

## 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*

June 17, 2011

#### 1. Introduction

We, the members of the Canadian Securities Administrators (the **CSA**), are publishing for a 60-day comment period revised versions of proposals (the **Proposals**) intended to improve the process by which reporting issuers send proxy-related materials to and solicit voting instructions from registered holders and beneficial owners of their securities (the **Shareholder Voting Communication Process**).

Specifically, we are publishing the following materials (the **Revised Materials**):

- a revised proposed amendment instrument to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and the related forms (**NI 54-101**);
- a revised proposed amendment instrument to National Instrument 51-102 *Continuous Disclosure Obligations* and Form 51-102F5 *Information Circular* (**Form 51-102F5**) (collectively, **NI 51-102**); and
- revised proposed changes to:
  - Companion Policy 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**54-101CP**); and
  - Companion Policy 51-102CP *Continuous Disclosure Obligations* (**51-102CP**).

The original versions of the above materials (the **Original Materials**) were first published on April 9, 2010. We received 27 comment letters. A summary of the comments we received and our responses to those comments are included in Schedule A.

The Original Materials also included proposed amendments to National Policy 11-201 *Delivery of Documents by Electronic Means* (**NP 11-201**). We are not publishing revised amendments to NP 11-201 at this time. An amended and restated version of NP 11-201 201 (**Proposed New NP 11-201**) was published for comment on April 29, 2011. We will consider at a later date what, if

any, additional changes to Proposed New NP 11-201 should be made in connection with the Proposals.

The Revised Materials are contained in the following Schedules to this Notice. Certain jurisdictions may include additional local information.

Schedule A:	Summary of Comments
Schedule B:	Revised Proposed Amendment Instrument to NI 54-101
Schedule C:	Revised Proposed Changes to 54-101CP
Schedule D:	Revised Proposed Amendment Instrument to NI 51-102
Schedule E:	Revised Proposed Changes to 51-102CP

The Revised Materials will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca  
www.albertasecurities.com  
www.bsc.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

**For more information on the comment process, see below under “How to provide your comments on the Revised Materials”.**

## **2. Substance and purpose of the Proposals and the Revised Materials**

The most significant features of the Proposals are as follows:

- providing reporting issuers with a new “notice-and-access” mechanism to send proxy-related materials to registered holders and beneficial owners of securities, collectively **shareholders**;
- simplifying the process by which beneficial owners are appointed as proxy holders in order to attend and vote at shareholder meetings; and
- requiring reporting issuers to provide enhanced disclosure regarding the beneficial owner voting process.

The Revised Materials contain proposed changes affecting these three features of the Proposals, which we describe below. We also briefly describe additional changes to other aspects of the Original Materials.

### **(a) Changes to notice-and-access (proposed sections 2.7.1 to 2.7.6 of NI 54-101; proposed sections 9.1.1 to 9.1.6 of NI 51-102)**

Under notice-and-access, a reporting issuer would be permitted to deliver proxy-related materials by sending a notice package to shareholders containing the following:

- a notice to shareholders informing them that proxy-related materials have been filed on SEDAR and posted on another non-SEDAR website and explaining how to access them; and
- the relevant voting document (a proxy, Form 54-101F6 or Form 54-101F7, as applicable).

The notice package would not contain the information circular. Instead, the information circular would be filed on SEDAR and also posted on a non-SEDAR website. A shareholder could request that a paper copy of the information circular be mailed to the shareholder free of charge.

We continue to take the view that properly designed notice-and-access procedures can enhance the Shareholder Voting Communication Process as well as increase the overall efficiencies of the system. We now propose several changes to our original proposal in response to the comments we received, as well as our ongoing examination of the Shareholder Voting Communication Process.

**(i) Reporting issuers other than investment funds can use notice- and-access for all meetings**

The original notice-and-access proposal would not have permitted reporting issuers to use notice-and-access for “special meetings” as defined in NI 54-101. We now propose that notice-and-access be permitted for all meetings of reporting issuers that are not investment funds. See proposed section 2.7.1 of NI 54-101 and proposed section 9.1.1 of NI 51-102.

This proposed change is intended to address concerns that restricting notice-and-access to meetings that are not special meetings:

- adds an additional layer of complexity to the voting process and may cause shareholder confusion;
- implies that “routine” annual matters such as director elections and auditor appointments are not important; and
- limits the potential efficiencies that can be realized by notice-and-access.

The proposed change also excludes investment funds from using notice-and-access. We did not explicitly request comment on, nor did we receive any comments that specifically addressed, the issue of whether investment fund reporting issuers should also be permitted to use notice-and-access for meetings. We would like to consider further and seek feedback on the appropriate form and content of notice for meetings involving investment funds, particularly those involving fundamental changes to an investment fund.

We also propose additional companion policy guidance on factors that reporting issuers should take into account when deciding when and how to use notice-and-access. Factors include:

- the nature of the meeting business; and
- whether notice-and-access resulted in material declines in shareholder voting rates where it was used for prior meetings.

**(ii) Reporting issuers must provide advance notice of their first use of notice-and-access and disclosure and provide information regarding**

## **use of notice-and-access in the notification of meeting and record dates**

The original notice-and-access proposal would have permitted a reporting issuer to use notice-and-access without giving shareholders any prior notification. This raises concerns that a shareholder who receives a notice package for the first time would be confused about what he or she is being sent.

We now propose that prior to using notice-and-access for the first time, a reporting issuer must provide advance notice that it intends to do so three to six months before the meeting. The issuer must issue a news release and post information regarding notice-and-access on a website that is not SEDAR. See proposed section 2.7.2 of NI 54-101 and proposed section 9.1.2 of NI 51-102.

We also no longer propose to require that each time a reporting issuer uses notice-and-access it issue a news release disclosing that fact at least 30 days before the meeting. We now propose that the reporting issuer state its intention to use notice-and-access in the notification of meeting and record dates required by section 2.2 of NI 54-101.

In addition, we provide companion policy guidance encouraging issuers to consider what additional methods of advance notice are appropriate, such as a mailing in advance of the meeting.

### **(iii) Reporting issuers must provide explanatory material regarding notice-and-access in the notice package**

The original notice-and-access proposal did not require that any explanatory material regarding notice-and-access be included in the notice package. We now think that shareholders who receive a notice package always should have basic information about notice-and-access as part of the notice package.

We now propose that a reporting issuer must include a plain-language explanation of notice-and-access in the notice package that is sent to shareholders. The reporting issuer must also post the explanation on the website where the full set of proxy materials is posted. See proposed subparagraph 2.7.1(1)(a)(ii) of NI 54-101, and proposed subparagraph 9.1.1(1)(a)(ii) of NI 51-102.

### **(iv) Reporting issuers cannot include additional material in the notice package other than explanatory material regarding notice-and-access**

The original notice-and-access proposal would have permitted reporting issuers to include additional material regarding the meeting (but not an information circular) in the notice package. We now propose to restrict a reporting issuer from including such additional material in the notice package unless a copy of the information circular is also included. We are concerned that provision of such additional material without an information circular encourages shareholders to only read the additional material without referring to the information circular.

### **(v) Inclusion of paper copies of the information circular with the notice package pursuant to standing instructions**

The original notice-and-access proposal did not explicitly address whether it was permissible for a shareholder to provide annual or standing instructions to receive a paper copy of the information circular where a reporting issuer uses notice-and-access. Under the original proposal, the only specified method by which a shareholder could obtain a paper copy of the information circular was to contact the reporting issuer (or the reporting issuer's service provider) to request a paper copy after the notice package had been sent out.

We now think that shareholders should be able to request that a paper copy of the information circular be automatically included with the notice package. Having the information circular automatically included, as opposed to having to wait until the notice package has been sent out, is more user-friendly to shareholders.<sup>1</sup> Standing instructions also provide reporting issuers with information that can assist them in planning print volumes.

We therefore propose that reporting issuers be permitted to obtain standing instructions from registered holders, and intermediaries be permitted to obtain standing instructions from beneficial owners. Where a reporting issuer or intermediary obtains such instructions, they must comply with these instructions. We also impose obligations on reporting issuers and intermediaries to facilitate compliance with these standing instructions once they have been obtained. See proposed section 2.7.6 of NI 54-101 and proposed section 9.1.5 of NI 51-102.

**(vi) Inclusion of paper copies of the information circular with the notice package where annual financial statements and MD&A are requested and sent as part of proxy-related materials**

Section 4.6 of NI 51-102 establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. These documents are generally found in an annual report, so for ease of reference, we will use the term annual report to refer to those documents.

If a reporting issuer does not send the annual report to all shareholders, the reporting issuer must send the annual request form to its shareholders to enable shareholders to request the annual report for the following financial year. In practice, service providers have integrated the annual request form mechanism with the Shareholder Communication Voting Process by:

- incorporating the annual request form into the proxy or the voting instruction form sent as part of proxy-related materials to shareholders. This avoids a separate mailing of the request form; and
- where the annual report has been requested, automatically inserting the annual report into the proxy-related materials sent to the relevant shareholders. This avoids a separate mailing of the annual report.

We also encourage reporting issuers to send their audited annual financial statements or annual report at the same time as other proxy-related materials. See section 7.2 of 54-101CP.

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<sup>1</sup> We note that data from the U.S. suggests that where retail beneficial owners receive full packages of materials as a result of standing instructions, their rate of vote return is extremely high. 60% of beneficial owner accounts that received full packages as a result of standing instructions voted, as compared to approximately 19% of beneficial owner accounts where notice-and-access was not used. See "Notice and Access: Statistical Overview of Use with Beneficial Shareholders As of December 31, 2010." Slides available at <http://www.broadridge.com/notice-and-access/index.asp>.

We have received feedback from Broadridge Investor Communications Corporation, the primary intermediary service provider, that in order to facilitate the efficient integration of the annual request form mechanism with the Shareholder Communication Voting Process, annual instructions to receive the annual report should also constitute instructions to include a paper copy of the information circular where the reporting issuer uses notice-and-access. Conversely, standing instructions to receive paper copies of the information circular as part of the notice package should also constitute instructions to include the annual report as part of the notice package.

If the instructions were not integrated in the above fashion, service providers would need to modify the existing infrastructure to accommodate four types of notice packages:

- notice package without paper copy of information circular and annual report;
- notice package with paper copy of information circular;
- notice package with paper copy of annual report; and
- notice packages with paper copy of information circular and annual report.

In contrast, integrating the instructions as requested would reduce the types of notice packages to two:

- notice package without paper copy of information circular and annual report;
- notice package with paper copy of information circular and annual report.

Having two types of notice packages would be simpler to design, implement and maintain.

We do not have any concerns with automatically including a paper information circular with the notice package for those shareholders who have requested to receive the annual report, and therefore propose that section 4.6 of NI 51-102 be amended so that paper copies of the information circular will be included with the notice package where the annual report is requested and sent as part of proxy-related materials.

However, we are not proposing at this time to explicitly prescribe the converse, i.e., the automatic inclusion of an annual report with the notice package where a paper information circular is included pursuant to standing instructions. While we acknowledge that having two types of notice packages would be simpler to design, implement and maintain, we would appreciate additional input from stakeholders before proposing such a change. Is it reasonable to infer that a shareholder who wishes to receive a paper copy of the information circular would also wish to receive the annual report?

#### **(vii) Stratification**

The original notice-and-access proposal contemplated that a reporting issuer could choose to send a notice package to some shareholders, and send a standard package (which would contain the notice of meeting, voting document and information circular) to others.

We now propose that where a reporting issuer uses notice-and-access, it must send the same basic notice package containing the required notice, the voting document, and the explanation of notice-and-access to all shareholders. However, the notice package for those shareholders who

have provided standing instructions and who have provided annual instructions (as discussed above) would also include the paper copy of the information circular.

We refer to the process of including a paper copy of the information circular in the notice package as “stratification”, and have added a new definition in subsection 1(1) of NI 54-101 and subsection 1.1(1) of NI 51-102.

We do not propose at this time to prescribe other criteria for when stratification can be used by a reporting issuer. We would require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a paper copy of the information circular. However, we are proposing companion policy guidance that states our expectation that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions would do so in order to enhance effective communication, and not to disenfranchise shareholders.<sup>2</sup> The guidance also explains that we would not mandate the provision of stratification by reporting issuers or intermediaries, other than in order to comply with standing instructions or annual requests for paper copies of information circulars that they may have chosen to obtain from registered holders or beneficial owners. We expect any additional stratification criteria will evolve through market demand and practice, and we will monitor developments in this area.

**(viii) The proposed exemption for delivery of proxy-related materials using US notice-and-access is available only to SEC issuers with a limited Canadian presence**

The original notice-and-access proposal would have exempted reporting issuers who are SEC issuers from the obligation to deliver proxy-related materials to beneficial owners under NI 54-101 where they use the notice-and-access process prescribed by the SEC (**U.S. notice-and-access**). A similar exemption was proposed in respect of registered holders. We propose to amend the exemption to clarify that it is available only to SEC issuers with a limited Canadian presence. We also are exempting intermediaries who deliver proxy-related materials on behalf of the issuer using U.S. notice-and-access from their obligations under NI 54-101. See section 9.1.1 of NI 54-101 and section 9.1.6 of NI 51-102.

**(ix) Methods for sending notice package**

The original notice-and-access proposal contemplated that issuers would deliver the notice package either using:

- prepaid mail, courier or the equivalent; or
- any other method previously consented to by the shareholder.

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<sup>2</sup> One example of how stratification could enhance communication is where a reporting issuer wishes to send proxy-related materials to all its beneficial owners, including those who have declined to receive materials (**declining beneficial owners**). These declining beneficial owners could be sent a notice package only, while the reporting issuer would send other beneficial owners who wished to receive all materials the notice package and the information circular. All beneficial owners thus would receive the documentation necessary to vote, but those declining to receive materials would not receive a paper copy of the information circular unless they requested it.

We now propose to remove the reference to “any other method previously consented to by the shareholder”, as it was not clear what such methods would be and how in practice they could be used to send the notice package. The revised provisions now only refer to sending the notice package by prepaid mail, courier or the equivalent. See paragraph 7.1(1)(b) of NI 54-101 and paragraph 9.1.1(1)(c) NI 51-102.

However, a reporting issuer’s decision to use notice-and-access would not preclude a shareholder from also being sent proxy-related materials using an alternate method to which the shareholder previously has consented. See section 2.7.5 of NI 54-101 and section 9.14 of NI 51-102. For example, our understanding is that one or more service providers acting on behalf of reporting issuers or intermediaries have previously obtained consents from shareholders for proxy-related materials to be sent by email (with links to the materials included in the body of the email). This delivery method would still be available to issuers and intermediaries even if notice-and-access is used.

**(x) Specific times by which a reporting issuer must provide materials for forwarding to proximate intermediaries**

The original notice-and-access proposal did not mandate specific times by which a reporting issuer would have to provide the documents for the notice package to proximate intermediaries for forwarding. We now propose specific timelines: three business days before the 30th day before the date fixed for the meeting where materials are sent by first class mail, courier or the equivalent, and four business days before the 30th day in the case of other types of prepaid mail. See subsection 2.12(3) of NI 54-101.

We provide guidance in 54-101CP that “first class mail” is the equivalent of Canada Post Lettermail.

**(xi) Methods and timing for fulfilling request for paper information circulars**

We propose that there be two different sets of fulfillment requirements for requests received prior to the date of the meeting, and on or after the date of the meeting. Where the request is received prior to the date of the meeting, the paper information circular must be sent by first class mail, courier or the equivalent within three business days. Where the request is received on or after the date of the meeting, and within one year of the information circular being filed, the paper information circular must be sent by prepaid mail, courier or the equivalent within 10 calendar days. Requests for a paper copy of the information circular do not need to be fulfilled more than one year after the date of the applicable meeting. See paragraph 2.7.1(1)(f) of NI 54-101.

**(xii) Other changes to the notice-and-access proposal**

We are also making the following additional changes to the notice-and-access proposal:

- The information circular and other documents in the notice package must be filed on SEDAR and posted on a non-SEDAR website on or before the day that the reporting issuer sends the notice package (paragraph 2.7.1(1)(d) of NI 54-101). The original proposal that the posting had to occur on the same day as the sending of the notice package meant that reporting issuers potentially would have to choose between mailing



the annual financial statements and annual MD&A with the notice package, and incorporating by reference the information circular in the AIF.

- We have modified the provisions that restrict information gathering by reporting issuers who receive requests for paper copies of information circulars or via the non-SEDAR website so that the prohibitions address intentional information gathering by the reporting issuer (section 2.7.3 of NI 54-101). Intentional information gathering can be contrasted with situations where information is volunteered by a requester, or where certain website functionality could be, but is not used, to identify a shareholder who accesses the non-SEDAR website.

**(b) Simplification of beneficial owner proxy appointment process (sections 2.18 and 4.5 of NI 54-101)**

**(i) Authority to act for and on behalf of the beneficial owner in respect of all matters that may come before the meeting**

The Original Materials proposed the repeal of the provisions relating to legal proxies, and replaced them with a provision that requires intermediaries and management as applicable to appoint a beneficial owner (or another person designated by the beneficial owner) as proxy holder to attend and vote at the meeting, if requested by the beneficial owner. However, there was no explicit requirement that an intermediary or reporting issuer management give discretionary authority to a beneficial owner to vote on all matters that would come before the meeting. The lack of an explicit requirement would permit an intermediary or management to limit the scope of voting authority to only those matters identified in the voting instruction form, and therefore potentially prevent the beneficial owner from voting on important matters that might come before the meeting but that were not set out in the voting instruction form.

We therefore propose that unless a beneficial owner has instructed otherwise, where an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder, the beneficial owner or nominee also must be given authority to attend, vote and otherwise act for and on behalf of the intermediary (or the issuer's management, where the reporting issuer is sending proxy-related materials directly to NOBOs) in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

We also propose consequential changes to the instructions regarding attending and voting at a meeting in Form 54-101F6 and Form 54-101F7.

**(ii) Deposit of proxy prior to proxy cut-off**

The Original Materials proposed to require an intermediary (or if applicable the reporting issuer) to deposit any proxy appointing a beneficial owner as a proxy holder within any time specified under corporate law for the deposit of proxies (a **proxy cut-off**). We propose to modify this requirement so that it applies only where the intermediary or reporting issuer (as the case may be) obtains the instructions from the beneficial owner to appoint it as proxy holder at least one business day before the proxy cut-off.

**(c) Enhanced disclosure of voting process (subsection 2.2(2) of NI 54-101)**

We propose to add a requirement that the notification of meeting and record dates under subsection 2.2(2) of NI 54-101 also include disclosure regarding the reporting issuer's use of notice-and-access, whether it is sending proxy-related materials directly to NOBOs, and whether it intends to pay for delivery of proxy-related materials directly to OBOs. We think that including this information in the notification will enhance the transparency of the voting process. This requirement is in addition to the requirement to disclose the above information in the information circular if applicable.

**(d) Other changes to NI 54-101**

We propose several other changes in respect of the amendments to NI 54-101:

- Subsection 2.5(4): We propose that a reporting issuer or person or company retained by the reporting issuer may request beneficial ownership information for the purpose of obtaining a NOBO list, if the intermediary to whom the request is being made reasonably believes that the person or company making the request has the technological capacity to receive the NOBO list. We think this change balances the concern with opening up the entire process of obtaining beneficial ownership information with streamlining the process for obtaining NOBO lists. It also enables the entity in the best position to assess a requester's technological capacity to receive the NOBO list to make that assessment.
- Removal of proposed changes to processing times in section 2.12: We no longer propose to have a single three-day processing time for proxy-related materials sent indirectly by prepaid mail. We are retaining the existing provision, which requires an additional day for processing proxy-related materials that are not sent by first class mail.
- Subsections 2.18(5) and 5.4(4): We propose to clarify that the confirmation provided to the intermediary must identify the specific meeting to which the confirmation applies, but is not required to specify each proxy appointment.
- Subsection 2.20(a.1) of NI 54-101: We propose to clarify that where a reporting issuer uses notice and access, a reporting issuer can abridge the record date for notice to not less than 30 days before the meeting date, and the sending of the notification of meeting and record dates under section 2.2 to not less than 30 days before the date of the meeting. This is to enable shareholders to have sufficient time to request and receive a paper copy of the information circular in advance of the meeting, if they wish to receive one.
- Removal of certain proposed record keeping requirements: We are removing the proposed requirements for issuers and intermediaries to retain a record of each Form 54-101F6 or Form 54-101F7 sent and the date and time of any voting instructions, including proxy appointment instructions, at this time. We will consider the broader issue of record-keeping generally in the proxy voting system at another time.
- Form 54-101F2 *Request for Beneficial Ownership Information*: We propose to amend the form to require the reporting issuer to state whether it is using notice-and-access, and any stratification criteria being used.

**3. Other possible reforms to the proxy voting process**

We received a number of comments on possible reforms to the proxy voting process which are set out and discussed in Appendix A. We thank all the commentators for their feedback. We are not at this stage publishing any specific regulatory proposals, other than the Proposals, in response to the comments we received. However, we continue to assess the proxy voting process, and may publish additional materials for consultation at a later date. We note that the proxy voting system is complex, and changes intended to improve one part of the system can cause “ripple effects” on other parts. Any proposed reforms must be carefully designed in order to minimize the likelihood of unintended consequences.

#### **4. How to provide your comments on the Revised Materials**

You must submit your comments in writing by **August 16, 2011**. If you are sending your comments by email, you should also send an electronic file containing the submissions in 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 you comments only to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

**John Stevenson**

**Secretary**

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**Anne-Marie Beaudoin**

**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](http://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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**Schedule A**  
**Summary of Comments and Responses**

We received comment letters from the following:

British Columbia Investment Management Corporation  
 Broadridge Investor Communication Solutions Canada  
 Canadian Bankers Association  
 Canadian Coalition for Good Governance  
 Canadian Foundation for Advancement of Investors Rights  
 Canadian Oil Sands  
 Canadian Society of Corporate Secretaries  
 Computershare Trust Company of Canada  
 Davies Ward Phillips & Vineberg LLP  
 GG Consulting  
 Hermes Equity Ownership Services Limited  
 Investment Industry Association of Canada  
 Kempenfelt House Consulting Inc.  
 Kenmar Associates  
 Kingsdale Shareholder Services  
 Laurel Hill Advisory Group  
 Manitoba Telecom Services Inc.  
 Manulife Financial Corporation  
 Mouvement d'Éducation et de Défense des Actionnaires  
 Ontario Bar Association  
 Pension Investment Association of Canada  
 RBC Dominion Securities  
 Scotia Capital Inc.  
 Securities Transfer Association of Canada  
 Shareholder Association for Research and Education  
 TMX Group Inc.  
 TransCanada Corporation

**A. Comments on the Original Materials**

#	Issue/Comment	Response
<b>Notice-and-Access</b>		
<b>1.</b>	<i>Whether notice-and-access generally is a positive development, particularly for retail investors</i>	
	The majority of comments, including comments from reporting issuers, institutional shareholders, intermediaries and service providers, were generally supportive of notice-and-access as being a positive step toward encouraging proxy voting and making the system more efficient. A transfer agent group noted that in its view, the main cause for a decrease of retail voting in the U.S. was the absence of the voting instruction form from the notice package. Several comment letters, however, recommended improvements be made to the proposed notice-and-access	We continue to think that permitting issuers to use notice-and-access to send proxy-related materials can improve the beneficial owner communication process.  We are, however, proposing several changes to the notice-and-access procedures we originally proposed in order to address concerns that notice-and-access will be an obstacle to voting, particularly by retail shareholders.  We now propose that reporting issuers who

#	Issue/Comment	Response
	<p>procedures, particularly a greater focus on shareholder education regarding notice-and-access.</p> <p>We received several comments from groups with a shareholder focus that did not support notice-and-access. Two commentators were very concerned that notice-and-access would be an obstacle to informed voting by requiring beneficial owners to take additional steps to access the information circular. One of the commentators stated that fundamental changes needed to be made to the procedures, and said that the proposal as currently designed should not be adopted.</p> <p>We received one comment that was neither in favour of nor opposed to notice-and-access, but that recommended that the CSA should monitor the effect of notice-and-access on the participation of Canadian retail shareholders, with the aim of holding voting participation rates at 2010 levels or increasing them.</p>	<p>use notice-and-access must provide advance notification before they use notice-and-access for the first time; and explanatory material on notice-and-access must be included in the notice package along with the notice and voting instruction form.</p> <p>We also propose to permit registered holders and beneficial owners to provide standing instructions on whether they wish to receive paper copies of information circulars in all instances where a reporting issuer is using notice-and-access.</p>
2.	<i>Whether notice-and-access should be available for special meetings under NI 54-101</i>	
	<p>Only one comment supported restricting notice-and-access to meetings that are not special meetings under NI 54-101 and to only extend it to all meetings until the impact of notice-and-access on voting participation rates had been demonstrated.</p> <p>All other comments disagreed with restricting notice-and-access to meetings that are not special meetings.</p> <p>The comments expressed the following concerns regarding the proposed restriction:</p> <p>(a) it would add an additional layer of complexity to an already complex system;</p> <p>(b) the distinction between special and non-special meetings is not meaningful in many cases, as controversial matters are often voted on at non-special meetings (e.g., the case of proxy contests);</p> <p>(c) it could perpetuate a view that the election of directors and (re)appointment of auditors require less attention;</p> <p>(d) it would significantly reduce the number of meetings for which notice-and-access could be used, thus significantly reducing the efficiency gains for the beneficial owner communication process.</p>	<p>We agree with the large majority of comments that notice-and-access should be available for all meetings, not just special meetings. We therefore propose to eliminate this restriction. In addition, we also propose additional companion policy guidance on what factors reporting issuers should consider when deciding whether to use notice-and-access.</p>

#	Issue/Comment	Response
3.	<i>Whether there should be a prescribed form of notice</i>	
	<p>Comments were divided on this issue.</p> <p>Those who supported a prescribed or standardized form of notice expressed concern that lack of specific requirements could create inconsistency between proxy-related materials and result in shareholder confusion.</p> <p>Those who did not think that a prescribed or standardized form was necessary noted that as long as the basic information about matters to be voted on was provided, it would be appropriate to provide additional information.</p>	<p>Regardless of whether commentators supported a prescribed or standardized form, all commentators appeared to agree that the notice should contain basic information about the matters to be voted on, and that investor confusion should be minimized.</p> <p>With the above objectives in mind, we have revised the proposal to specify that the notice must only state certain information. With respect to matters being voted on at the meeting, the notice must only state each matter or group of related matters to be voted on as identified in the form of proxy. This will facilitate consistency between the notice and other proxy-related materials, as well as standardization of the notice among issuers, both of which are intended to minimize investor confusion. We also propose companion policy guidance that states our expectations that reporting issuers draft the items to be voted on in the proxy in a clear and user-friendly manner.</p>
4.	<i>Whether additional information (that is not an information circular) can be provided with the notice</i>	
	<p>Comments were divided on this issue. Most commentators shared a concern that additional materials could be confusing and in some cases, intentionally or unintentionally inaccurate or misleading. One comment suggested mandating a plain language summary of the notice with all relevant voting information. Another comment suggested prescribing rules regarding the type, tone, content and purpose of additional materials. One comment also proposed requiring any additional materials to be provided to all investors, regardless of how the materials were delivered.</p>	<p>We think that permitting additional materials to be included in the notice-and-access package without any prescribed rules around type, tone, content and purpose could contribute to investor confusion. Furthermore, we are concerned that providing such additional materials without the information circular encourages shareholders not to review the information circular. We therefore propose to prohibit additional material from being included in the notice-and-access package without an information circular also being included.</p>
5.	<i>Whether notice-and-access can be used only in respect of some beneficial owners</i>	
	<p>Comments were divided on this issue. Some comments expressed concern that selective use of notice-and-access would be confusing to shareholders, and in some cases could be used to manipulate voting outcomes by reporting issuers. Other comments viewed selective use of notice-and-access as being consistent with effective communication with shareholders while maximizing cost efficiencies in the communication process.</p> <p>One comment noted that there is a distinction</p>	<p>In order to minimize the complexity of the system and investor confusion, we propose that an issuer that uses notice-and-access under NI 54-101 must use it in respect of all its beneficial owners (subject to any alternate delivery methods such as e-mail delivery to which the shareholder has consented or may consent). However, the issuer can choose to include a paper copy of the information circular in the notice package that is delivered to a subset of its shareholders. We have added a definition of “stratification” to</p>



#	Issue/Comment	Response
	<p>to be made between selective use of notice-and-access, and “stratification”. Stratification refers to procedures whereby an issuer that uses notice-and-access includes paper copies of the information circular in the notice package sent to a subset of beneficial owners.</p>	<p>describe these procedures.</p> <p>We think that stratification as part of notice-and-access can be consistent with effective communication while maximizing cost efficiencies in the communication process. However, in order to increase transparency, we propose to require that stratification criteria be disclosed in the notification of meeting and record dates required by s. 2.2 of NI 54-101, the notice-and-access explanation required by s. 2.7.1(1)(a)(ii), and the information circular. We also propose companion policy guidance that states our expectation that a reporting issuer will use stratification in order to enhance effective communication, and not to disenfranchise shareholders.</p>
6.	<p><i>Costs and benefits of notice-and-access</i></p>	
	<p>Comments were divided on whether notice-and-access would result in cost savings to the Shareholder Voting Communication Process. Some commentators were of the view that notice-and-access would result in significant cost savings, while others were of the view that it would depend on the particular circumstances of the issuer. One commentator noted that notice-and-access also had costs associated with building and maintaining the infrastructure, lost economies of scale in printing and mailing materials and cost transfers to investors to access and print materials. In addition, several comments expressed concern that potential cost savings of notice-and-access would not be passed on to issuers absent regulatory intervention on fees charged by service providers.</p> <p>An intermediary service provider noted that on a proportional basis, the opportunity for significant cost savings for issuers in Canada is likely to be less than that seen in the U.S. Issuers in Canada have already received cost savings due to regulatory changes. In particular, reporting issuers are not required to send annual financial statements and annual MD&amp;A to all registered holders and beneficial owners if they use the annual request form mechanism in NI 51-102.</p> <p>The same intermediary service provider also noted that it is unclear at this stage whether building and maintaining a notice-and-access system is justified given the potential number of corporations that may use the proposed notice-and-access procedures. It also noted that notice-and-access as an additional option</p>	<p>Based on the comments, it appears that the potential for costs savings will depend on a number of factors. For example, one issuer provided an estimate of \$75,000 to \$500,000 in savings (depending on the type of meeting), while another estimated savings of \$500,000 to \$700,000.</p> <p>We acknowledge concerns that the notice-and-access process not be overly complicated and expensive to design and maintain, and therefore have proposed a number of changes that are intended to streamline and standardize the procedures. With regard to the issue of service provider fees, we note that the use of notice-and-access is voluntary, and that it is up to each reporting issuer to assess whether fees charged in connection with notice-and-access will be sufficiently offset by the savings associated with printing and mailing.</p>

#	Issue/Comment	Response
	for distribution of proxy-related materials, can increase cost and complexity for participants in the Shareholder Voting Communication Process.	
7.	<i>Whether notice-and-access is adequately integrated with the process for requesting copies of financial statements and MD&amp;A</i>	
	The comments received on this issue were divided, although a small majority took the view that the two processes could be better integrated.	<p>We have made the following changes in response to the comments:</p> <p>(a) We propose to permit proxy-related materials to be filed on or prior to the day the notice is sent. This will enable a reporting issuer to both incorporate by reference the information circular in its AIF (by filing the information circular prior to filing its AIF, annual financial statements and annual MD&amp;A); and send a single set of proxy-related materials that includes the annual financial statements and annual MD&amp;A.</p> <p>(b) We propose to amend NI 51-102 so that an annual request form used to request the annual financial statements and MD&amp;A will also constitute a request for a paper copy of the information circular where the reporting issuer uses notice-and-access.</p> <p>(c) We propose to reduce the period that a reporting issuer is obligated to fulfil requests for annual or interim financial statements and annual or interim MD&amp;A to one year from the date that the materials were filed, which is consistent with the proposed provision that a reporting issuer is only required to fulfil a request for a paper information circular one year from the date of the meeting to which it relates.</p>
8.	<i>Requirement that reporting issuer issue news release regarding use of notice-and-access</i>	
	The majority of comments questioned the utility of the news release requirement. One comment noted that the information required in the news release should be drafted to refer to both registered holders and beneficial owners.	We propose several changes as to how shareholders learn about a reporting issuer's use of notice-and-access. First, we propose a new requirement that a reporting issuer provide advance notice three to six months before the first meeting where notice-and-access is used by issuing a news release and posting information on a website that is not SEDAR. Second, we propose that information regarding notice-and-access subsequently be disseminated in the notification of meeting required in s. 2.2(2) of NI 54-101. Finally, the information to be disclosed must be in respect of both registered holders and beneficial owners.
9.	<i>Requirement that reporting issuer post "document with same information" on non-SEDAR</i>	

#	Issue/Comment	Response
	<i>website</i>	
	One comment noted that this requirement should be redrafted to require that the reporting issuer post the “information circular” on the non-SEDAR website.	We are adopting the suggested change.
<b>10.</b>	<i>Requirement that reporting issuer provide “information” to the intermediary</i>	
	One comment requested that this requirement be redrafted to clarify that the reporting issuer must provide the materials for forwarding, as the provision as currently drafted would require intermediaries to be responsible for producing the required notice.	We are adopting the suggested change.
<b>11.</b>	<i>Requirement that requests for paper copies of information circular be fulfilled within 3 business days</i>	
	One comment recommended that the requirement should only apply if a request is received at least 3 business days prior to the meeting. Another comment requested that guidance be provided on how to deal with last-minute requests.	In our view, it is appropriate for any request for an information circular that is received on or before a meeting date to be fulfilled in a prompt manner. We therefore are not proposing to change the 3 business day fulfillment requirement. We also propose to require that first class mail, courier or the equivalent be used in those cases. However, we propose to permit requests received after the date of the meeting to be fulfilled within 10 calendar days and by prepaid mail other than first class mail, which is consistent with the new proposed fulfillment time frames for annual financial statements and annual MD&A. The new proposed mandatory notice-and-access explanation must contain information about when requests should be received in order for the requester to receive the paper copy in advance of any deadline for the submission of voting instructions and the date of the meeting.
<b>12.</b>	<i>Requirement not to “obtain” information when fulfilling requests for paper copies</i>	
	One comment requested a change from the word “obtain” to “request”.	We have adopted the suggested change.
<b>13.</b>	<i>Use of term “enable” in context of prohibition against identification of person accessing website where materials are posted</i>	
	One comment stated that the proposed prohibition against a reporting issuer using any means that would “enable” the reporting issuer to identify a person or company is too broad, and recommended that the provision be changed to read that the reporting issuer “must not collect” such information.	We have adopted the suggested change.
<b>14.</b>	<i>Reporting issuer must send notice and post materials on non-SEDAR website at least 30 days before the meeting and on same day that notice package is sent</i>	

#	Issue/Comment	Response
	<p>One comment stated that the 30-day period was too far in advance of the meeting, and that sending of the notice and posting of materials should be able to take place at least 21 days before the meeting.</p> <p>One comment raised a concern that the requirement that the notice be sent out on the same day that the proxy-related materials are made publicly available through filing on SEDAR could result in reporting issuers having to choose between mailing the annual financial statements and annual MD&amp;A with the notice, and incorporating disclosure from the information circular in the AIF.</p>	<p>We are not adopting the suggestion regarding reducing the 30-day period as we continue to take the view that 30 days is an appropriate period to reasonably enable shareholders who receive the notice to request and obtain a paper copy of the information circular if they wish.</p> <p>We have adopted the change suggested to permit the proxy-related materials to be filed on SEDAR on or before the day the notice package is sent.</p>
15.	<i>No specific time frame mandated for when intermediaries must receive notice materials for sending to beneficial owners</i>	
	<p>One comment recommended that there be a specific time frame mandated for when intermediaries must receive notice materials where the reporting issuer is sending the materials indirectly to beneficial owners.</p>	<p>We propose that the time frames now track the time frames that apply to standard mailings of proxy-related materials. See s. 2.12 of NI 54-101.</p>
16.	<i>No provision that permits beneficial owners to provide standing instructions to receive paper copy of information circular</i>	
	<p>Two comments suggested that there should be provision for beneficial owners to give standing instructions that they wish to receive paper copies of information circulars in every case. One commentator noted that under the SEC notice-and-access rules, investors are permitted to give standing instructions to receive paper copies of meeting materials, and that statistics indicate that those investor who give these instructions tend to vote more often than the average retail investor.</p>	<p>We are adopting this suggestion. We propose that reporting issuers be permitted to obtain standing instructions in respect of registered holders, and that intermediaries be permitted to obtain standing instructions in respect of beneficial owners. We considered proposing that reporting issuers be permitted to obtain standing instructions from beneficial owners, but were not able to envision how reporting issuers could implement a mechanism to obtain, maintain and execute such instructions given the current infrastructure whereby intermediaries are primarily responsible for collecting and maintaining beneficial owner shareholder communication data. We therefore are not proposing such a provision at this time.</p>
17.	<i>Reporting issuers who use notice-and-access are not required to pay for delivery to OBOs</i>	
	<p>One comment stated that reporting issuers who use notice-and-access should be required to pay for delivery of the notice to OBOs. See also Issue/Comment 32, which relates to reporting issuers not being required to pay for delivery to OBOs generally.</p>	<p>We are not adopting this suggestion. The notice-and-access proposal is not intended to address the general question of how the cost of delivering proxy-related materials to OBOs should be allocated. However, we strongly encourage those reporting issuers who use notice-and-access to pay for delivery of the notice package to OBOs.</p>
18.	<i>Integrating other delivery methods with notice-and-access (s. 2.7(2)(c) and 4.2(2)(c) of NI 54-</i>	

#	Issue/Comment	Response
	<i>101 in the Original Materials)</i>	
	One comment noted that it was unclear what other delivery methods are being contemplated and how they would be integrated into the beneficial owner communication process.	We are removing the originally proposed sections that enumerate the permitted delivery methods for proxy-related materials as these provisions are no longer necessary. We also are removing the reference to delivery methods other than prepaid mail, courier or the equivalent for the notice package.
<b>19.</b>	<i>Exemption for SEC issuers who use U.S. notice-and-access</i>	
	A comment identified several technical issues with the proposed exemption for SEC issuers, including how the exemption would interact with the obligations of intermediaries subject to obligations under NI 54-101, but who might not be subject to the U.S. notice-and-access rules.	<p>The proposed exemption is revised as follows:</p> <p>(a) We propose to eliminate the original condition that the SEC issuer obtain confirmation from each intermediary that it will “comply” with the U.S. notice-and-access rules, and replace it with a condition that the issuer arrange with each intermediary to send the materials using the U.S. notice-and-access procedures;</p> <p>(b) We narrow the application of the exemption to SEC issuers that have a limited Canadian presence;</p> <p>(c) We expand the exemption to apply to any intermediary that, at the request of an SEC issuer, uses U.S. notice-and-access procedures to deliver proxy-related materials to beneficial owners.</p>
<b>20.</b>	<i>No consequential amendments to Form 54-101F2</i>	
	Two comments requested that the Form 54-101F2 <i>Request for Beneficial Ownership Information</i> be amended to reflect the changes proposed in NI 54-101 relating to notice-and-access and also require the issuer to indicate which method(s) of delivery were going to be used, i.e., direct delivery to NOBOs, indirect delivery to both types of beneficial owners, selective/complete use of N&A, etc.	We are adopting this suggestion. We note that some of the information listed is already required to be provided in Form 54-01F2, i.e., Items 7.4 and 10 of Part 1 – Reporting issuer Information.
<b>Repeal of legal proxy provisions and appointment of beneficial owner or its nominee as proxy holder</b>		
<b>21.</b>	<i>Reporting issuer must provide confirmation in a format that is acceptable to the intermediary that reporting issuer will appoint the NOBO as proxy holder where NOBO has so requested</i>	
	One comment noted that the clause as drafted could result in multiple confirmation formats, and recommended that it not be at the sole discretion of the intermediary. Furthermore, the clause as drafted also could permit an intermediary to demand confirmation of every proxy appointment submitted on behalf of its clients. This could create logistical issues,	We removed the requirement that the confirmation be in a format acceptable to the intermediary. We also have added a new provision that clarifies that the confirmation does not need to specify every proxy appointment submitted, and that it is sufficient simply to identify the meeting to which the confirmation applies.

#	Issue/Comment	Response
	especially on meetings for large reporting issuers during the height of meeting season.	
22.	<i>Beneficial owner or nominee that is appointed as proxy holder does not have power of attorney to act as principal with authority to vote on all matters before the meeting</i>	
	Issuers should clearly outline in the information circular and on the form of proxy/VIF that the appointee will have authority to present matters to the meeting and to vote on all matters brought before the meeting. Furthermore, issuers should clearly state this fact in the voting instruction form/form of proxy and the information circular.	We have added a provision that the appointee has full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in the VIF or the information circular.
23.	<i>No specific mechanism outlined for appointing a beneficial owner to attend and vote at a meeting</i>	
	One comment requested that there should be a specific mechanism outlined in NI 54-101 for appointing a beneficial owner to attend and vote at a meeting.	We are not adopting this change. However, as we noted in the notice accompanying the Original Materials, the appointee system has been developed and in place for some time, and we are adding a discussion of it in the companion policy.
24.	<i>Obligation to deposit proxy by proxy cut-off</i>	
	A comment requested that the requirement to deposit the proxy by the proxy cut-off pursuant to voting instructions from a beneficial owner only apply where the voting instructions were received at least one business day prior to the proxy cut-off.	We are adopting this suggestion. However, we propose companion policy guidance that we expect that reporting issuers and intermediaries will make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.
<b>Enhanced disclosure of proxy voting process in information circular</b>		
25.	<i>Requirement to disclose where notice-and-access used only for some beneficial owners</i>	
	Comments were divided on the whether the disclosure would be helpful to shareholders.	We continue to take the view that this disclosure is helpful to shareholders. We have made changes to the proposed requirement so that the disclosure regarding stratification is in respect of registered holders and beneficial owners. We also propose to require that the information be disclosed earlier, when the issuer files the notification of meeting.
26.	<i>Requirement to disclose non-payment for delivery to OBOs</i>	
	One comment supported disclosure, while two comments questioned the utility of the disclosure. One of the latter two comments noted that the more fundamental issue was the potential that an OBO would not receive proxy-related materials as a result of the reporting issuer not paying for OBO delivery. The second comment suggested that the	As noted in our responses to Issue/Comment 17 and 32, we do not intend to address the issue of requiring reporting issuers to pay for delivery to OBOs as part of the Proposals. We are maintaining the proposed disclosure requirement, but also propose to require reporting issuers to disclose whether they will pay for OBOs in the notification of meeting.

#	Issue/Comment	Response
	disclosure of non-payment should be included in the press release.	
<b>Use of NOBO information</b>		
27.	<i>Increased restrictions on use of NOBO information</i>	
	The comments were generally supportive, although one comment questioned why such restrictions were necessary. One comment suggested that issuers, intermediaries and subcontractors be required to adopt specific privacy standards, such as those in PIPEDA and the Canadian Standards Association's Model Code.	We continue to think that the restrictions are appropriate. We are not adopting the suggestion regarding adoption of specific privacy standards. We expect issuers, intermediaries and service providers to comply with their obligations under privacy legislation, and encourage adoption of appropriate best practices.
<b>Requests for beneficial ownership information</b>		
28.	<i>Permitting non-transfer agents to request beneficial ownership information on behalf of reporting issuers</i>	
	<p>Comments generally supported this proposed amendment. One comment suggested that s. 2.5(4) be eliminated completely, as information can be delivered using a variety of media and by direct electronic exchange with a much wider array of parties than was anticipated when the original provision was drafted. In the alternative, the assessment regarding technological capacity should be made by the intermediary, as it is the party providing the information.</p> <p>However, one comment strongly disagreed with the proposed amendment, noting that:</p> <p>(a) beneficial owners completing their client response form do not have the expectation that their information would be accessible to non-transfer agents; and</p> <p>(b) transfer agents are trusted entities that are recognized by the regulator and exchanges and are active participants in the daily affairs of publicly traded companies.</p>	We continue to think that issuers and third parties should be able to obtain NOBO lists directly (subject to the permitted purposes for obtaining NOBO lists, and permitted uses of NOBO lists in NI 54-101). We therefore propose changes to the provision that clarify that a reporting issuer can request a NOBO list without using a transfer agent provided the intermediary reasonably believes that the reporting issuer (or the person or company making the request on its behalf) has the technological capacity to receive the information. We note that the client response reform does not indicate that beneficial ownership information will only be released to a transfer agent.
<b>Miscellaneous comments</b>		
29.	<i>Requirement for issuers/intermediaries to retain a record of the Form 54-101F6/7 and the date and time of any voting instructions and proxy appointment</i>	
	One comment was supportive of this requirement. However, other comments took the view that the proposed requirements were unclear. For example, one comment noted that the purpose of the proposed requirement was unclear. If the aim was to generate an audit trail for voting, then the recordkeeping requirements should go further to mandate	We propose to remove the proposed requirements at this stage. We will consider the broader issue of appropriate recordkeeping in the proxy voting system separately from the Proposals.

#	Issue/Comment	Response
	keeping the date(s) the materials were sent to investors, full details of the instructions received and the date(s), time(s) and details of tabulated votes that were sent by an intermediary to the issuer. If the longer term aim was to have a system that can confirm voting instructions and that proxies were executed as securityholders intended, then it would be less expensive and more efficient to require full records to be kept now, rather than introduce additional requirements over time, necessitating multiple systems changes.	
<b>30.</b>	<i>Differences in definitions of special resolution and proxy-related material in NI 51-102 and NI 54-101</i>	
	A comment noted that there were differences in the drafting of the definitions of special resolution and proxy-related material in NI 51-102 and NI 54-101.	We propose to harmonize the definitions.
<b>31.</b>	<i>Reasonable assurance of payment to intermediaries before mailing materials</i>	
	A comment noted that the language in Part 4 of NI 54-101 relating to the intermediary's obligation to deliver NOBO lists to issuers and proxy-related materials to beneficial owners on behalf of issuers should be amended to make the conditions contingent on the intermediary receiving reasonable assurance of payment.	We are not proposing to adopt this change at this time. We will consider this issue separately from the Proposals.

## B. Comments on other aspects of NI 54-101

#	Comments	Response
<b>32.</b>	<i>Issuers should pay for delivery to OBOs under all circumstances.</i>	We are not adopting this suggestion at this time. We will consider the issue of whether NI 54-101 should require reporting issuers to deliver to OBOs separately from the Proposals.
<b>33.</b>	<i>NI 54-101 needs to be strengthened to make intermediaries more accountable.</i>	We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals.
<b>34.</b>	<i>For special meetings as defined in NI 54-101, materials should be sent 45 days in advance.</i>	We are not adopting this suggestion as we continue to take the view that 21 days (30 days where notice-and-access is used) is an appropriate period. We note that existing companion policy guidance states that for meetings that deal with contentious matters, good corporate practice will often require that meeting materials be sent earlier than the time frames set out in NI 54-101 so that shareholders have the full opportunity to understand and react to matters raised.



#	Comments	Response
35.	<i>NOBO status should be the default for beneficial owners; shareholders who wish to remain anonymous must sign waiver of right to receive materials directly.</i>	We are not adopting this suggestion at this time. We will consider issues generally related to OBO and NOBO status separately from the Proposals.
36.	<i>Issuers should not be able to override a security holder's choice not to receive materials. In the alternative, securityholders who have declined to receive materials altogether should only be sent a notice package under notice-and-access.</i>	We are not adopting this suggestion, as we think that reporting issuers are entitled to contact securityholders in connection with voting matters. Nor do we propose to effectively prohibit a reporting issuer from sending a beneficial owner a paper copy of the information circular. However, we encourage issuers to consider whether notice-and-access and stratification can be used to enhance effective communication in the beneficial owner communication process by sending notice-only packages to securityholders who do not wish to receive materials, and including paper copies of the information circulars in notice packages for shareholders who do wish to receive materials.
37.	<i>Include FINS number in the NOBO list where it is requested by a person other than the reporting issuer.</i>	We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals.
38.	<i>OBOs and NOBOs should not be treated in the same manner where it is possible for NOBOs to be treated more like registered shareholders. The Original Materials should be amended to reflect this principle. Issuers should be allowed to provide NOBOs with a form of proxy rather than a request for voting instructions using the STAC protocol for NOBO omnibus proxies.</i>	We are not adopting this suggestion at this time. We will consider the issue of whether NOBOs should be treated more like registered holders separately from the Proposals.
39.	<i>NI 54-101 should mandate that any party that has carriage of mailing (such as the transfer agents or Broadridge) file with the CSA and on SEDAR a confirmation that the mailing was completed in accordance with the requirements of NI 54-101.</i>	We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals.
40.	<i>Any party involved in the beneficial owner voting process should be entitled to rely upon the consent to electronic delivery of material obtained by another party.</i>	We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals.

### C. Comments on the proxy voting system generally

#	Comment	Response
41.	<i>There needs to be a clear voting audit trail. Consideration should be given to requiring a regulatory or independent audit of meetings</i>	We thank the commentators for their suggestions on areas where the proxy voting system requires regulatory attention. Although

#	Comment	Response
	<i>where the vote was determined by a narrow margin.</i>	<p data-bbox="816 138 1338 296">we are not proposing any specific regulatory initiatives as a result of these comments at this time, we continue to consider these comments separately from the Proposals, and what, if any, appropriate regulatory responses to take.</p> <p data-bbox="816 323 1338 443">We support enhancing investor education on the proxy voting system and are considering how we as securities regulators can facilitate achieving this outcome.</p>
42.	<i>Shareholders should have the right to confidentiality when voting.</i>	
43.	<i>There needs to be a charter of shareholder rights.</i>	
44.	<i>The regulators should send each beneficial owner a reminder form about casting votes.</i>	
45.	<i>Majority voting/individual director voting should be mandatory for reporting issuers.</i>	
46.	<i>Shareholders should have greater access to the proxy.</i>	
47.	<i>There should be policy guidance requiring the fair allocation of votes received in respect of all beneficial owner positions at a particular intermediary.</i>	
48.	<i>There should be a CSA proxy voting section on CSA websites similar to SEC proxy voting section/There should be an investor education campaign about the beneficial owner voting process.</i>	

**Schedule B**  
**Revised Proposed Amendment Instrument to NI 54-101**

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

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

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

“notice-and-access” means

(a) in respect of registered holders of voting securities of a reporting issuer, the delivery procedures referred to in section 9.1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;

(b) in respect of beneficial owners of securities of a reporting issuer, the delivery procedures referred to in section 2.7.1 of this Instrument;

***(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) adding the following definition after the definition of “special meeting”:***

“stratification”, in relation to a reporting issuer using notice-and-access, means procedures whereby a paper copy of the information circular is included with either or both of the following:

- (a) the documents required to be sent to registered holders under subsection 9.1(1) of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (b) the documents required to be sent to beneficial owners under subsection 2.7.1(1) of this Instrument;

**3. *Subsection 2.2(2) is amended by striking out subparagraphs (g) and (h) and replacing them with the following:***

- (g) the classes or series of securities that entitle the holder to vote at the meeting;
- (h) whether the meeting is a special meeting;
- (i) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;
- (j) whether the reporting issuer is sending proxy-related materials directly to NOBOs;
- (k) whether the reporting issuer intends to pay for delivery to OBOs.

**4. *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 a transfer agent.
- (5) Despite subsection (4), a reporting issuer may request beneficial ownership information without using a transfer agent for the purpose of obtaining a NOBO list if the intermediary to whom the request is being made reasonably believes that the reporting issuer, or if the reporting issuer has made the request through another person or company, the person or company making the request, has the technological capacity to receive the NOBO list.

**5. *The following is added after section 2.7 of National Instrument 54-101:***

**2.7.1 Notice-and-Access** – (1) A reporting issuer that is not an investment fund may send proxy-related materials to a beneficial owner of its securities using notice-and-access that complies with all of the following:

- (a) the beneficial owner is sent the following:
  - (i) a notice containing all the following information, and no other information:

- A. the date, time and location of the reporting issuer's meeting;
  - B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;
  - C. the website address other than the address for SEDAR, where the proxy-related materials are located;
  - D. a reminder to review the information circular before voting;
  - E. an explanation of how to obtain a paper copy of the information circular from the reporting issuer;
- (ii) a document in plain language that explains notice-and-access and includes the following information:
- A. why the reporting issuer is using notice-and-access;
  - B. if the reporting issuer is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;
  - C. the date and time by which a request for a paper copy of the information circular should be received in order for the requester to receive the information circular in advance of any deadline for the submission of voting instructions and the date of the meeting;
  - D. an explanation of how the beneficial owner is to return voting instructions, including any deadline for return of such instructions;
  - E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)B can be found;
  - F. a toll-free telephone number the beneficial owner can call to ask questions about notice-and-access;
- (b) 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, the documents required by paragraph (a), and a Form 54-101F6 or Form 54-101F7, as applicable;
- (c) at least 30 days before the date fixed for the meeting the reporting issuer files the notification required by subsection 2.2(1) of this Instrument;
- (d) public electronic access to the information circular and the documents in paragraph (a) is provided on or before the day that the reporting issuer sends the documents in paragraph (a) to registered holders, in the following manner:
- (i) the documents are filed on SEDAR;
  - (ii) the documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the documents relate, at a website address other than the address for SEDAR;
- (e) 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 documents in paragraph (a) to the beneficial owner, up to and including the date of the meeting including any adjournment;

- (f) if a request is received under paragraph (e) or by any other means, a paper copy of the information circular is sent free of charge to the person or company at the address specified in the request in the following manner:
  - (i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;
  - (ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.
- (2) A reporting issuer that sends proxy-related materials to a beneficial owner of its securities using notice-and-access must not include with the proxy-related material any document that relates to the particulars of any matter to be submitted to the meeting unless an information circular also is included, other than any one or more of the following documents:
  - (a) a document set out in paragraphs (1)(a) or (b);
  - (b) a document related to the approval of financial statements.

**2.7.2 Notice in advance of first use of notice-and-access** – A reporting issuer that uses notice-and-access to send proxy-related materials to a beneficial owner of its securities must do the following not more than 6 months and not less than 3 months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

- (a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;
- (b) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

**2.7.3 Restrictions on information gathering** – (1) A reporting issuer that receives a request under paragraph 2.7.1(1)(e) or by any other means must not do any of the following:

- (a) request 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.
- (2) A reporting issuer that posts proxy-related materials pursuant to subparagraph 2.7.1(1)(d)(ii) must not collect information that can be used to identify a person or

company who has accessed the website address where the proxy-related materials are located.

**2.7.4 Posting materials on non-SEDAR website** – (1) A reporting issuer that posts proxy-related materials in the manner referred to in subparagraph 2.7.1(1)(d)(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.
- (2) Proxy-related materials that are posted under subparagraph 2.7.1(1)(d)(ii) must be posted in a manner and be in a format that permit an individual 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.

**2.7.5 Consent to other delivery methods** – For greater certainty, section 2.7.1 does not

- (a) prevent a beneficial owner from consenting to a reporting issuer's or intermediary's use of other delivery methods to send proxy-related materials; or
- (b) prevent a reporting issuer or intermediary from sending proxy-related materials using a delivery method to which a beneficial owner has previously consented.

**2.7.6 Instructions to receive paper copies** – (1) Despite section 2.7.1, an intermediary may obtain standing instructions from a beneficial owner that is a client of the intermediary that a paper copy of the information circular be sent to the beneficial owner in all cases where a reporting issuer uses notice-and-access.

- (2) If an intermediary has obtained standing instructions from a beneficial owner under subsection (1), the intermediary must do all of the following:
- (a) if the reporting issuer is sending proxy-related materials directly under section 2.9 of this Instrument, provide the reporting issuer with the names of those NOBOs who have provided standing instructions to receive a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access, at the same time as the intermediary provides the reporting issuer with the NOBO list;
  - (b) if the intermediary is sending proxy-related materials to a beneficial owner on behalf of a reporting issuer using notice-and-access, request appropriate quantities of paper copies of the information circular from the reporting issuer

for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;

- (c) provide a mechanism for the beneficial owner to revoke the beneficial owner's standing instructions.

**6. Section 2.9 of 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 documents required by paragraphs 2.7.1(1)(a) and (b) and any paper copies of information circulars required to comply with standing instructions under section 2.7.6 or requests under section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* at least 30 days before the date fixed for the meeting.

**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 proximate intermediary send the proxy-related materials by prepaid mail must send the proxy-related materials to the proximate intermediary
  - (a) at least 3 business days before the 21st day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent;
  - (b) at least 4 business days before the 21st day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.



- (3) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using notice-and-access must send the documents required by paragraph 2.7.1(1)(a) and any paper copies of information circulars to be included with such documents to the proximate intermediary
  - (a) at least 3 business days before the 30th day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent;
  - (b) at least 4 business days before the 30th day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.
- (4) 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.
- (5) 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 its 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) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used the types of registered holders or beneficial owners who will receive paper copies of the information circular;
    - (b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

- (c) whether the reporting issuer intends to pay for delivery to OBOs, and if the reporting issuer does not intend to pay for delivery to OBOs, a statement that 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.

***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.

***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 document in writing that requests that the NOBO be appointed as a proxyholder.
- (2) Unless the NOBO has instructed otherwise, if management appoints a NOBO or a nominee of the NOBO as a proxy holder under subsection (1), the NOBO or nominee of the NOBO as applicable also must be given authority to attend, vote and otherwise act for and on behalf of management of the reporting issuer in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.
- (3) 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 if the reporting issuer obtains the instructions under subsection (1) at least one business day before the termination of such time.
- (4) 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, confirmation of both of the following:
- (a) management of the reporting issuer will comply with subsections 2.18(1) and (2);
  - (b) management of the reporting issuer 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.

- (5) A confirmation provided under subsection (4) must identify the specific meeting to which the confirmation applies, but is not required to specify each proxy appointment that management of the reporting issuer has made.

***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;
- (a.1) if the reporting issuer uses notice-and-access, fixes the record date for notice to be at least 30 days before the date of the meeting and sends the notification of meeting and record dates under section 2.2 at least 30 days before the date of the meeting;

***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 in the case of a NOBO list, a person or company described in subsection 2.5(5) that sent the request”;***

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

**4.4 Voting instruction form (Form 54-101F7)** – 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.

***15. 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 document in writing that requests that the beneficial owner be appointed as a proxy holder.
- (2) Unless the beneficial owner has instructed otherwise, if an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder under subsection (1), the beneficial owner or nominee of the beneficial owner as applicable also must be given authority to attend, vote and otherwise act for and on behalf of the intermediary in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

- (3) 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 if the intermediary obtains the instructions under subsection (1) at least one business day before the termination of such time.

***16. 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 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).
- (4) A confirmation provided under subsection (3) must identify the specific securityholder meeting to which the confirmation applies, but is not required to specify each proxy appointment that the participant has made.

***17. 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.

***18. 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.

***19. The following is added after section 9.1 of National Instrument 54-101:***

**9.1.1 Compliance with SEC Notice-and-access Rules –** (1) Section 2.7 does not apply to a reporting issuer that is an SEC issuer if it satisfies all of the following:

- (a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act;
- (b) the SEC issuer has arranged with each intermediary through whom the beneficial owner holds its interest in the reporting issuer's securities to have each such intermediary send the proxy-related materials to the beneficial owner by implementing 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;
- (c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50 per cent of the votes for the election of directors, and none of the following applies:

- (i) the majority of the executive officers or directors of the issuer are residents of Canada;
  - (ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada;
  - (iii) the business of the issuer is administered principally in Canada.
- (2) Part 4 of this Instrument does not apply to an intermediary with whom a reporting issuer has made arrangements under paragraph (1)(b) if the intermediary implements 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.

**20. Form 54-101F2 is amended as follows:**

**(a) in the following provisions, replacing “National Policy 11-201 and, in Québec, Staff Notice 11-201” with “National Policy 11-201 *Electronic Delivery of Documents*”:**

- (i) Item 6.7;**
- (ii) Item 7.8;**
- (iii) Item 8.5;**
- (iv) Item 9.7;**

**(b) adding the following after Item 7.11:**

7.12 State whether the reporting issuer is using notice-and-access, and any stratification criteria being used.

**(c) adding the following after Item 9.8:**

9.9 State whether the reporting issuer is using notice-and-access, and any stratification criteria being used.

**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 this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless you instruct otherwise, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in this form or the information circular. If you require help, please contact [the undersigned].

**22. Form 54-101F7 – Request for Voting Instructions Made by Intermediary is amended by striking out 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 this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless you instruct otherwise, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in this form or the information circular. 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:**

**<Option #1: use this alternative if the reporting issuer is providing the undertaking>**

2. I undertake that the information set out on the NOBO list will be used only in connection with one or more matters relating to the affairs of the reporting issuer.

**<Option #2: use this alternative if a person or company other than the reporting issuer is providing the undertaking>**

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

- (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 for the purpose of 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 C**  
**Revised Proposed Changes to 54-101CP**

The following are proposed changes to Companion Policy 54-101CP to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*

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

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7.3	Additional Costs <del>If Time Limitations Shortened</del> <a href="#">for Expedited Processing</a>
7.4	Applications
PART 8	APPENDIX A
8.1	Appendix A

## PART 1 BACKGROUND

### 1.1 History

- (1) Obligations imposed on reporting issuers under corporate law and securities legislation to communicate with securityholders are typically cast as obligations in respect of registered holders and not in respect of beneficial owners. For purposes of market efficiency, securities are ~~increasingly no~~ generally no longer registered in the names of the beneficial owners but rather in the names of depositories, or their nominees, who hold on behalf of intermediaries, such as dealers, trust companies or banks, who, in turn, hold on behalf of the beneficial owners. Securities may also be registered directly in the names of intermediaries who hold on behalf of the beneficial owners.
- (2) Corporate law and securities legislation require reporting issuers to send to their registered holders information and materials that enable such holders to exercise their right to vote. To address concerns that beneficial owners who hold their securities through intermediaries or their nominees may not receive the information and materials, in 1987, the CSA approved National Policy Statement No. 41 (“NP41”), which has since been replaced by National Instrument 54-101 (the “Instrument”).
- (3) The purpose of this Policy is to state the views of the Canadian securities regulatory authorities on various matters relating to the Instrument in order to provide guidance and interpretation to market participants in the practical application of the Instrument.

### 1.2 Fundamental Principles – The following fundamental principles have guided the preparation of the Instrument:

- (a) 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;
- (b) efficiency should be encouraged; and
- (c) the obligations of each party in the securityholder communication process should be equitable and clearly defined.

## PART 2 GENERAL

### 2.1 Application of Instrument

- (1) The securityholder communication procedures ~~contemplated by~~ in the Instrument are ~~applicable~~ relevant to all securityholder materials sent by a reporting issuer to ~~holders~~ beneficial owners of its securities ~~of the reporting issuer~~ under Canadian securities legislation ~~including~~ 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 of securities and beneficial owners of a reporting issuer's securities, such as interim financial reports or annual financial statements and;~~
- (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. Securityholder, and dissident proxy-related materials can also include;~~
- (c) ~~materials sent to registered holders or beneficial owners of a reporting issuer's securities absent any legal requirement to do so; an example of these types of materials would be corporate communications containing product information.~~
- (2) As provided in section 2.7 of the Instrument, compliance with the procedures set out in the Instrument is mandatory for reporting issuers when sending proxy-related materials to beneficial owners, and, under section 2.8 of the Instrument, is optional for the sending of other materials. Once a reporting issuer, or another person or company pursuant to Part 6 of the Instrument, chooses to use the communications procedures specified in the Instrument for a reporting issuer, depositories, intermediaries and other persons or companies must comply with their corresponding obligations under the Instrument.

## 2.2 Application to Foreign Securityholders and U.S. Issuers

- (1) As provided in subsection 2.12(35) of the Instrument, a reporting issuer that is precluded from sending securityholder materials directly to NOBOs because of conflicting legal requirements in the United States or elsewhere outside of Canada shall send the materials indirectly, i.e., by forwarding the materials to NOBOs through proximate intermediaries for those securities.
- (2) National Instrument 71-101 *The Multijurisdictional Disclosure System* provides, in Part 18, that a "U.S. issuer", as defined in that Instrument, is considered to satisfy the requirements of National Instrument 54-101, other than in respect of fees, if the issuer complies with the requirements of Rule 14a-13 under the 1934 Act for any Canadian clearing agency and any intermediary whose last address as shown on the books of the issuer is in the local jurisdiction. Those requirements are designed to achieve the same purpose as the requirements of the Instrument.
- (3) A Canadian reporting issuer may be exempt from complying with U.S. requirements under a reciprocal provision in the U.S. Multijurisdictional Disclosure regime.

~~2.3 Interim Financial Statements Interim financial statements sent to beneficial owners in accordance with National Instrument 54-102 *Interim Financial Statement and Report Exemption* are "securityholder materials" under the Instrument. However, financial statements sent under National Instrument 54-102 need not be sent using the mechanisms of National Instrument 54-101 as the reporting issuer will send them directly to persons on a supplemental list.~~

~~2.3 [Deleted]~~

## 2.4 “Client” and “Intermediary” to be Distinguished From “Beneficial Owner”

- (1) Section 1.1 of the Instrument distinguishes between “client” and “beneficial owner”. The two definitions recognize that, for many reporting issuers, there may be layers of intermediaries between the registered holder of a security and the ultimate beneficial owner. For example, a dealer could hold a security on behalf of another dealer that in turn holds the security for the beneficial owner.
- (2) In the Instrument, “beneficial owner” refers to a person or company that, ultimately, has the right to vote, or exercise control or direction over, the securities that are held through intermediaries and that therefore originates the instructions that are contained in a client response form, or that would have the authority to originate those instructions. If an intermediary that holds securities has discretionary authority over the securities, and consequently has authority to provide instructions in a client response form, it will be the beneficial owner of those securities for purposes of the Instrument and would not also be an “intermediary” with respect to those securities.
- (3) The term “client” refers to the person or company for whom an intermediary directly holds securities, regardless of whether the client is a beneficial owner. For example, if a dealer holds securities on behalf of a bank that in turn holds the securities on behalf of the beneficial owner, the bank is a client of the dealer, and the beneficial owner is a client of the bank. The beneficial owner is not a client of the dealer. Section 1.2 of the Instrument recognizes that, under the Instrument, an intermediary may “hold” securities for a client, even if another person or company is shown on the books or records of the reporting issuer or the records of another intermediary or depository as the holder of the securities.

**2.5 Definition of “Corporate Law”** — Section 1.1 of the Instrument defines “corporate law” as any legislation, constating instrument or agreement that governs the affairs of a reporting issuer. The term “corporate law” therefore encompasses Canadian and foreign laws, a declaration or deed of trust in the case of a trust, and the partnership agreement in the case of a partnership.

**2.6 Fees** — Section 1.4 provides that fees payable under the Instrument, unless prescribed by the regulator or securities regulatory authority, shall be a reasonable amount. Section 2.13 provides that a reporting issuer shall pay a fee to a proximate intermediary for furnishing the information requested in a request for beneficial ownership information (which would be used by reporting issuer to request a NOBO list) made by the reporting issuer. Paragraph 2.14(1)(a) provides that a reporting issuer that sends securityholder materials indirectly to NOBOs through a proximate intermediary shall pay to the proximate intermediary, upon receipt by the reporting issuer of a certificate of sending to NOBOs in accordance with the instructions specified by the reporting issuer and the request for beneficial ownership information, a fee for sending the securityholder materials to the NOBOs. In determining what is a reasonable amount the Canadian securities regulatory authorities expect that market participants will be guided by fees previously prescribed by Canadian securities regulatory authorities and by the fees payable for comparable services in other jurisdictions such as the United States, as well as by technological developments. In the case of fees for sending securityholder materials

to NOBOs, referred to in paragraph 2.14(1)(a), the CSA would regard as currently reasonable an amount not exceeding \$1 (being the amount previously specified in NP41).

- 2.7 **Agent** = ~~–A depository, intermediary or reporting issuer that uses an agent to comply with the requirements of the Instrument is reminded that it,~~ 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 fulfil its obligations. A person or company that uses an agent remains fully responsible for such compliance. fulfilling its obligations under the Instrument, and for the conduct of the agent in this regard.

A person or company may fulfil 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.

## PART 3 REPORTING ISSUERS

### 3.1 Timing for Notice of Meeting and Record Dates and Intermediary Searches

- (1) ~~Subject to section 2.20, section~~ Section 2.2 of the Instrument requires that, 25 days before the record date for notice of a meeting, a reporting issuer send to the entities named in that section a notification of meeting and record dates, ~~and section~~ that includes certain basic information about the meeting. Section 2.5 of the Instrument requires that 20 days before the record date for notice, a reporting issuer send a request for beneficial ownership information to proximate intermediaries. Section 2.20 allows these timing requirements to be abridged so long as the reporting issuer arranges to have the proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12, and upon filing of an officer’s certificate containing the information specified in section 2.20. Where the reporting issuer uses notice-and-access, the reporting issuer also must fix the record date for notice to be at least 30 days before the date of the meeting, and send the notification of meeting and record dates at least 30 days before the meeting.

Nevertheless, reporting issuers should commence the notice and searches referred to in sections 2.2, 2.3 and 2.5 at an early date and in sufficient time to allow the completion of all steps and actions required before the sending of materials, including allowing for the response time permitted for intermediaries in section 4.1 and depositories in section 5.3, so that the materials may be sent within the times contemplated by sections 2.9 and 2.12 of the Instrument.

- (2) The time frames stipulated by sections 2.9 and 2.12 of the Instrument are minimum requirements. For a meeting that will deal with contentious matters, the CSA expect that good corporate practice will often require that materials be sent earlier than the minimum required dates to ensure that securityholders have a full opportunity to understand and react to the matters raised.
- (3) It remains the reporting issuer’s responsibility when planning a meeting timetable to factor in all timing considerations, including deadlines external to the

Instrument. For example, reporting issuers that have obligations under corporate law to advertise in advance of a record date for notice, or satisfy other publication obligations, would need to comply with those obligations. Reporting issuers that intend to satisfy their advance publication obligation by relying upon publication by CDS of meeting and record dates under subsection 5.2(2) of the Instrument would need to factor in the timing of publication by CDS and the advance notice required by CDS, as described in section 3.4 of this Policy, in order to permit inclusion of meeting and record date information in the publication. Reporting issuers will also need to factor in the time needed to produce and assemble the relevant securityholder materials after quantities have been determined.

- (4) Proximate intermediaries are required under section 4.1 of the Instrument to furnish the information requested in a request for beneficial ownership information, in certain circumstances, within three business days of receipt. It should be noted that this timing refers to receipt of the request by the proximate intermediary, which may not be the same date as the request was sent by the reporting issuer. The time necessary for a request for beneficial ownership information to be received by a proximate intermediary should be factored into a reporting issuer's planning.

### **3.2 Adjournment or Change in Meeting**

- (1) Under section 2.15, a reporting issuer that sends a notice of adjournment or other change for a meeting to registered holders of its securities shall concurrently send the notice, including any change in the beneficial ownership determination date, to the persons and companies listed in section 2.15. Issuers are reminded of a number of other potential implications associated with an adjournment or other change, including those set out below.
- (2) If additional proxy-related materials are sent in connection with the meeting after proxy-related materials have previously been sent, a new intermediary search may be required if the beneficial ownership determination date for the meeting is changed.
- (3) New intermediary searches may have to be conducted if the nature of the business to be transacted at the meeting is materially changed. If the nature of the business is changed to add business that is not routine business, it may be necessary to conduct new intermediary searches in order to ensure that beneficial owners that had elected not to receive proxy-related materials for meetings at which only routine business was to be conducted receive proxy-related materials for the meeting.
- (4) If an adjournment or other change to the business of the meeting requires that new proxy-related materials be sent to securityholders, the meeting date or the date of the adjourned meeting may have to be delayed to satisfy the time periods specified in the Instrument, unless an exemption from the time periods of the Instrument is obtained. If the change in the business of the meeting is significant, such as a change from only routine business to special business, Canadian securities regulatory authorities will not generally grant exemptions from timing

requirements for sending proxy-related materials in the absence of exceptional circumstances.

### 3.3 Request for Beneficial Ownership Information

- (1) A request for beneficial ownership information made under subsection 2.5(2) of the National Instrument may be for any class or series of securities and is not restricted to only those securities carrying the right to receive notice of, or to vote at, a meeting, as is the case with a request under subsection 2.5(1). A request under subsection 2.5(2) need not necessarily be addressed to all proximate intermediaries holding the class or series of securities.
- (2) If it is able to do so, a proximate intermediary is required to respond to a request for a NOBO list by providing the NOBO list in electronic format. ~~All requests~~ Subsection 2.5(4) provides that a request for beneficial ownership information ~~including NOBO lists are required to~~ must be made through a transfer agent. ~~A reporting issuer that wishes to receive a NOBO list in non-electronic format may make arrangements with its transfer agent to have the electronic format received by the transfer agent converted to a paper copy~~ However, where only a NOBO list is being requested, the request may be made by the reporting issuer (or another person or company retained by the reporting issuer); provided the relevant proximate intermediary reasonably believes that the reporting issuer (or the person or company retained by the reporting issuer) has the technological capacity to receive the NOBO list.

**3.4 Depository's Index of Meetings** – CDS advises that the index referred to in section 5.2 of the Instrument is currently published in the Monday edition of *The Globe and Mail Report on Business* and in the Tuesday edition of *La Presse*. CDS advises that notices of meetings received by CDS by noon on Wednesday are usually published in *The Globe and Mail* on the following Monday and in *La Presse* on the following Tuesday. A reporting issuer should contact CDS for current forms and fee schedules of CDS.

#### 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.
- (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) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;
  - (b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;



(c) whether the reporting issuer intends to pay for delivery to OBOs. If the reporting issuer does not intend to pay for such delivery, the information circular must disclose this fact.

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.

We also encourage reporting issuers to disclose whether they are sending proxy-related materials to beneficial owners who have declined to receive them and explain their decision.

(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 to OBOs.

### **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 ~~in accordance with~~ according to the instructions received from ~~the~~ NOBOs to the extent that management has the corresponding proxy. ~~That proxy is given to management by the~~ 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 he or she had received; or may now wish to provide voting instructions although he or she had previously indicated on his or her client response form that he or 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.

### **3.6 Appointing NOBO as Proxy Holder** – Section 2.18 of the Instrument requires reporting issuers who request voting instructions from NOBOs to:

- arrange to appoint the NOBO as proxy holder, if he or she so instructs, at no expense to the NOBO; and
- deposit the proxy within any time specified under corporate law for the deposit of proxies (a “proxy cut-off”) if the reporting issuer obtains the instructions at least one business day before the proxy cut-off. We expect reporting issuers to make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.

However, subject to these basic obligations, reporting issuers have flexibility as to the specific mechanism used to appoint the beneficial owner as proxy holder.

## **PART 4 INTERMEDIARIES**

- 4.1 Client Response Form** — By completing a client response form as provided in Part 3 of the Instrument, a beneficial owner gives notice of its choices concerning the receipt of materials and the disclosure of ownership information concerning it. Pursuant to section 3.4 of the Instrument, a beneficial owner may, by notice to the intermediary through which it holds, change any prior instructions given in a client response form. Proximate intermediaries should alert their clients to the costs and other consequences of the options in the client response form.
- 4.2 Separate Accounts** — A client that wishes to make different choices concerning receipt of securityholder materials or disclosure of ownership information with respect to some of the securities beneficially owned by it should hold those securities in separate accounts.
- 4.3 Reconciliation of Positions**
- (1) The records of an intermediary must show which of its clients are NOBOs, OBOs or other intermediaries, and specify the holdings of each of those clients.
  - (2) In order that the Instrument work properly, it is important that the records of an intermediary be accurate. Its records must reconcile accurately with the records of the person or company through whom the intermediary itself holds the securities, which could either be another intermediary or a depository, or the security register of the relevant issuer, if the intermediary is a registered securityholder. This reconciliation must include securities held both directly and through nominees.
  - (3) A proximate intermediary should provide accurate responses to requests for beneficial ownership information. Information about the holdings of NOBOs, when added to the holdings of OBOs, the holdings of other intermediaries holding through the proximate intermediary and the holdings that the proximate intermediary holds as principal, must not exceed the total security holdings of the proximate intermediary, including its nominees, as shown on the register of the issuer or in the records of the depository.

- (4) It is important as well that the total number of votes cast at a meeting by an intermediary or persons or companies holding through an intermediary not exceed the number of votes for which the intermediary itself is a proxyholder.

#### **4.4 Identification of Intermediary**

- (1) A NOBO list with FINS numbers will only be provided where the list is sought by a reporting issuer in conjunction with a meeting of its securityholders in circumstances in which the issuer is sending proxy-related materials under paragraph 4.1(1)(c) of the Instrument. The FINS number should not be required in circumstances where it is not necessary to reconcile voting instructions and/or proxies.
- (2) Identification of the intermediary and the holdings specified in the corresponding NOBO list on requests for voting instructions as required in Form 54-101F6 is necessary for the reporting issuer to be able to reconcile voting instructions received from a NOBO to the corresponding position registered in the name of the intermediary or its nominee or in respect of which the intermediary holds a proxy. In addition, should a NOBO wish to change its voting instructions, before or at a meeting of securityholders, knowledge of the corresponding intermediary and the NOBO's holdings is necessary.

**4.5 Changes to Intermediary Master List** – It is the obligation of intermediaries under section 3.1 of the Instrument to notify each depository of any changes in the information required to be provided under that section within five business days after the change. The five business days is a maximum requirement and it is expected that intermediaries will provide notice of such changes as soon as possible and, if possible in advance, in order that their clients not be prejudiced.

**4.6 Incomplete or Late Deliveries** – If sets of securityholder materials of a reporting issuer are incomplete or received after the prescribed time limits, the intermediary should advise the reporting issuer and request instructions.

**4.7 Other Obligations of Intermediaries** – The Instrument addresses the obligations of intermediaries in connection with the forwarding of securityholder materials. It is noted that intermediaries will have other obligations to the beneficial owners holding through them that arise from the nature of the relationship between the intermediary and the beneficial owners. These obligations will likely include advising the beneficial owners of the commencement of take-over bids, issuer bids, rights offerings and other events, and advising as to how the beneficial owners can obtain the relevant materials.

#### **4.8 Appointing Beneficial Owner as Proxy Holder – Section 4.5 of the Instrument requires intermediaries to:**

- arrange to appoint the beneficial owner as proxy holder, if he or she so instructs, at no expense to the beneficial owner; and
- deposit the proxy within any proxy cut-off if the intermediary obtains the instructions at least one business day before the proxy cut-off. We encourage intermediaries to make best efforts to deposit the proxy even if the instructions are

obtained less than one business day before the proxy cut-off.

However, subject to these basic obligations, intermediaries have flexibility as to the specific mechanism used to appoint the beneficial owner as proxy holder. One mechanism in current use and permitted under section 4.5 of the Instrument is the “appointee system”. Under the appointee system, a beneficial owner who wishes to be appointed as proxy holder for the intermediary in respect of securities that he or she beneficially owns can print his or her name or the name of his or 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 his 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.

**PART 5 ~~MEANS OF SENDING~~ – MEANS OF SENDING**

**5.1 General**

~~**5.1 — General** All parties should use the most efficient means of sending information or securityholder material, including, if practicable, sending materials in bulk.~~  
The following tables illustrate the options available for sending proxy-related materials to beneficial owners.

**Table A: Direct Sending to NOBOs**

<u>Deliver y Method</u>	<u>Documents Sent</u>	<u>Beneficial Owner Consent Required?</u>
<u>Prepaid mail, courier or the equivalent</u>	<u>Reporting issuer sends paper copies of notice of meeting, management information circular, and Form 54-101F6</u>	<u>No</u>
<u>Notice-and-access</u>	<u>Reporting issuer files management information circular on SEDAR and posts on non-SEDAR website. Reporting issuer sends paper copies of documents required by para. 2.7.1(1)(a) and Form 54-101F6. Reporting issuer will include paper copy of management information circular in compliance with any standing instructions under s. 2.7.6 or annual request forms under National Instrument 51-102 <i>Continuous Disclosure Obligations</i>. Reporting issuer is responsible for providing paper copy of information circular on request.</u>	<u>No</u>
<u>Other</u>	<u>Reporting issuer sends notice of meeting,</u>	<u>Yes.</u>

<u>delivery method</u>	<u>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, e.g., e-mail with embedded links.</u>	
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~~5.2 — Materials in Bulk for~~ **Table B: Indirect Sending to Beneficial Owners** ~~— Securityholder materials sent to intermediaries for sending to beneficial owners by mail should be in uncollated bulk form. All materials forming part of a set to be delivered to securityholders should be delivered together. The intermediary will collate the materials; if the materials are proxy-related materials the intermediary will substitute for any issuer proxy contained in the materials a request for voting instructions for matters to which the proxy-related materials relate.~~

<u>Deliver y Method</u>	<u>Documents Sent</u>	<u>Beneficial Owner Consent Required?</u>
<u>Prepaid mail, courier or the equivalent</u>	<u>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.</u>	<u>No</u>
<u>Notice-and-access</u>	<u>Reporting issuer files management information circular on SEDAR and posts on non-SEDAR website. Reporting issuer sends paper copies of documents required by para. 2.7.1(1)(a) to proximate intermediary for sending to beneficial owners. Reporting issuer also sends appropriate numbers of paper copies of management information circular to comply with any standing instructions under s. 2.7.6 or annual request forms under National Instrument 51-102 <i>Continuous Disclosure Obligations</i>. Proximate intermediary sends paper copies of the above documents and Form 54-101F7 using prepaid mail, courier or the equivalent. Reporting issuer is responsible for providing paper copy of information circular on request.</u>	<u>No</u>
<u>Other delivery method</u>	<u>Proximate intermediary sends notice of meeting, management information circular and Form 54-101F7 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access, e.g., email with embedded links.</u>	<u>Yes.</u>

~~5.3 — Number of Sets of Materials~~ **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. We consider “first class mail” to be the equivalent of Canada Post Lettermail. 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) The Instrument permits a reporting issuer to use notice-and-access to send proxy-related materials to beneficial owners. Notice-and-access cannot be used for sending proxy-related materials relating to meetings of investment fund reporting issuers. However, it can be used for all other types of meetings.

Prior to using notice-and-access for the first time, a reporting issuer must provide advance notice as specified in subsection 2.7.2 of the Instrument. We also encourage issuers to consider what additional methods of advance notice are appropriate. For example, an issuer could consider a special purpose mailing to its retail beneficial owners in advance of the first meeting for which notice-and-access is used.

We expect reporting issuers to evaluate the potential impact of using notice-and-access on beneficial owners of their voting securities when deciding whether to use notice-and-access. Factors that reporting issuers should take into account include:

- the nature of the meeting business (including whether it is expected to be contentious); and
- whether notice-and-access resulted in material declines in shareholder voting rates in prior meetings where notice-and-access was used.

(2) Notice-and-access can be used by reporting issuers to send 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 documents required by paragraph 2.7.1(1)(a), any paper copies of information circulars required to comply with standing instructions or annual request form instructions, and Form 54-101F6 to NOBOs at least 30 days before the meeting (subsection 2.9(3) of the Instrument).

##### *Indirect sending to beneficial owners:*

The reporting issuer must send the documents required by paragraph 2.7.1(1)(a) and any paper copies of information circulars required to comply with standing instructions or annual request form instructions within the relevant timelines set

out in subsection 2.12(3).

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

- (3) Subparagraph 2.7.1(1)(a)(i) of the Instrument requires the beneficial owner to be sent a notice containing required information about the meeting. With respect to matters to be voted on at the meeting, the notice must only contain a factual description of each matter or group of related matters identified in the form of proxy. We expect that reporting issuers who use notice-and-access will state each matter or group of related matters in the proxy in a reasonably clear and user-friendly manner. For example, it would not be appropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular, e.g., “To vote For or Against the resolution in Schedule A of management’s information circular”.

Subparagraph 2.7.1(1)(a)(ii) of the Instrument requires the beneficial owner be sent a plain language document that explains notice-and-access. This document can also be used to explain other aspects of the proxy voting process to beneficial owners. However, this document should not contain any substantive discussion of the matters to be considered at the meeting.

- (4) Paragraph 2.7.1(1)(b) of the Instrument requires the beneficial owner to be sent as part of the notice package the appropriate voting instruction form, i.e., a Form 54-101F6 where the reporting issuer is sending proxy-related materials and soliciting voting instructions from NOBOs, and a Form 54-101F7 where an intermediary is doing so.
- (5) Paragraph 2.7.1(1)(c) of the Instrument requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) at least 30 days before the date fixed for the meeting. This is intended to broadly communicate to the reporting issuer’s beneficial owners that the reporting issuer is using notice-and-access.
- (6) Paragraph 2.7.1(1)(d) of the Instrument requires the information circular and other proxy-related materials to be filed on SEDAR and posted on a website other than SEDAR. The non-SEDAR website can be the reporting issuer’s website or the website of a service provider.
- (7) Paragraph 2.7.1(1)(e) 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)(f) of the Instrument and the restrictions on use of information obtained in connection with the request.
- (8) Section 2.7.3 of the Instrument is intended to restrict intentional information gathering about beneficial owners by reporting issuers who receive requests for paper copies of information circulars or via the website other than SEDAR.

(9) Section 2.7.4 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.

#### **5.4 — Electronic Communication**

(10) Where a reporting issuer uses notice-and-access, it generally must send the same basic notice package to all beneficial owners. However, the following are exceptions to this general principle:

~~(1) It is expected that most communication for the purposes of the Instrument between or among depositories, reporting issuers and intermediaries will, as far as practicable, be by electronic means, including fax, electronic mail or data transfer. The Instrument is intended by the CSA to promote and facilitate the use of electronic communication, within the limits imposed by corporate law and securities legislation.~~

- Section 2.7.5 of the Instrument provides that where a reporting issuer uses notice-and-access, a beneficial owner still can be sent proxy-related materials using an alternate method to which the shareholder has previously consented. For example, service providers acting on behalf of reporting issuers or intermediaries may have previously obtained (and continue to obtain) consents from shareholders for proxy-related materials to be sent by email. This delivery method would still be available.
- Section 2.7.6 of the Instrument permits an intermediary to obtain standing instructions from a beneficial owner client to be sent a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access. Where such standing instructions have been obtained, the notice package for the beneficial owner will contain a paper copy of the information circular.
- Subsection 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. A request for annual financial statements and annual MD&A will also constitute a request that the notice package for the beneficial owner contain a paper copy of the information circular.

The addition of a paper information circular to the notice package sent to some beneficial owners is referred to as “stratification”, and is a term defined in section 1.1 of the Instrument.

~~(2) The Instrument does not require manual signatures to the forms referred to in the Instrument. While manual signatures are permitted and may be included, the CSA are of the view that if the Instrument is to promote and facilitate the use of electronic communication, the obligation to include manual signatures would~~



~~impede the promotion of this technology. Accordingly, the Instrument does not require authentication by manual signature, and persons or companies should satisfy themselves as to the authenticity of instructions or other communications received in electronic form.~~

We do not mandate the use of stratification, other than to the extent it is necessary to comply with standing instructions or annual requests for paper copies of information circulars that reporting issuers or intermediaries have chosen to obtain from registered holders or beneficial owners. We expect that any additional stratification criteria will develop and evolve through market demand and practice. However, we expect that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions does so in order to enhance effective communication, and not to disenfranchise shareholders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a copy of the information circular.

One example of how stratification could enhance communication is where a reporting issuer wishes to send proxy-related materials to all its beneficial owners, including those who have declined to receive materials (“declining beneficial owners”). These declining beneficial owners could be sent a notice package only, while the reporting issuer would send other beneficial owners who wished to receive all materials the notice package and the information circular. All beneficial owners thus would receive the documentation necessary to vote, but those declining to receive materials would not receive a paper copy of the information circular unless they requested it.

- ~~(3) — In Quebec, Staff Notice 11-201, and, in the rest of Canada, **5.5 Consent to Electronic Delivery** – National Policy 11-201 *Electronic Delivery of Documents by Electronic Means* (the “NP 11-201 Documents”) ~~discuss~~discusses the sending of materials by electronic means. The guidelines set out in ~~the NP 11-201 Documents, 201,~~ particularly the suggestion that consent be obtained to an electronic transmission of a document, are applicable to documents sent under the Instrument. ~~Under the 11-201 Documents, securityholder materials could be sent to beneficial owners by electronic means in satisfaction of the requirements of the Instrument if the beneficial owner has consented to receive them in that form.~~~~
- ~~(4) — Section 3.2 of the Instrument requires intermediaries that hold securities on behalf of a client in an account to obtain the electronic mail address of the client, if available, and to enquire whether the client wishes to consent to electronic delivery of documents by the intermediary to the client. The client’s electronic mail address and whether they have consented to electronic delivery by the intermediary forms part of the “ownership information” associated with a beneficial owner that will be contained in NOBO lists. The electronic form of NOBO list has a field for this information. Because the consent identified in the NOBO list relates to electronic delivery by the intermediary only, the reporting issuer cannot rely on the consent for its electronic delivery. However, the field in the NOBO list for this consent may be of interest to a reporting issuer. It may assist the reporting issuer in ascertaining whether the intermediary will forward electronically the securityholder materials that the reporting issuer elects to send indirectly through the intermediary. It may also assist the reporting issuer to~~

~~determine the feasibility of sending materials directly to NOBOs and whether to use electronic delivery itself. Where the reporting issuer chooses to obtain consent for the purposes of satisfying the provisions of the 11-201 Documents, the Canadian securities regulatory authorities anticipate that the reporting issuer will use the electronic mail address contained in the NOBO list.~~

**5.5.6 Multiple Deliveries to One Person or Company** ~~It is noted that sometimes a~~ A single investor ~~holds~~may hold securities of the same class in two or more accounts with the same address. ~~The Canadian securities regulatory authorities note that the delivery of~~Delivering a single set of securityholder materials to that person or company would satisfy the delivery requirements under the Instrument. ~~The sending of a single document in those circumstances is encouraged in order to~~We encourage this practice as a way to help reduce the costs of securityholder communications.

## PART 6 USE OF NOBO LIST

**6.1 Use of NOBO List** ~~Market participants are reminded that the trafficking of a NOBO list,~~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, acting reasonably and in good faith, 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, ~~and that the penalty.~~ Penalty provisions of securities legislation may be applied.

## PART 7 EXEMPTIONS

**7.1 Materials Sent in Less Than ~~21~~the Required Number of Days Before Meeting** - In ~~the absence of extraordinary circumstances, the Canadian securities regulatory authorities will generally not consider shortening the 21-day period for the sending of proxy-related materials to beneficial owners of securities referred to~~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.~~

**7.2 Delay of Audited Annual Financial Statements or Annual Report** - Section 9.1 of the Instrument recognizes that corporate law or securities legislation may permit a reporting issuer to send its audited annual financial statements or annual report to registered holders of its securities later than other proxy-related materials. The Instrument provides that the time periods applicable to sending proxy-related materials prescribed in the Instrument do not apply to the sending of proxy-related materials that are annual financial statements or an annual report if the statements or report are sent by the reporting issuer to beneficial owners of the securities within the time limitations established in applicable corporate law and securities legislation for the sending of the statements or report to registered holders of the securities. Reporting issuers are nonetheless encouraged to send

their audited annual financial statements or annual report at the same time as other proxy-related materials.

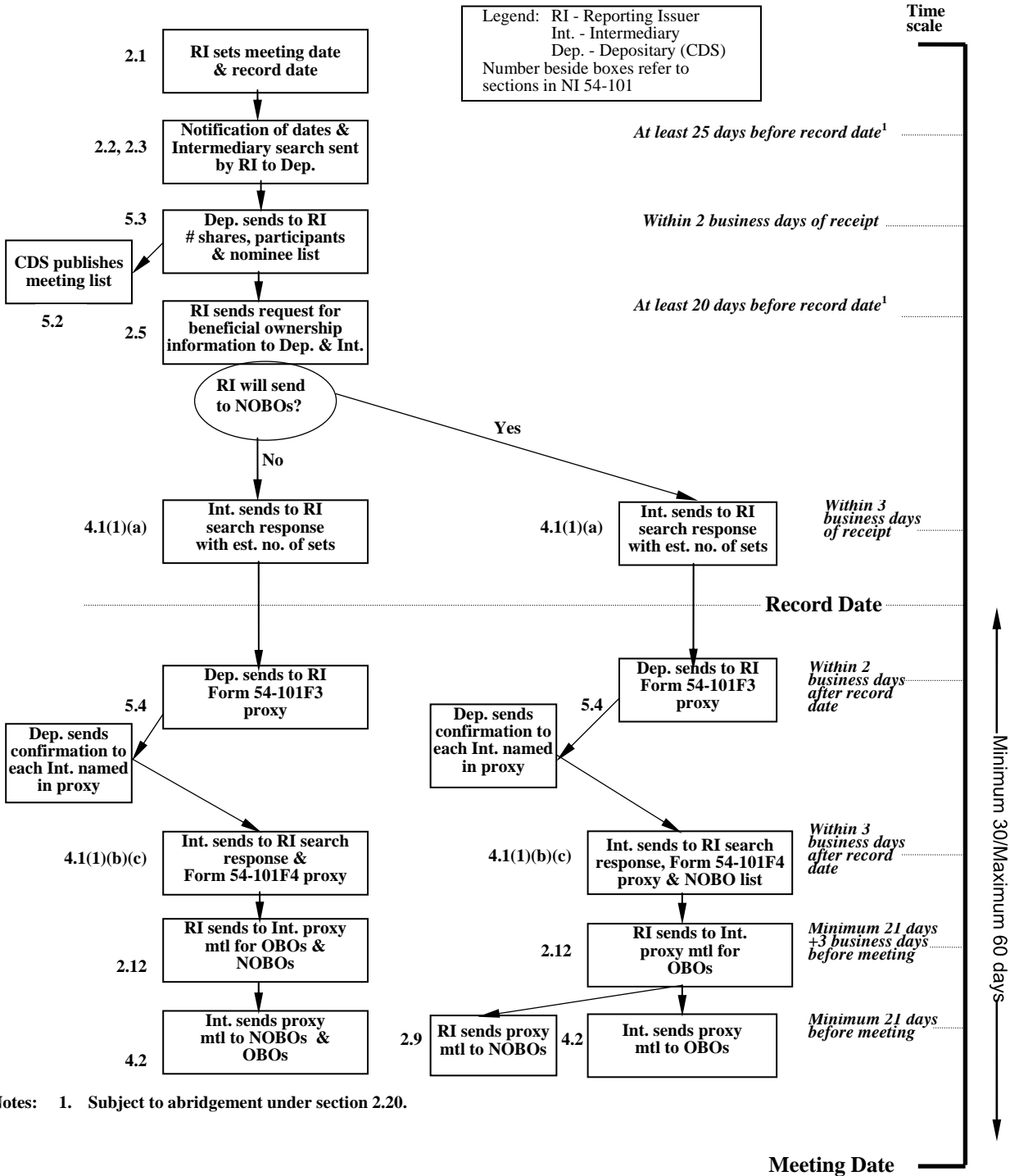
- 7.3 Additional Costs ~~If Time Limitations Shortened~~**— ~~Section 4.2 of the Instrument allows a proximate intermediary three business days to prepare the securityholder materials for forwarding to beneficial owners after its receipt of the materials from the reporting issuer (four business days if the material is to be sent by mail other than first class mail). Reporting issuers making arrangements with intermediaries to~~ **for Expedited Processing** ~~– Where reporting issuers wish to have intermediaries~~ comply with the procedures in the Instrument within shorter time limits ~~may wish to~~ than provided in the Instrument, they should provide for recovery by the intermediary of reasonable costs ~~attributable to the shorter time limits that it would not otherwise incur (for example, incurred in expedited processing of securityholder materials in order to ensure forwarding of the materials to beneficial owners. Examples of such costs include~~ courier, long distance telephone and overtime costs) to ensure forwarding of the materials to OBOs.
- 7.4 Applications**— ~~Applicants should be aware that major~~ – Major exemptions from the requirements of the Instrument will probably likely be granted infrequently. ~~Exemptions to the predecessor policy statement to the Instrument that were granted typically involved reporting issuers that were incorporated or organized outside of Canada, that had only an insignificant connection to Canada in terms of the percentage of its securityholders that were resident in Canada and the percentage of its securities that were held by those securityholders, and in circumstances in which the reporting issuer was also subject to requirements imposed by securities or corporate legislation outside of Canada that served to ensure that beneficial owners would receive a comparable level of communication from the issuer~~ We encourage applicants to discuss requests for exemptive relief on a pre-file basis with the relevant Canadian securities regulatory authorities.

2.12

## **PART 8 APPENDIX A**

- 8.1 Appendix A** - This Companion Policy contains, as Appendix A, a flow chart outlining the processes prescribed by the Instrument for the sending of proxy-related materials by prepaid mail.

## Appendix A Proxy Solicitation under NI 54-101



**Schedule D**  
**Revised Proposed Amendment Instrument to NI 51-102**

**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 “common share”:*

“corporate law” has the same meaning as in section 1.1 of NI 54-101;

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

“notice-and-access” has the same meaning as in section 1.1 of NI 54-101;

*(c) adding the following definition after “proxy”:*

“proxy-related materials” means securityholder materials relating to a meeting that the reporting issuer is required under corporate law or securities legislation to send to the registered holders of the securities;

*(d) adding the following definitions after “solicit”:*

“special meeting” has the same meaning as in section 1.1 of NI 54-101;

“special resolution” has the same meaning as in section 1.1 of NI 54-101;

“stratification” has the same meaning as in section 1.1 of NI 54-101;

*3. Subsection 4.6 of National Instrument 51-102 is amended by*

*(a) repealing and replacing subsection (1) with the following:*

**4.6 Delivery of Financial Statements** – (1) Subject to subsection (2), a reporting issuer must send an annual request form to the registered holders and beneficial owners of its securities, other than debt instruments, that the registered holders and beneficial owners may use to request one or both of the following:

- (a) a copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements and, where the reporting issuer uses notice-and-access to send proxy-related materials, a paper copy of the information circular;
- (b) a copy of the reporting issuer's interim financial reports and MD&A for the interim financial reports.

**(b) inserting** “using the request form in subsection (1)” **after** “requests the reporting issuer's annual financial statements or interim financial reports” **in subsection (3)**;

**(c) replacing** “two years” **in subsection (4) with** “one year”.

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

**9.1.1 Notice-and-Access** – (1) 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 the following:
  - (i) a notice containing all of the following information, and no other information:
    - A. the date, time and location of the reporting issuer's meeting;
    - B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;
    - C. the website address other than the address for SEDAR, where the proxy-related materials are located;
    - D. a reminder to review the information circular before voting;
    - E. an explanation of how to obtain a paper copy of the information circular from the person or company;
  - (ii) a document in plain language that explains notice-and-access and includes the following information:
    - A. why the person or company is using notice-and-access;
    - B. if the person or company is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;
    - C. the date and time by which a request for a paper copy of the information circular should be received in order for the

- requester to receive the paper copy in advance of any deadline for the submission of the proxy and the date of the meeting;
- D. an explanation of how the registered holder is to return the proxy, including any deadline for return of the proxy;
  - E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)(B) can be found;
  - F. a toll-free telephone number the registered holder can call to ask questions about notice-and-access;
- (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), 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, at least 30 days before the date fixed for the meeting the reporting issuer files the notification required by subsection 2.2(1) of NI 54-101;
  - (e) public electronic access to the information circular, form of proxy and the documents in paragraph (a) is provided on or before the day that the person or company soliciting proxies sends the documents in paragraphs (a), in the following manner:
    - (i) the documents are filed on SEDAR as required by section 9.3;
    - (ii) the documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the documents relate, 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 paragraph (a) 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 free of charge to the person or company at the address specified in the request in the following manner:

- (i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;
  - (ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.
- (2) A person or company that sends proxy-related materials to a registered holder of voting securities using notice-and-access must not include with the proxy-related material any documents other than the documents set out in paragraphs (1)(a) or (b) unless an information circular also is included.

**9.1.2 Notice in advance of first use of notice-and-access** – Management of a reporting issuer that uses notice-and-access to send proxy-related material to a registered holder of voting securities must do the following not more than six months and not less than three months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

- (a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;
- (b) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

**9.1.3 Posting materials on non-SEDAR website** – (1) A person or company that posts proxy-related materials in the manner referred to in subparagraph 9.1.1(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.
- (2) Proxy-related materials that are posted under subparagraph 9.1.1(1)(e)(ii) must be posted in a manner and be in a format that permits an individual 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.

**9.1.4 Consent to other delivery methods** – Nothing in section 9.1.1 shall be interpreted as

- (a) restricting a registered holder of voting securities from consenting to a reporting issuer's use of other delivery methods to send proxy-related materials;
- (b) terminating or a modifying a consent that a registered holder of voting securities previously gave to reporting issuer regarding a reporting issuer's use of other delivery methods to send proxy-related materials; or
- (c) preventing a reporting issuer from sending proxy-related materials using a delivery method to which a registered holder has previously consented.

**9.1.5 Instructions to receive paper copies** – (1) Despite section 9.1.1, a reporting issuer may obtain standing instructions from a registered holder of voting securities that a paper copy of the information circular be sent to the registered holder in all cases where the reporting issuer uses notice-and-access.

- (2) Where a reporting issuer has obtained standing instructions from registered holder under subsection (1), the reporting issuer must do all of the following:
  - (a) include any paper copies of information circulars required to comply with standing instructions obtained under subsection (1) with the documents required by paragraphs 9.1.1(1)(a) and (b);
  - (b) provide a mechanism for the registered holder to revoke the registered holder's standing instructions.
- (3) Where a reporting issuer has received a request for a paper copy of the information circular from a registered holder under paragraph 4.6(1)(a), the reporting issuer must include a paper copy of the information circular with the documents required by paragraphs 9.1.1(1)(a) and (b).

**9.1.6 Compliance with SEC Rules** – Section 9.1 does not apply to a reporting issuer that is an SEC issuer if it satisfies both of the following:

- (a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act;
- (b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50 per cent of the votes for the election of directors, and none of the following is true:
  - (i) the majority of the executive officers or directors of the issuer are residents of Canada;
  - (ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada;
  - (iii) the business of the issuer is administered principally in Canada.

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

**4.3** The information circular must state the following information if applicable:

- (a) that the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is being used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;
- (b) that the reporting issuer is sending proxy-related materials directly to non-objecting beneficial owners under NI 54-101;
- (c) that 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, and 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.

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

**Schedule E**  
**Revised Proposed Changes to 51-102CP**

The following are proposed changes to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations*.

1. *Proposed changes to section 3.5*

**3.5 Delivery of Financial Statements and Paper Copies of Information Circulars**

Section 4.6 of the Instrument requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities. The registered holders and beneficial owners may use the request form to request a copy of the reporting issuer's annual financial statements and related MD&A, an interim financial report and related MD&A, or both. In addition, instructions to receive the annual financial statements and related MD&A also constitute instructions to include a paper copy of the information circular where the reporting issuer uses notice-and-access.

~~MD&A, or both.~~ Reporting issuers are only required to deliver financial statements and MD&A to the person or company that requests them. As a result, if a beneficial owner requests financial statements and MD&A through its intermediary, the issuer is only required to deliver the requested documents to the intermediary.

Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under NI 54-101 in respect of the financial statements. However, failing to return the request form will not override any beneficial owner standing instructions under NI 54-101 to receive a paper copy of the information circular if the reporting issuer is using notice-and-access to deliver proxy-related materials.

The Instrument does not prescribe when the request form must be sent, or how it must be returned to the reporting issuer.

2. *Proposed changes to Part 10 Electronic Delivery of Documents*

**PART 10 ELECTRONIC DELIVERY OF DOCUMENTS**

**10.1 Electronic Delivery of Documents**

~~Any~~Generally, any documents required to be sent under the Instrument may be sent by electronic delivery, as long as such delivery is ~~made in compliance with Québec Notice 11-201 Relating to the Delivery of Documents by Electronic Means, in Québec, and National Policy 11-201 Delivery of Documents by~~

~~Electronic Means, in the rest of Canada,~~ consistent with the guidance in National Policy 11-201 *Electronic Delivery of Documents*. However, if a reporting issuer is using notice-and-access to deliver proxy-related materials, it should refer to the specific guidance in section 10.3 of the Policy.

## 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) 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 for the proximate intermediary to deliver proxy-related materials to registered holder employees through the reporting issuer's internal mail system.

## 10.3 Notice-and-access

- (1) The Instrument permits a reporting issuer to use notice-and-access to send proxy-related materials to registered holders.

Prior to using notice-and-access for the first time, a reporting issuer must provide advance notice as specified in section 9.1.2 of the Instrument. We also encourage issuers to consider what additional methods of advance notice are appropriate. For example, an issuer could consider a special purpose mailing to its retail registered holders in advance of the first meeting for which notice-and-access is used.

- (2) Subparagraph 9.1.1(1)(a)(i) of the Instrument requires the registered holder to be sent a notice containing required information about the meeting. With respect to matters to be voted on at the meeting, the notice must only contain a factual description of each matter or group of related matters identified in the form of proxy. We expect that reporting issuers who use notice-and-access will state each matter or group of related matters in the proxy in a reasonably clear and user-friendly manner. For example, it would not be appropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular, e.g., "To vote For or Against the resolution in Schedule A of management's information circular".

Subparagraph 9.1.1(1)(a)(ii) of the Instrument requires the registered holder be sent a plain language document that explains notice-and-access. This document can also be used to explain other aspects of the proxy voting process to registered

holders. However, this document should not contain any substantive discussion of the matters to be considered at the meeting.

- (3) Paragraph 9.1.1(1)(b) of the Instrument requires the registered holder to be sent as part of the notice package the form of proxy.
- (4) Paragraph 9.1.1(1)(c) of the Instrument requires that the registered holder of voting securities be sent the notice package by prepaid mail, courier or the equivalent. In the case of a solicitation by reporting issuer management, the notice package must be sent at least 30 days before the date fixed for the meeting.
- (5) Paragraph 9.1.1(1)(d) of the Instrument requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) of NI 54-101 at least 30 days before the date fixed for the meeting. This is intended to broadly communicate to the reporting issuer's registered holders that the reporting issuer is using notice-and-access.
- (6) Paragraph 9.1.1(1)(e) of the Instrument requires the information circular and other proxy-related materials to be filed on SEDAR and posted on a 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.
- (7) 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 to request a paper copy of the information circular. A person or company soliciting proxies may choose to, 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.
- (8) Subsection 9.1.3(2) of the Instrument is intended to allow registered holders to access the posted proxy-related materials in a user-friendly manner. For example, requiring the registered holder to navigate through several web pages 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.
- (9) Where a reporting issuer uses notice-and-access, it generally must send the same basic notice package to all registered holders. However, the following are exceptions to this general principle:

  - Section 9.1.4 of the Instrument provides that where a reporting issuer uses notice-and-access, a registered holder still can be sent proxy-related materials using an alternate method to which the registered holder has previously

consented. For example, service providers acting on behalf of reporting issuers may have previously obtained (and continue to obtain) consents from shareholders for proxy-related materials to be sent by email. This delivery method would still be available.

- Section 9.1.5 of the Instrument permits a reporting issuer to obtain standing instructions from a registered holder to be sent a paper copy of the information circular in all cases where the reporting issuer uses notice-and-access. Where such standing instructions have been obtained, the notice package for the registered holder will contain a paper copy of the information circular.
- Section 4.6 of the Instrument establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. A request for annual financial statements and annual MD&A will also constitute a request that the notice package for the registered holder contain a paper copy of the information circular.

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The addition of a paper information circular to the notice package sent to some registered holders is referred to as "stratification" and is a term defined in section 1.1 of the Instrument.

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We do not mandate the use of stratification, other than to the extent it is necessary to comply with standing instructions or annual requests for paper copies of information circulars that reporting issuers or intermediaries have chosen to obtain from registered holders or beneficial owners. We expect that any additional stratification criteria will develop and evolve through market demand and practice. However, we expect that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions does so in order to enhance effective communication, and not to disenfranchise shareholders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a copy of the information circular.