the anticipated costs and savings of implementing and using the notice-and-access process. Will notice-and-access result in meaningful costs savings that make the proxy voting system more efficient?
5. We propose to give reporting issuers flexibility in the form and content of the notice provided the notice contains certain specified information. Is this approach appropriate, or should there be a prescribed form?
6. The CSA proposal does not impose any restrictions on additional materials that can be included with the notice and voting instruction form. We do not have any concerns with including additional material that explains the notice-and-access process, such as a Q&A. However, is it appropriate for reporting issuers and others to include materials that

address the substance of the matters to be voted on at the meeting? Would this create a disincentive for investors to read the full information circular? Should there be restrictions on what can be included in these types of materials? Should there be requirements prescribing basic information that these types of materials must contain?

7. Is the requirement in subsection 4.6(1) of NI 51-102 that requires reporting issuers to send an annual request form to registered holders and beneficial owners of their securities to request financial statements and management's discussion and analysis adequately integrated with the requirements to send proxy-related materials? Will notice-and-access have any impact?

Other questions

8. The Proposed Amendments require management of reporting issuers that choose not to pay for delivery to OBOs to disclose this fact in the management information circular. The intent is to make the proxy voting system more transparent and easier to navigate. Will this disclosure facilitate this objective?

(b) Other issues relating to the beneficial owner voting process generally

The focus of the Proposed Amendments is on improving the process by which beneficial owners are sent proxy-related materials and their voting instructions are solicited. This process is one aspect of the larger proxy voting system, i.e. the entire process by which votes are solicited, submitted and tabulated.

In recent months, the proxy voting system as a whole has been the subject of some debate. Questions are being raised as to whether it is functioning with appropriate reliability, integrity and transparency. We therefore also invite general comments on:

- the integrity of the proxy voting system as a whole; and
- whether there are any particular areas that require regulatory attention or reform, and if so, what priority should be assigned.

How to provide your comments

You must submit your comments in writing by **August 31, 2010**. If you are sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please address your comments to all of the CSA member commissions as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Please send your comments only to the address below. Your comments will be forwarded to the remaining CSA jurisdictions.

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Corporate Secretary

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Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

Questions

Please refer your questions to any of the following:

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Schedules

- Schedule A: Proposed Amendment Instrument to NI 54-101
- Schedule B: Proposed Amendment Instrument to 54-101CP
- Schedule C: Proposed Amendment Instrument to NI 51-102
- Schedule D: Proposed Amendment Instrument to 51-102CP
- Schedule E: Proposed Amendment Instrument to NP 11-201
- Schedule F: Additional Local Information

April 9, 2010

SCHEDULE A

PROPOSED AMENDMENT INSTRUMENT TO NATIONAL INSTRUMENT 54-101 COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

1. *National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer is amended by this Instrument.*

2. *Section 1.1 of National Instrument 54-101 is amended by*

(a) *amending the definition of “proxy-related materials” to insert “or beneficial owners” between “registered holders” and “of the securities”;*

(b) *repealing the definition of “legal proxy”;*

(c) *adding the following definition after the definition of “non-objecting beneficial owner list”:*

“notice-and-access” means the delivery procedures referred to in section 2.7.1;

(d) *adding the following definition after the definition of “request for beneficial ownership information”:*

“SEC issuer” means an issuer that

(a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, and

(b) is not registered or required to be registered as an investment company under the *Investment Company Act* of 1940 of the United States of America, as amended;

(e) *repealing the definition of “request for voting instructions”;*

(f) *amending the definition of “securityholder materials” to insert “or beneficial owners” between “registered holders” and “of the securities”;*

(g) *repealing the definition of “send”;*

3. *Subsection 2.5(4) of National Instrument 54-101 is repealed and replaced with the following:*

(4) A reporting issuer that requests beneficial ownership information under this section must do so through one of the following:

- (a) a transfer agent;
- (b) another person or company if both of the following apply:
 - (i) the person or company is in the business of providing services to assist persons or companies soliciting proxies;
 - (ii) the reporting issuer has reasonable grounds to believe that the person or company has the technological capacity to receive the beneficial ownership information.

4. Section 2.7 of National Instrument 54-101 is repealed and replaced with the following:

2.7 Sending of Proxy-Related Materials to Beneficial Owners – (1) A reporting issuer that is required by Canadian securities legislation to send proxy-related materials to the registered holders of any class or series of its securities must send the proxy-related materials to beneficial owners of the securities by doing one of the following:

- (a) the reporting issuer sends the proxy-related materials directly under section 2.9 to NOBOs, and indirectly under section 2.12 to OBOs;
 - (b) the reporting issuer sends the proxy-related materials indirectly under section 2.12 to beneficial owners.
- (2) A reporting issuer that sends proxy-related materials under subsection (1) to a beneficial owner of securities may do so using any one or a combination of the following methods:
- (a) paper copies sent by prepaid mail, courier or the equivalent;
 - (b) notice-and-access, but only for a meeting that is not a special meeting;
 - (c) any delivery method to which the beneficial owner consents.

2.7.1 Notice-and-Access – (1) For a meeting that is not a special meeting, a reporting issuer may send proxy-related materials to a beneficial owner of securities by notice-and-access that complies with all of the following:

- (a) the beneficial owner is sent a document containing all of the following information:
 - (i) the date, time and location of the reporting issuer's meeting;
 - (ii) a summary of the items to be voted on;
 - (iii) an explanation of how to electronically access the information circular and other proxy-related materials, including a website

- address other than the address for SEDAR, where the proxy-related materials are located;
- (iv) a reminder to review the information circular before voting;
 - (v) an explanation of how to obtain a paper copy of the information circular from the reporting issuer;
 - (vi) an explanation of how the NOBO is to execute and return Form 54-101F6 sent under paragraph (b), including any deadline for the return of the form;
- (b) each NOBO is sent a Form 54-101F6, if the reporting issuer is sending proxy-related materials to, and seeking voting instructions from, NOBOs under section 2.9;
 - (c) using the direct or indirect procedures in section 2.9 or 2.12 as applicable, the beneficial owner is sent by prepaid mail, courier or the equivalent, paper copies of the documents required by paragraph (a) and if applicable, paragraph (b), or is sent these documents by any other method previously consented to by the beneficial owner;
 - (d) a news release is issued at least 30 days before the date fixed for the meeting containing the following:
 - (i) the information set out in paragraph (a);
 - (ii) if the reporting issuer is using notice-and-access only in respect of some beneficial owners, an explanation of its decision;
 - (e) public electronic access to the information circular and other proxy-related materials is provided on the same day as the reporting issuer sends the document in paragraph (a) to beneficial owners, in the following manner:
 - (i) the proxy-related materials are filed on SEDAR;
 - (ii) the proxy-related materials are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the materials relate, at a website address other than the address for SEDAR;
 - (f) a toll-free telephone number is provided for use by the beneficial owner to request a paper copy of the information circular at any time from the date that the reporting issuer sends the document in paragraph (a) to the beneficial owner, up to and including the date of the meeting including any adjournment;
 - (g) if a request is received under paragraph (f) or by any other means, a paper copy of the information circular is sent by prepaid mail, courier or the equivalent to the person or company at the address specified in

the request, free of charge to the person or company to whom the paper copy of the information circular is sent, no later than 3 business days after receiving the request.

- (2) A reporting issuer that receives a request under paragraph (1)(f) or by any other means must not do any of the following:
 - (a) obtain any information about the person or company making the request, other than the name and address to which the paper copy of the information circular is to be sent;
 - (b) disclose or use the name or address of the person or company making the request for any purpose other than sending the paper copy of the information circular.
- (3) A reporting issuer that posts proxy-related materials pursuant to subparagraph (1)(e)(ii) must not use any means that would enable the reporting issuer to identify a person or company who has accessed the website address where the proxy-related materials are located.
- (4) A reporting issuer that posts proxy-related materials in the manner referred to in subparagraph (1)(e)(ii) must also post on the website the following documents:
 - (a) any other disclosure material regarding the meeting that the reporting issuer has sent to registered holders or beneficial owners of its securities;
 - (b) any written communications the reporting issuer has made available to the public regarding the meeting, whether sent to registered holders or beneficial owners of its securities or not.
- (5) Proxy-related materials that are posted under subparagraph (1)(e)(ii) must be posted in a manner and be in a format that permits a person or company with a reasonable level of computer skill and knowledge to do all of the following conveniently:
 - (a) access, read and search the documents on the website;
 - (b) download and print the documents.
- (6) An information circular posted under subparagraph (1)(e)(ii) must contain the same information as the information circular filed on SEDAR.
- (7) Despite anything in this section or the previous section, a beneficial owner may consent to the use of other delivery methods to send proxy-related

materials. Nothing in this section shall be interpreted as restricting a beneficial owner from consenting to the reporting issuer's or intermediary's use of other delivery methods to send proxy-related materials.

2.7.2 Compliance with SEC Rules – Section 2.7 does not apply to a reporting issuer that is an SEC issuer if it complies with both of the following:

- (a) the SEC issuer sends proxy-related materials to the beneficial owner using the procedures in Rule 14a-16 under the 1934 Act;
- (b) the SEC issuer obtains confirmation from the intermediary that holds securities on behalf of the beneficial owner that the intermediary will implement the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act.

5. Section 2.8 is repealed and replaced with the following:

2.8 Other securityholder materials – (1) A reporting issuer may send securityholder materials other than proxy-related materials to beneficial owners of its securities by doing one of the following:

- (a) the reporting issuer sends the materials directly under section 2.9 to NOBOs, and indirectly under section 2.12 to OBOs;
- (b) the reporting issuer sends the materials indirectly under section 2.12 to beneficial owners.

(2) A reporting issuer that sends securityholder materials under subsection (1) may send the securityholder materials using any of the methods in subsection 2.7(2).

6. Section 2.9 National Instrument 54-101 is repealed and replaced with the following:

2.9 Direct sending of proxy-related materials to NOBOs by reporting issuer – (1) A reporting issuer that has stated in its request for beneficial ownership information sent in connection with a meeting that it will send proxy-related materials to, and seek voting instructions from, NOBOs must send the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request at its own expense.

(2) A reporting issuer that sends by prepaid mail, courier or the equivalent, paper copies of proxy-related materials directly to a NOBO must send the proxy-related materials at least 21 days before the date fixed for the meeting.

- (3) A reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access must send the material required by paragraphs 2.7.1(1)(a) and (b) at least 30 days before the date fixed for the meeting.
- (4) A reporting issuer that sends proxy-related materials directly to a NOBO using a delivery method that is not notice-and-access and to which the NOBO has consented under paragraph 2.7(2)(c) must send the proxy-related materials using that delivery method either:
 - (a) at least 21 days before the date fixed for the meeting, if the NOBO has not consented to a specific day or days for sending of the proxy-related materials; or
 - (b) on any day to which the NOBO has consented.
- (5) Despite subsection (2), a reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access and also sends paper copies of proxy-related materials directly to other NOBOs under subsection (2) by prepaid mail, courier or the equivalent must send the paper copies of the proxy-related materials to those other beneficial owners on the same day as it sends the documents set out in paragraphs 2.7.1(1)(a) and (b) to the beneficial owner using notice-and-access.

7. *Section 2.10 of National Instrument 54-101 is amended by inserting “and despite subsection 2.9(1),” after “Except as required by securities legislation,”.*

8. *Section 2.12 of National Instrument 54-101 is repealed and replaced with the following:*

2.12 Indirect sending of securityholder materials by reporting issuer – (1) A reporting issuer sending securityholder materials indirectly to beneficial owners must send to each proximate intermediary that responded to the applicable request for beneficial ownership information the number of sets of those materials specified by that proximate intermediary for sending to beneficial owners.

- (2) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner by having the intermediary send paper copies of the proxy-related materials by prepaid mail, courier or the equivalent must send the proxy-related materials to the proximate intermediary at least 3 business days before the 21st day before the date fixed for the meeting.
- (3) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using notice-and-access must provide the information set out in paragraph 2.7.1(1)(a) to the intermediary in sufficient time for the intermediary to send a document containing that information to the

beneficial owner at least 30 days before the date fixed for the meeting.

- (4) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using a delivery method that is not notice-and-access and to which a beneficial owner has consented under paragraph 2.7(2)(c) must make any necessary arrangements to enable the intermediary to send the proxy-related materials using that delivery method either:
 - (a) at least 21 days before the date fixed for the meeting, if the NOBO has not consented to a specific day or days for sending of the proxy-related materials; or
 - (b) on any day to which the beneficial owner has consented.
- (5) Despite subsection (2), a reporting issuer that sends proxy-related materials directly or indirectly to a beneficial owner using notice-and-access, and also sends proxy-related materials indirectly to other beneficial owners by having the intermediary send paper copies of the proxy-related materials using prepaid mail, courier or the equivalent, must arrange for the intermediary to send the paper copies of the proxy-related materials to those other beneficial owners on the same day as the reporting issuer or intermediary, as applicable, sends the document containing the information set out in paragraph 2.7.1(1)(a) to the beneficial owner.
- (6) A reporting issuer that sends securityholder materials that are not proxy-related materials indirectly to beneficial owners must send the securityholder materials to the intermediary on the day specified in the request for beneficial ownership information.
- (7) A reporting issuer must not send securityholder materials directly to a NOBO if a proximate intermediary in a foreign jurisdiction holds securities on behalf the NOBO and one or both of the following applies:
 - (a) the law of the foreign jurisdiction does not permit the reporting issuer to send securityholder materials directly to NOBOs;
 - (b) the proximate intermediary has stated in a response to a request for beneficial ownership information that the law in the foreign jurisdiction requires the proximate intermediary to deliver securityholder materials to beneficial owners.

9. Section 2.16 of National Instrument 54-101 is repealed and replaced with the following:

2.16 Explanation of voting rights – (1) If a reporting issuer sends proxy-related materials for a meeting to a beneficial owner of securities, the materials must explain, in plain language, how the beneficial owner can exercise

voting rights attached to the securities, including an explanation of how to attend and vote the securities directly at the meeting.

- (2) Management of a reporting issuer must provide the following disclosure in the information circular:
 - (a) if the reporting issuer is not paying for intermediaries to send proxy-related materials and Form 54-101F7 to OBOs through the indirect sending procedures in section 2.12, disclosure of the following:
 - (i) the reporting issuer is choosing not to pay for intermediaries to send proxy-related materials and Form 54-101F7 to OBOs;
 - (ii) it is the OBO's responsibility to contact the OBO's intermediary to make any necessary arrangements to exercise voting rights attached to the OBO's securities;
 - (b) if the reporting issuer is using notice-and-access only in respect of some beneficial owners, an explanation of its decision.
- (3) Despite subsection (2), management may omit the disclosure set out in paragraph (2)(b) if management has not determined at the time of preparing the information circular whether notice-and-access will be used only in respect of some beneficial owners.

10. Section 2.17 of National Instrument 54-101 is repealed and replaced with the following:

- 2.17 Voting instruction form (Form 54-101F6) –** (1) A reporting issuer that sends proxy-related materials that solicit votes or voting instructions directly to a NOBO must provide a Form 54-101F6 in substitution for the form of proxy.
- (2) A reporting issuer that sends a Form 54-101F6 to a NOBO under subsection (1) must maintain a record of the following:
 - (a) each Form 54-101F6 sent to the NOBO;
 - (b) the date and time of any voting instructions, including proxy appointment instructions, submitted to the reporting issuer.

11. Section 2.18 of National Instrument 54-101 is repealed and replaced with the following:

- 2.18 Appointing beneficial owner as proxy holder –** (1) A reporting issuer whose management holds a proxy in respect of securities beneficially owned by a NOBO must arrange, without expense to the NOBO, to appoint the

NOBO or a nominee of the NOBO as a proxy holder in respect of those securities if the NOBO has instructed the reporting issuer to do so using either of the following methods:

- (a) the NOBO submitted the completed Form 54-101F6 previously sent to the NOBO by the reporting issuer;
 - (b) the NOBO submitted any other documentation that is acceptable to the reporting issuer.
- (2) A reporting issuer who appoints a NOBO as a proxy holder pursuant to subsection (1) must deposit the proxy within any time specified under corporate law for the deposit of proxies.
- (3) If legislation requires an intermediary or depository to appoint the NOBO or nominee of the NOBO as proxy holder in respect of securities beneficially owned by the NOBO in accordance with any written voting instructions received from the NOBO, the intermediary may ask for, and the reporting issuer must provide, in a form that is acceptable to the intermediary, confirmation of both of the following:
- (a) management of the reporting issuer will comply with subsections 2.18(1) and (2);
 - (b) management is acting on behalf of the intermediary or depository to the extent it appoints a NOBO or nominee of the NOBO as proxy holder in respect of the securities of the reporting issuer beneficially owned by the NOBO.

12. Subsection 2.20(a) of National Instrument 54-101 is repealed and replaced with the following:

- (a) arranges to have proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12;

13. Subsection 4.1(1) of National Instrument 54-101 is amended by replacing “through the transfer agent of the reporting issuer that sent the request” with “through the transfer agent or person or company described in paragraph 2.5(4)(b) that sent the request”;

14. Subsection 4.2(2) of National Instrument 54-101 is repealed and replaced with the following:

- (2) A proximate intermediary shall send the following securityholder materials to beneficial owners or intermediaries holding securities of the relevant class

or series that are its clients within the following time periods:

- (a) in the case of paper copies of securityholder materials to be sent by prepaid mail, courier or the equivalent, or any other securityholder materials that are not proxy-related materials, within 3 business days after receipt;
- (b) in the case of a document containing the information set out in paragraph 2.7.1(1)(a), at least 30 days before the date fixed for the meeting;
- (c) in the case of proxy-related materials to be sent by a delivery method that is not notice-and-access to which the beneficial owner has consented under paragraph 2.7(2)(c), on any day to which the beneficial owner has consented for the sending of proxy-related materials, or if the beneficial owner has not consented to a specific day or days, at least 21 days before the date fixed for the meeting;
- (d) despite paragraph (a), in the case of paper copies of proxy-related materials to be sent by prepaid mail, courier or the equivalent, on the same day as the reporting issuer or intermediary, as applicable, sends any document using notice-and-access containing the information set out in paragraph 2.7.1(1)(a) to a beneficial owner.

15. Subsection 4.2(5) of National Instrument 54-101 is repealed, and the following is added after the repealed subsection 4.2(5):

- (6) An intermediary that sends securityholder materials to a beneficial owner under this section may do so through either of the following methods:
 - (a) paper copies sent by prepaid mail, courier or the equivalent;
 - (b) any delivery method to which the beneficial owner consents.

16. Section 4.4 of National Instrument 54-101 is repealed and replaced with the following:

- 4.4 Voting instruction form (Form 54-101F7) –** (1) An intermediary that forwards proxy-related materials to beneficial owners that solicit votes or voting instructions from securityholders must provide a Form 54-101F7 in substitution for the form of proxy.
- (2) An intermediary that sends a Form 54-101F7 to a beneficial owner under subsection (1) must maintain a record of the following:
 - (a) each Form 54-101F7 sent to the beneficial owner;

- (b) the date and time of any voting instructions, including proxy appointment instructions, submitted to the intermediary.

17. Section 4.5 of National Instrument 54-101 is repealed and replaced with the following:

4.5 Appointing beneficial owner as proxy holder – (1) An intermediary who is the registered holder of, or holds a proxy in respect of, securities owned by a beneficial owner must arrange, at no expense to the beneficial owner, to appoint the beneficial owner or a nominee of the beneficial owner as a proxy holder if the beneficial owner has instructed the intermediary to do so using either of the following methods:

- (a) the beneficial owner submitted the completed Form 54-101F7 previously sent to the beneficial owner by the intermediary;
 - (b) the beneficial owner submitted any other documentation that is acceptable to the intermediary.
- (2) An intermediary who appoints a beneficial owner as proxy holder pursuant to subsection (1) must deposit the proxy within any time specified under corporate law for the deposit of proxies.

18. The following is added after subsection 5.4(2) of National Instrument 54-101:

- (3) If legislation requires a depository to appoint a beneficial owner or nominee of the beneficial owner as proxy holder in respect of securities that are beneficially owned by a beneficial owner in accordance with any written voting instructions received from the beneficial owner, the depository may ask any participant described in subsection (1) for, and the participant must provide, in a form that is acceptable to the depository, confirmation of all of the following:
- (a) the participant will comply with subsections 4.5(1) and (2);
 - (b) the participant is acting on behalf of the depository to the extent it appoints a beneficial owner or nominee of a beneficial owner as proxy holder in respect of the securities of the reporting issuer beneficially owned by the beneficial owner;
 - (c) if the participant is required to execute an omnibus proxy under section 4.1, that the participant will obtain the confirmation set out in subsection 2.18(3).

19. Subsection 6.2(6) of National Instrument 54-101 is repealed and replaced with the following:

- (6) A person or company, other than the reporting issuer to which the request relates, that sends materials indirectly to beneficial owners must comply with all of the following:
 - (a) the person or company must pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners;
 - (b) the person or company must provide an undertaking to the proximate intermediary in the form of Form 54-101F10.

20. Part 7 is repealed and replaced with the following:

**PART 7 – USE OF NOBO LIST AND INDIRECT
SENDING OF MATERIALS**

- 7.1 Use of NOBO list** – (1) A reporting issuer may use a NOBO list or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument in connection with any matter relating to the affairs of the reporting issuer.
- (2) A person or company that is not the reporting issuer must not use a NOBO list or a report prepared under section 5.3 relating to a reporting issuer and obtained under this Instrument in any manner other than the following:
- (a) for sending securityholder materials directly to NOBOs in accordance with this Instrument;
 - (b) in respect of an effort to influence the voting of securityholders of the reporting issuer;
 - (c) in respect of an offer to acquire securities of the reporting issuer.
- 7.2 Sending of Materials** - (1) A reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, in connection with any matter relating to the affairs of the reporting issuer.
- (2) A person or company that is not the reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, only in connection with one or more of the following:

- (a) an effort to influence the voting of securityholders of the reporting issuer;
- (b) an offer to acquire securities of the reporting issuer.

21. Form 54-101F6 – Request for Voting Instructions Made by Reporting Issuer is amended by striking out the paragraph that begins “Should you wish to attend the meeting and vote in person...” and substituting the following:

If you want to attend the meeting and vote in person, please write your name in the place provided for that purpose in the voting instruction form (Form 54-101F6) provided to you. If you require help, please contact [the undersigned].

22. Form 54-101F7 – Request for Voting Instructions Made by Intermediary is amended by deleting the paragraph that begins “Should you wish to attend the meeting and vote in person...” and replacing it with the following:

If you want to attend the meeting and vote in person, please write your name in the place provided for that purpose in the voting instruction form (Form 54-101F7) provided to you. If you require help, please contact [the undersigned].

23. Form 54-101F8 – Legal Proxy is repealed.

24. Form 54-101F9 – Undertaking is amended by

(a) striking out paragraph 2 and substituting the following:

2. I undertake that the information set out on the NOBO list will be used only in connection with one or more of the following:

- (a) sending securityholder materials directly to NOBOs in accordance with National Instrument 54-101;
- (b) an effort to influence the voting of securityholders of the reporting issuer;
- (c) an offer to acquire securities of the reporting issuer.

(b) striking out paragraph 4 and substituting the following:

4. I am aware that it is a contravention of the law to use a NOBO list for purposes other than in connection with one or more of the following:

- (a) sending securityholder materials directly to NOBOs in accordance with National Instrument 54-101;

- (b) an effort to influence the voting of securityholders of the reporting issuer;
- (c) an offer to acquire securities of the reporting issuer.

25. The following is added after Form 54-101F9:

Form 54-101F10 – Undertaking

Note: Terms used in this Form have the meaning given to them in National Instrument 54-101.

The use of this Form is referenced in section 6.2 of National Instrument 54-101.

I,
 (Full Residence Address)
(If this undertaking is made on behalf of a body corporate, set out the full legal name of the body corporate, position of person signing and address for service of the body corporate).

SOLEMNLY DECLARE AND UNDERTAKE THAT:

1. I wish to send materials to beneficial owners of securities of [*insert name of the reporting issuer*] on whose behalf intermediaries hold securities, using the indirect sending procedures provided in National Instrument 54-101 (the NI 54-101 Procedures).
2. I undertake that I am using the NI 54-101 Procedures to send materials to beneficial owners only in connection with one or both of the following:
 - (a) an effort to influence the voting of securityholders of the reporting issuer;
 - (b) an offer to acquire securities of the reporting issuer.
3. I am aware that it is a contravention of the law to send materials using the NI 54-101 Procedures for purposes other than in connection with one or both of the following:
 - (a) an effort to influence the voting of securityholders of the reporting issuer;
 - (b) an offer to acquire securities of the reporting issuer.

.....Signature
Name of person signing

.....Date

26. This Instrument is effective on [*].

SCHEDULE B

PROPOSED AMENDMENT INSTRUMENT TO COMPANION POLICY 54-101CP COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

1. *Companion Policy 54-101CP Communication with Beneficial Owners of Securities of a Reporting Issuer is amended by this Instrument.*
2. *Subsection 2.1(1) of Companion Policy 54-101CP is repealed and replaced with the following:*

2.1 Application of Instrument – (1) The securityholder communication procedures in the Instrument are relevant to all securityholder materials sent by a reporting issuer to beneficial owners of its securities under Canadian securities legislation. Securityholder materials include, but are not limited to, proxy-related materials. Securityholder materials include:

- (a) materials required by securities legislation or applicable corporate law to be sent to registered holders and beneficial owners of a reporting issuer's securities, such as interim or annual financial statements;
- (b) materials required by securities legislation or applicable corporate law to be sent only to registered holders of a reporting issuer's securities, such as issuer bid and directors circulars, and dissident proxy-related materials;
- (c) materials sent to registered holders or beneficial owners of a reporting issuer's securities absent any legal requirement to do so.

3. *Section 2.3 of Companion Policy 54-101CP is repealed.*
4. *Section 2.7 of Companion Policy 54-101CP is repealed and replaced with the following:*

2.7 Agent – A depository, intermediary, reporting issuer or any other person or company subject to obligations under the Instrument's securityholder communication procedures may use a service provider as its agent to fulfill its obligations. A person or company that uses an agent remains fully responsible for fulfilling its obligations under the Instrument, and for the conduct of the agent in this regard.

A person or company may fulfill its obligations relating to another party through an agent of that other party. For example, under section 2.12 of the

Instrument, a reporting issuer fulfills its obligation to send securityholder materials to a proximate intermediary if it provides the materials to a person or company designated by that proximate intermediary.

5. ***Subsection 3.3(2) of Companion Policy 54-101CP is amended by deleting the sentence “All requests for beneficial ownership information, including NOBO lists are required to be made through a transfer agent.” and substituting the following:***

All requests for beneficial ownership information, including NOBO lists, must be made through:

- (a) a transfer agent; or
- (b) another person or company that satisfies the two criteria in subsection 2.5(4)(b) of the Instrument. In our view, a proxy solicitor would satisfy these criteria.

6. ***The following is added after section 3.4 of Companion Policy 54-101CP:***

3.4.1 Explanation of voting rights – (1) Subsection 2.16(1) of the Instrument requires a reporting issuer’s proxy-related materials to contain a plain language explanation of how the beneficial owner can exercise the voting rights attached to the securities. If the reporting issuer has chosen to send proxy-related materials directly to, and receive voting instructions from, NOBOs, we expect this to be stated in the proxy-related materials.

- (2) Subsection 2.16(2) of the Instrument requires management of a reporting issuer to provide in the information circular disclosure about the following:

- (a) non-payment of fees for intermediaries to send proxy-related materials and Form 54-101F7 to OBOs under section 2.12 of the Instrument;
- (b) use of notice-and-access if management has made this determination for some, but not all beneficial owners at the time it prepares the information circular.

This disclosure is intended to explain to beneficial owners why they may receive different proxy-related materials than other beneficial owners and why they may not receive proxy-related materials even if they have requested them. Item 4.3 of Form 51-102F5 Information Circular also requires this disclosure.

- (3) If a reporting issuer has chosen not to pay for proximate intermediaries to deliver proxy-related materials and Form 54-101F7 to OBOs, it must still provide to the proximate intermediary the number of sets of proxy-related materials that the proximate intermediary requested for forwarding.

7. Section 3.5 of Companion Policy 54-101CP is repealed and replaced with the following:

3.5 NOBO voting instructions – (1) Voting instructions that the reporting issuer requests directly from NOBOs will be returned directly to the reporting issuer. Management of the reporting issuer will then vote the securities beneficially owned by NOBOs according to the instructions received from the NOBOs to the extent that management has the corresponding proxy. The proximate intermediary that provides the NOBO list under subsection 4.1(1) of the Instrument gives management that proxy.

We expect reporting issuers that choose to solicit voting instructions directly from NOBOs to have appropriate procedures for NOBO voting. This includes doing the following in a timely manner:

- (a) responding to inquiries from NOBOs or intermediaries with NOBO clients about the voting process;
- (b) appointing a NOBO or nominee of the NOBO as a proxyholder in respect of securities beneficially owned by the NOBO;
- (c) generating a new Form 54-101F6 if a NOBO requests one. For example, a NOBO may have misplaced a Form 54-101F6 that she had received; or may now wish to provide voting instructions although she had previously indicated on her client response form that she did not wish to receive proxy-related materials.

We expect reporting issuers and intermediaries to work together to address any issues arising from the NOBO voting process.

- (2) Subsection 2.17(2) of the Instrument requires a reporting issuer to maintain records of each Form 54-101F6 that it sends to a NOBO, and the date and time of voting instructions that it receives. This is to assist in identifying the beneficial owner's most recent set of voting instructions.

8. Part 5 of Companion Policy 54-101CP is repealed and replaced with the following:

PART 5 – MEANS OF SENDING

5.1 General – (1) Section 2.7 of the Instrument sets out the permitted delivery methods for proxy-related materials. Reporting issuers, intermediaries and other persons or companies should also review any other applicable legislation, such as corporate legislation.

- (2) The following tables illustrate the options available for sending proxy-related materials to beneficial owners.

Table A: Direct Sending to NOBOs

Delivery Method	Documents Sent	Beneficial Owner Consent Required?
Prepaid mail, courier or the equivalent	Reporting issuer sends paper copies of notice of meeting, management information circular, and Form 54-101F6	No
Notice-and-access	Reporting issuer posts management information circular on SEDAR and non-SEDAR website. Reporting issuer sends paper copies of notice required by para. 2.7.1(1)(a), Form 54-101F6. Reporting issuer will send paper copy of management information circular on request.	No
	Reporting issuer posts management information circular on SEDAR and non-SEDAR website. Reporting issuer sends notice required by para. 2.7.1(1)(a) and Form 54-101F6 using delivery method other than prepaid mail, courier or the equivalent (e.g. email). Reporting issuer will send paper copy of management information circular on request.	Prior consent of beneficial owner is required for reporting issuer to send notice and Form 54-101F6 using delivery method other than prepaid mail, courier or the equivalent.
Other delivery method	Reporting issuer sends notice of meeting, management information circular and Form 54-101F6 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access.	Yes. Reporting issuers are expected to work with proximate intermediaries to obtain consent.

Table B: Indirect Sending to Beneficial Owners

Delivery Method	Documents Sent	Beneficial Owner Consent Required?
Prepaid mail, courier or the equivalent	Reporting issuer sends paper copies of notice of meeting, management information circular to proximate intermediary. Proximate intermediary sends paper copies of materials and Form 54-101F7 using prepaid mail, courier or the equivalent.	No
Notice-and-access	Reporting issuer posts management information circular on SEDAR and non-SEDAR website. Reporting issuer makes arrangements for proximate intermediary to send paper copies of notice required by para. 2.7.1(1)(a). Proximate intermediary sends paper copies of notice and Form 54-101F7 using prepaid mail, courier or the equivalent. Reporting issuer will send paper copy of management information circular on request.	No
	Reporting issuer posts management information circular	Beneficial owner

	on SEDAR and non-SEDAR website. Reporting issuer makes arrangements for proximate intermediary to send notice required by para. 2.7.1(1)(a) using delivery method other than prepaid mail, courier or the equivalent (e.g. email). Proximate intermediary sends copies of notice and Form 54-101F7 using the alternate delivery method. Reporting issuer will send paper copy of management information circular on request.	consent is required for proximate intermediary to send notice and Form 54-101F7 using delivery method other than prepaid mail, courier or the equivalent. Proximate intermediary will be responsible for obtaining necessary beneficial owner consent.
Other delivery method	Reporting issuer and proximate intermediary make arrangements for proximate intermediary to send notice of meeting and management information circular using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access. Proximate intermediary sends notice of meeting, management information circular and Form 54-101F7 using the alternate delivery method.	Yes. Reporting issuers are expected to work with proximate intermediaries to obtain consent.

5.2 Securityholder materials sent to intermediaries – Reporting issuers and other persons or companies should make arrangements with proximate intermediaries to send securityholder materials to beneficial owners in a timely manner. A proximate intermediary should not request sets of securityholder materials for NOBOs if the reporting issuer will be sending the materials directly to those NOBOs.

5.3 Prepaid mail, courier or the equivalent – Paper copies of proxy-related materials must be sent using prepaid mail, courier or an equivalent delivery method. An equivalent delivery method is any delivery method where the beneficial owner receives paper copies in a similar time frame as prepaid mail or courier. For example, a reporting issuer that sponsors an employee share purchase plan could arrange for the proximate intermediary to deliver proxy-related materials to beneficial owner employees through the reporting issuer’s internal mail system.

5.4 Notice-and-access – (1) A reporting issuer can use notice-and-access if it sends proxy-related materials directly to NOBOs under section 2.9 of the Instrument or indirectly under section 2.12 of the Instrument.

Direct sending to NOBOs:

The reporting issuer must send the notice required by paragraph 2.7.1(1)(a) and Form 54-101F6 to the NOBO at least 30 days before the meeting (subsection 2.9(3) of the Instrument).

Indirect sending to beneficial owners:

The reporting issuer must make arrangements with the proximate intermediary so that the proximate intermediary is in a position to send the notice required by paragraph 2.7.1(1)(a) to the beneficial owner at least 30 days before the date fixed for the meeting (subsection 2.12(3) of the Instrument).

The proximate intermediary must prepare a Form 54-101F7 and forward it and the notice document (see section 4.4 of the Instrument). The notice can be combined with the Form 54-101F7 in a single document.

Delivery methods

Unless the reporting issuer or intermediary, as applicable, has obtained the beneficial owner's prior consent, a beneficial owner will receive a paper copy of the notice document and relevant voting instruction form.

- (2) Paragraph 2.7.1(1)(a) of the Instrument requires the beneficial owner to be sent a document containing required information. This document is essentially a notice that informs the beneficial owner of the meeting, and how to access the information circular and other proxy-related materials that are posted on the internet. A reporting issuer may choose to send additional information on notice-and-access with this notice.
- (3) Paragraph 2.7.1(1)(b) of the Instrument only applies if the reporting issuer is sending proxy-related materials directly to NOBOs under section 2.9. The Form 54-101F6 and the notice document can be combined in a single document.
- (4) Paragraph 2.7.1(1)(d) of the Instrument requires a news release to be issued at least 30 days before the date fixed for the meeting. The news release must contain the information set out in the notice document. This is intended to broadly communicate to the reporting issuer's beneficial owners that they will receive a notice and not a full paper set of proxy-related materials. If the reporting issuer is using notice-and-access only for some beneficial owners, this must also be disclosed and explained in the news release. This is intended to help beneficial owners understand why they are receiving a notice and not the full set of paper proxy-related materials.
- (5) Paragraph 2.7.1(1)(e) of the Instrument requires the information circular and other proxy-related materials to be posted on SEDAR and on a website other than SEDAR. The non-SEDAR website can be the reporting issuer's website or the website of a service provider.
- (6) Paragraph 2.7.1(1)(f) of the Instrument requires the reporting issuer to establish a toll-free telephone number for the beneficial owner to request a paper copy of the information circular. A reporting issuer may choose to, but is not required to, provide additional methods for requesting a paper copy of the information circular. If a reporting issuer does so, it must still comply with the fulfillment

timelines in paragraph 2.7.1(1)(g) of the Instrument and the restrictions on use of information obtained in connection with the request.

A beneficial owner client may ask its intermediary to request a paper copy of the information on its behalf.

- (7) Subsection 2.7.1(5) of the Instrument is intended to allow beneficial owners to access the posted proxy-related materials in a user-friendly manner. For example, requiring the beneficial owner to navigate through several web pages to access the proxy-related materials would not be user-friendly. Providing the beneficial owner with the specific URL where the documents are posted would be more user-friendly. We encourage reporting issuers and their service providers to develop best practices in this regard.

- 5.5 Consent** – Paragraph 2.7(2)(c) of the Instrument requires that beneficial owner consent be obtained if proxy-related materials are being sent using a delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access. Refer to Notice 11-201 Relating to Delivery of Documents by Electronic Means in Québec, and in the rest of Canada, National Policy 11-201 Delivery of Documents by Electronic Means, for guidance on effective delivery using electronic means, including appropriate consents.

In the case of proxy-related materials sent using notice-and-access, a beneficial owner's prior consent must be obtained if the beneficial owner will not be sent paper copies of the notice and relevant voting instruction form by prepaid mail, courier or the equivalent.

- 5.6 Multiple deliveries to one person or company** – A single investor may hold securities of the same class in two or more accounts with the same address. Delivering a single set of securityholder materials to that person or company would satisfy the delivery requirements under the Instrument. We encourage this practice as a way to help reduce the costs of securityholder communications.

9. Part 6 of Companion Policy 54-101CP is repealed and replaced with the following:

PART 6 – USE OF NOBO LIST

- 6.1 Permitted uses** – (1) A person or company that is not a reporting issuer may only use the NOBO list and the procedures in sections 2.9 or 2.12 of the Instrument in connection with an effort to influence voting or an offer to acquire securities of a reporting issuer. In our view, a person or company may obtain the NOBO list if the person or company is acting reasonably and in good faith, and intends to use the NOBO list to determine whether to begin an effort to influence securityholder voting or an offer to acquire securities of the reporting issuer.

- (2) Using a NOBO list contrary to Part 7 of the Instrument will constitute a breach of the Instrument and securities legislation. Penalty provisions of securities legislation may be applied.

10. Section 7.1 of Companion Policy 54-101CP is repealed and replaced with the following:

- 7.1 Materials sent in less than the required number of days before meeting** – In general, exemptive relief to shorten the relevant periods in sections 2.9 and 2.12 of the Instrument will not be granted, except in extraordinary circumstances.

11. Section 7.3 of Companion Policy 54-101CP is repealed and replaced with the following:

- 7.3 Additional costs for expedited processing** – Reporting issuers may want to reimburse an intermediary for reasonable costs incurred in expedited processing of securityholder materials, for example, courier, long distance telephone and overtime costs.

12. Section 7.4 of Companion Policy 54-101CP is repealed and replaced with the following:

- 7.4 Applications** – Major exemptions from the requirements of the Instrument will likely be granted infrequently. We encourage applicants to discuss requests for exemptive relief on a pre-file basis with the relevant Canadian securities regulatory authorities.

13. Section 8.1 of Companion Policy 54-101CP is amended by adding “by prepaid mail” after “proxy-related materials”

14. This Instrument is effective on [*].

SCHEDULE C

PROPOSED AMENDMENT INSTRUMENT TO NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS

1. *This Instrument amends National Instrument 51-102 Continuous Disclosure Obligations.*

2. *Section 1.1 of National Instrument 51-102 is amended by*

(a) adding the following definition after “non-voting security”:

“notice-and-access” means the delivery procedures referred to in section 9.1.1;

(b) adding the following definition after “proxy”:

“proxy-related materials” means securityholder materials relating to a meeting that the reporting issuer is required by the laws under which the reporting issuer is organized, incorporated or continued, or by securities legislation, to send to the registered holders of the securities.

(c) adding the following definitions after “solicit”:

“special meeting” means a meeting at which a special resolution is being submitted to the securityholders of a reporting issuer;

“special resolution” for a meeting,

- (a) has the same meaning given to the term “special resolution” under the laws under which the reporting issuer is incorporated, organized or continued; or
- (b) if no such term exists under the laws under which the reporting issuer is incorporated, organized or continued, means a resolution that is required to be passed by at least two thirds of the votes cast;

3. *The following is added after subsection 9.1(2) of National Instrument 51-102:*

(3) A person or company soliciting proxies may send proxy-related materials using any one or a combination of the following methods:

- (a) paper copies sent by prepaid mail, courier or the equivalent;
- (b) notice-and-access, but only for a meeting that is not a special meeting;
- (c) any delivery method to which the registered holder of voting securities consents.

4. The following is added after section 9.1 of National Instrument 51-102 Continuous Disclosure Obligations:

9.1.1 Notice-and-Access – (1) For a meeting that is not a special meeting, a person or company soliciting proxies may send proxy-related materials to a registered holder of voting securities by notice-and-access that complies with all of the following:

- (a) the registered holder of voting securities is sent a document containing all of the following information:
 - (i) the date, time and location of the reporting issuer's meeting;
 - (ii) a summary of the items to be voted on;
 - (iii) an explanation of how to electronically access the information circular and other proxy-related materials, including a website address other than the address for SEDAR, where the proxy-related materials are located;
 - (iv) a reminder to review the information circular before voting;
 - (v) an explanation of how to obtain a paper copy of the information circular from the person or company;
 - (vi) an explanation of how the registered holder is to execute and return the form of proxy sent under paragraph (b), including any deadline for return of proxies;
- (b) the registered holder of voting securities is sent a form of proxy for use at the meeting;
- (c) the registered holder of voting securities is sent by prepaid mail, courier or the equivalent, paper copies of the documents required by paragraphs (a) and (b), or is sent the documents by any other method previously consented to by the registered holder, and in the case of a solicitation by or on behalf of management of the reporting issuer the documents are sent at least 30 days before the date fixed for the meeting;
- (d) in the case of a solicitation by or on behalf of management of the reporting issuer, a news release is issued at least 30 days before the date fixed for the meeting containing the following:
 - (i) the information set out in paragraph (a);
 - (ii) if management of the reporting issuer is using notice-and-access only in respect of some registered holders, an explanation of its decision;
- (e) public electronic access to the information circular, form of proxy and other proxy-related materials is provided on the same day as the

person or company soliciting proxies sends the documents in paragraphs (a) and (b), in the following manner:

- (i) the proxy-related materials are filed on SEDAR as required by section 9.3;
 - (ii) the proxy-related materials are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the material relates, at a website address other than the address for SEDAR;
- (f) a toll-free telephone number is provided for use by the registered holder of voting securities to request a paper copy of the information circular at any time from the date that the person or company soliciting proxies sends the documents in paragraphs (a) and (b) to the registered holder, up to and including the date of the meeting including any adjournment;
- (g) if a request is received under paragraph (f) or by any other means, a paper copy of the information circular is sent by prepaid mail, courier or the equivalent to the person or company at the address specified in the request, free of charge to the person or company to whom the paper copy of the information circular is sent, no later than 3 business days after receiving the request.
- (2) A person or company soliciting proxies that posts proxy-related materials in the manner referred to in subparagraph (1)(e)(ii) must also post on the website the following documents:
- (a) any other disclosure material regarding the meeting that the person or company has sent to registered holders or beneficial owners of voting securities;
 - (b) any written communications the person or company soliciting proxies has made available to the public regarding the meeting, whether sent to registered holders or beneficial owners of voting securities or not.
- (3) Proxy-related materials that are posted under subparagraph (1)(e)(ii) must be posted in a manner and be in a format that permits a person or company with a reasonable level of computer skill and knowledge to do all of the following conveniently:
- (a) access, read and search the documents on the website;
 - (b) download and print the documents.

- (4) An information circular posted under subparagraph (1)(e)(ii) must contain the same information as the information circular filed on SEDAR.
- (5) Management of a reporting issuer that sends an information circular and form of proxy to a registered holder of voting securities using notice-and-access and sends paper copies of the information circular and form of proxy to other registered holders of voting securities by prepaid mail, courier or the equivalent must send the paper copies to those other registered holders on the same day as they send the proxy-related materials under paragraph (1)(c).
- (6) Despite anything in this section or the previous section, a registered holder of voting securities may consent to the use of other delivery methods to send proxy-related materials. Nothing in this section shall be interpreted as restricting a registered holder of voting securities from consenting to use by a person or company soliciting proxies of other delivery methods to send proxy-related materials.

9.1.2 Compliance with SEC Rules – Section 9.1 does not apply to a reporting issuer that is an SEC issuer if it uses the procedures in Rule 14a-16 under the 1934 Act to deliver proxy-related materials to a registered holder of voting securities.

5. *Form 51-102F5 – Information Circular is amended by adding the following after item 4.2:*

- 4.3 If management of the reporting issuer has decided not to pay for intermediaries to forward to objecting beneficial owners under NI 54-101 the proxy-related materials and Form 54-101F7 – Request for Voting Instructions Made by Intermediary, the information circular must state this fact. The information circular must also state that it is the responsibility of objecting beneficial owners to contact their intermediaries to make any necessary arrangements to exercise voting rights attached to securities they beneficially own.
- 4.4 If management of the reporting issuer has determined to use notice-and-access only in respect of certain registered holders or beneficial owners, disclose this fact and provide an explanation of this decision.

6. *This Instrument is effective on [*].*

SCHEDULE D

PROPOSED AMENDMENT INSTRUMENT TO COMPANION POLICY 51-102CP CONTINUOUS DISCLOSURE OBLIGATIONS

1. *Companion Policy 51-102CP Continuous Disclosure Obligations is amended by this Instrument.*

2. *Section 10.1 of the Companion Policy 51-102 is amended by:*

(a) *replacing “Any” with “Generally, any”;*

(b) *adding the following after “in the rest of Canada.”:*

However, where a reporting issuer is using notice-and-access to deliver proxy-related materials, it should refer to the specific guidance in subsection 10.2(3) of the Policy.

3. *The following is added after section 10.1 of Companion Policy 51-102:*

10.2 Delivery of Proxy-Related Materials – (1) This section provides guidance on delivery of proxy-related materials. Reporting issuers should also review any other applicable legislation, such as corporate legislation.

(2) **Prepaid mail, courier or the equivalent** – Paper copies of proxy-related materials must be sent using prepaid mail, courier or an equivalent delivery method. An equivalent delivery method is any delivery method where the registered holder receives paper copies in a similar time frame as prepaid mail or courier. For example, a reporting issuer that sponsors an employee share purchase plan could arrange to deliver proxy-related materials to registered holder employees through the reporting issuer’s internal mail system.

(3) **Notice-and-access** – The following is guidance on specific provisions regarding notice-and-access.

(a) Paragraph 9.1.1(1)(a) of the Instrument requires the registered holder of voting securities to be sent a document containing required information. This document is essentially a notice that informs the registered holder of the meeting, and how to access the information circular and other proxy-related materials that are posted on the Internet. A person or company soliciting proxies may choose to send additional information on notice-and-access with the notice.

(b) Paragraph 9.1.1(1)(b) of the Instrument requires the registered holder of voting securities to be sent the form of proxy.

- (c) Paragraph 9.1.1(1)(c) of the Instrument deals with how the notice in paragraph 9.1.1(1)(a) and the form of proxy are to be sent. The default delivery method to a registered holder of voting securities is paper copies of the required documents sent by prepaid mail, courier or the equivalent. If a person or company soliciting proxies wishes to use alternate delivery methods such as electronic mail, it must obtain the registered holder's prior consent.
- (d) Paragraph 9.1.1(1)(d) of the Instrument requires a news release be issued at least 30 days before the date fixed for the meeting. The news release must contain the information set out in the notice document. This is intended to broadly communicate to the reporting issuer's registered holders of voting securities that they will receive a notice and not a full paper set of proxy-related materials. If the reporting issuer is using notice-and-access only for some registered holders, this must also be disclosed and explained in the news release. This is intended to help registered holders understand why they are receiving a notice and not the full set of paper proxy-related materials.
- (e) Paragraph 9.1.1(1)(e) of the Instrument requires the information circular and other proxy-related materials to be posted on SEDAR and on an additional website other than SEDAR. The non-SEDAR website can be the website of the person or company soliciting proxies (e.g. the reporting issuer's website), or the website of a service provider.
- (f) Paragraph 9.1.1(1)(f) of the Instrument requires the person or company soliciting proxies to establish a toll-free telephone number for the registered holder of voting securities to request a paper copy of the information circular. The person or company soliciting proxies may choose, but is not required to, provide additional methods for requesting a paper copy of the information circular. If a person or company soliciting proxies does so, it must still comply with the fulfillment timelines in paragraph 9.1.1(1)(g) of the Instrument.
- (g) Subsection 9.1.1(3) of the Instrument is intended to allow registered holders of voting securities to access the posted proxy-related materials in a user-friendly manner. For example, requiring the registered holder to navigate through numerous web pages in order to access the proxy-related materials would not be user-friendly. Providing the registered holder with the specific URL where the documents are posted would be more user-friendly. We encourage reporting issuers and their service providers to develop best practices in this regard.

4. *This Instrument is effective on [*].*

SCHEDULE E

PROPOSED AMENDMENTS TO NATIONAL POLICY 11-201 DELIVERY OF DOCUMENTS BY ELECTRONIC MEANS

1. Section 1.3 of National Policy 11-201 Delivery of Documents by Electronic Means is repealed and replaced with the following:

- 1.3 Application of this Policy** – (1) Parts 2 and 3 of this Policy apply to documents required to be delivered under the delivery requirements. This includes prospectuses, financial statements, trade confirmations, and account statements that are delivered by issuers, registrants or persons or companies acting on behalf of issuers or registrants, such as transfer agents or other service providers. Examples of documents that are not required by securities legislation to be delivered, and which are therefore not subject to Parts 2 and 3, are documents delivered by securityholders or investors to issuers or registrants, for instance, in connection with the return of completed proxies or voting instructions. In addition, there is specific guidance on proxy documents in Part 4 of this Policy.
- (2) This Policy does not apply to deliveries where the method of delivery is mandated by securities legislation and that method does not include electronic means. Market participants also should consider whether other relevant legislation, such as corporate law statutes, may impose requirements concerning the method of delivery in some circumstances.
- (3) This Policy does not apply to documents filed with or delivered by or to a securities regulatory authority or regulator.

2. Section 4.1 of National Policy 11-201 is repealed and replaced with the following:

- 4.1 Proxy Delivery Requirements** – (1) This section applies to persons or companies required to send proxy documents under securities legislation to registered or beneficial securityholders, including depositories, participants in depositories, intermediaries and service providers to those persons or companies.
- (2) Section 2.7.1 of National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer and section 9.1.1 of National Instrument 51-102 Continuous Disclosure Obligations prescribe how reporting issuers and intermediaries can satisfy obligations to deliver proxy documents to beneficial and registered owners using a “notice-and-access” delivery method.

- (3) “Notice-and-access” is not the only means by which a reporting issuer or intermediary can satisfy their proxy document delivery obligations using electronic delivery methods. Market participants can use alternate methods of delivery that are consistent with the four components of effective delivery set out in Part 2 of this Policy.
- (4) Market participants are reminded, however, that merely making proxy documents available for access on a website likely does not constitute effective delivery.

3. *This Instrument is effective on [*].*