

CSA Notice of
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*

and

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

November 29, 2012

Introduction

We, the members of the Canadian Securities Administrators (**CSA**), are adopting amendments (the **Amendments**) intended to improve the process by which reporting issuers send proxy-related materials to and solicit proxies and voting instructions from registered holders and beneficial owners of their securities (the **Shareholder Voting Communication Process**).

The Amendments are set out in the following materials (the **Materials**) included in the relevant Annexes to this notice:

- an amendment instrument to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**), including the enactment of a new Form 54-101F10 *Undertaking*, and the following forms:
 - Form 54-101F2 *Request for Beneficial Ownership Information*;
 - Form 54-101F5 *Electronic Format for NOBO List*;
 - Form 54-101 F6 *Request for Voting Instructions Made by Reporting Issuer*;
 - Form 54-101F7 *Request for Voting Instructions Made by Intermediary*;
 - Form 54-101F9 *Undertaking* (Annex B);
- an amendment instrument to National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and Form 51-102F5 *Information Circular* (Annex C); and
- changes to:
 - Companion Policy 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**54-101CP**) (Annex D); and

- Companion Policy 51-102CP *Continuous Disclosure Obligations (51-102CP)* (Annex E).

The Materials are also available on the websites of CSA members, including the following:

- www.bcsc.bc.ca
- www.albertasecurities.com
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.msc.gov.mb.ca
- www.nbsc-cvmnb.ca
- www.gov.ns.ca/nssc
- www.sfsc.gov.sk.ca

In some jurisdictions, ministerial approvals are required for the implementation of the Amendments. Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **February 11, 2013**. However, please refer to **Effective Dates** for an explanation of the dates on which specific provisions of the Amendments will take effect.

Substance and Purpose

The most significant features of the Amendments 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.

Background

We published proposed versions of the Amendments on April 9, 2010 and again on June 17, 2011 (the **2011 Proposal**). For additional background and the summary of comments received during the first and second publication periods, please refer to the notices we published on April

9, 2010 and June 17, 2011.

Summary of Written Comments Received by the CSA

During the last comment period, we received submissions from eight commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex A of this notice as well as a summary of their comments, together with our responses.

Summary of Changes to the Proposed Instrument/Policy

The following outlines the main changes from the 2011 Proposal. As these changes are not material, we are not republishing the Amendments for a further comment period.

1. Notice-and-access (sections 2.7.1 to 2.7.8 of NI 54-101; sections 9.1.1 to 9.1.4 of NI 51-102)

Under notice-and-access, a reporting issuer can deliver proxy-related materials by:

- posting the relevant information circular (and if applicable, other proxy-related materials) on a website that is not SEDAR; and
- sending a notice informing beneficial owners that the proxy-related materials have been posted, and explaining how to access them.

We have made the following changes to the notice-and-access provisions.

(a) Record date for notice

In order to use notice-and-access, a reporting issuer must set the record date for notice of the meeting date to be at least 40 days before the meeting. The 2011 Proposal would have permitted the record date to be set between 30 to 60 days before the meeting. The change to at least 40 days is intended to provide sufficient time for the website posting and delivery requirements under notice-and-access. See Annex A, Comment 1(g) for a further discussion of this issue.

(b) Notice in advance of first use of notice-and-access

A reporting issuer must file a notification of meeting and record dates containing information about the meeting and its use of notice-and-access on SEDAR. Where the issuer is using notice-and-access for the first time, the notification must be filed at least 25 days before the record date for notice (i.e., at least 65 days before the date of the meeting). This requirement replaces the proposed advance notice mechanism in the 2011 Proposal, which would require that a reporting issuer provide advance notice via a news release and a website posting 3 to 6 months before the expected date of the meeting. We believe this provides sufficient advance notice to shareholders.

See Annex A, Comment 1(c) for a further discussion of this issue.

For meetings subsequent to the first meeting for which an issuer uses notice-and-access, the issuer can abridge the timeline for filing the notification of meeting and record dates to 3 business days before the record date for notice.

(c) Contents of notice package

Under notice-and-access, an issuer will send to shareholders a notice package that contains a notice and the relevant voting document (a form of proxy or voting instruction form as applicable).

(i) Notice

The notice must:

- contain basic information about the meeting and the matters to be voted on;
- explain how to obtain a paper copy of the information circular (and if applicable, annual financial statements and annual management discussion and analysis (**MD&A**)); and
- explain in plain language the notice-and-access process.

The 2011 Proposal as drafted contemplated that the notice-and-access explanation would be a separate document from the notice. The present requirement provides that the explanation will form part of the Notice. Note, however, that s.1.3 of NI 54-101 also is being amended to give issuers the flexibility to combine or substitute any form or document required by NI 54-101 with another form or document, provided the information required by NI 54-101 is included.¹

We have also made changes to the information that must be included in the notice-and-access explanation:

- The explanation need only state an estimated date and time by which an issuer should receive a request for paper copies. The 2011 Proposal required a firm date and time to be specified.
- The explanation need only state the sections of the information circular where disclosure regarding each matter or group of related matters identified in the notice can be found. The 2011 Proposal required page numbers to be specified.

(ii) Additional material

An issuer generally is prohibited from including material in the notice package other than the notice and the relevant voting document. However, an issuer can include financial statements

¹ The original s. 1.3 only applied to forms required by NI 54-101, and not documents generally.

which are to be approved at the meeting and MD&A related to such financial statements, which documents may be part of an annual report. Sections 2.7.1(2)(b) of NI 54-101 and 9.1.1(2)(b) of NI 51-102) have been modified from the 2011 Proposal to make this concept clearer.

(d) Sending of annual financial statements and MD&A as part of proxy-related materials

In the Notice accompanying the 2011 Proposal, we asked questions about how notice-and-access should interact with the sending of annual financial statements and annual MD&A. Having considered the issue, we think that an issuer should be able to use notice-and-access to send annual financial statements and annual MD&A pursuant to s. 4.6(5) of NI 51-102. Notice-and-access is consistent with the principles for electronic sending set out in National Policy 11-201 *Delivery of Documents by Electronic Means*. We therefore provide new policy guidance in 51-102CP to that effect. The net effect is that an issuer can choose between:

- sending annual financial statements and annual MD&A pursuant to the annual request mechanism set out in s. 4.6(1) of NI 51-102; or
- sending annual financial statements and annual MD&A under s. 4.6(5) of NI 51-102, for which notice-and-access is an acceptable delivery method.

An issuer who chooses the second option and uses notice-and-access must modify the information in the notice required by s. 2.7.1(1) of NI 54-101 and s. 9.1.1(1) of NI 51-102 to refer to the annual financial statements and annual MD&A.

(e) Other significant features of notice-and-access

(i) Methods of sending notice package

A notice package can be sent by mail or, if prior consent has been obtained, electronically. In addition, if a service provider offers an e-delivery method (e.g., an email is sent with hyperlinks to all the proxy-related materials) that is distinct from notice-and-access and that is otherwise compliant with securities legislation, such delivery method can continue to be used in conjunction with notice-and-access.

(ii) Website posting

There are a number of requirements relating to the posting of proxy-related materials on the non-SEDAR website and these generally remain unchanged from the 2011 Proposal. One change is that proxy-related materials need only be posted for one year from the date of posting. This harmonizes the posting period with the period for which a reporting issuer has an obligation to fulfill requests for paper copies of proxy-related materials in s. 2.7.1(1)(f)(ii) of NI 54-101.

(f) Use of notice-and-access for non-management solicitations

We have added a new s. 2.7.7 that is intended to clarify that notice-and-access can be used to

deliver proxy-related materials to beneficial owners of a reporting issuer's securities in connection with a proxy solicitation that is not a solicitation by management of the reporting issuer.²

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

An intermediary or management of a reporting issuer, as applicable, who has voting authority over the securities owned by a beneficial owner, must appoint the beneficial owner or its nominee as a proxy holder with authority to vote on any matters that come before the meeting. We have modified the 2011 Proposal to clarify that the required grant of authority is subject to any prohibitions under corporate law. We also have removed the provision that a beneficial owner can instruct the intermediary or reporting issuer management, as applicable, to limit the voting authority. See Annex A, Comment 5 for a further discussion of these changes.

3. Enhanced disclosure of voting process (s. 2.16 of NI 54-101 and Item 4.3 of Form 51-102F5)

Issuers must provide enhanced disclosure of the voting process in the information circular. We have modified the 2011 Proposal so that where the reporting issuer does not intend to pay for intermediaries to deliver proxy-related materials to OBOs, the information circular must include a statement that the OBO may not receive proxy-related materials unless the OBO's intermediary assumes the costs of delivery.

4. NOBO list

A reporting issuer or other person may request a NOBO list without using a transfer agent. We have modified the 2011 Proposal to add a self-certification process, whereby the requester certifies in the Form 54-101F9 *Undertaking* that accompanies the request for a NOBO list that it has the technological capacity to receive the list.

5. Other changes

We have made additional changes to several Forms that were not part of the 2011 Proposal.

(a) Form 54-101F2 *Request for Beneficial Ownership Information*

The following changes are intended to improve the process for obtaining beneficial ownership information:

- adding the reporting issuer's French name, if applicable (Item 1);
- adding a contact person at the reporting issuer to deal with invoices, if different from the person who making the request (Item 2);

² The notice-and-access provisions in NI 51-102 contain an equivalent concept.

- having the reporting issuer explicitly state whether it wants securityholder materials to be sent electronically where consent has been obtained from beneficial owners (Items 6.7, 7.9, 8.5 and 9.7);
- having the reporting issuer explicitly state whether securityholder materials are to be sent to all beneficial owners of securities (including beneficial owners that have declined to receive them), only beneficial owners who have requested to receive all securityholder materials, or only beneficial owners who have requested to receive all securityholder materials or special meeting materials (Items 6.9, 7.11, 8.6 and 9.8); and
- where the reporting issuer wishes to use stratification, clarifying that a reporting issuer should discuss with the relevant intermediary what criteria the intermediary is able to apply (Items 7.12 and 9.9).

(b) Form 54-101F5 *Electronic Format for NOBO List*

We are replacing the existing form with a new one that includes a new field for stratification instructions (to the extent those have been obtained) under notice-and-access.

Effective Dates

The Amendments will come into force on February 11, 2013, subject to the following implementation dates:

- notice-and-access can only be used in respect of meetings that occur on or after March 1, 2013;
- a reporting issuer may request beneficial ownership information without using a transfer agent for the sole purpose of obtaining a NOBO list only on or after February 15, 2013;
- a person or company need only provide the new Form 54-101F10 *Undertaking* for a request to send materials indirectly to beneficial owners made on or after February 15, 2013;
- the new Part 7 of NI 54-101 only applies to NOBO lists requested on or after February 15, 2013 and requests to send materials indirectly to beneficial owners made on or after February 15, 2013; and
- a reporting issuer may rely on the exemptions in sections 9.1.1 of National Instrument 54-101 and 9.1.5 of NI 51-102 only in respect of a meeting that takes place on or after February 15, 2013.

Local Matters

Annex F is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Questions

If you have any questions, please refer them to any of the following:

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ANNEX A

SUMMARY OF COMMENTS AND RESPONSES ON NOTICE AND REQUEST FOR COMMENT

**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***

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

This annex summarizes the written public comments we received on the 2011 Proposal. It also sets out our responses to those comments.

List of Parties Commenting on the 2011 Proposal

- Broadridge Financial Solutions, Inc.
- Canadian Bankers Association
- Computershare Trust Company of Canada, Computershare Investor Services Inc. and Georgeson Shareholder Communications (joint comment letter)
- Investment Industry Association of Canada
- Mouvement d'éducation et de défense des actionnaires
- National Bank of Canada
- Osler, Hoskin & Harcourt LLP
- Securities Transfer Association of Canada

1. Notice-and-access

(a) General comments on notice-and-access

We received a comment that notice-and-access should not be introduced without further study of the familiarity of shareholders with websites and appropriate regulations to facilitate their access and review of information circulars.

Response: Our view is that the notice-and-access provisions strike an appropriate balance between shareholder access to materials and a more streamlined delivery process. We will monitor the implementation of notice-and-access to assess the impact on shareholders.

We also received several comment letters recommending that investment funds be permitted to use notice-and-access.

Response: We are not prepared at this time to extend notice-and-access to investment funds without further study. We will consider this issue at a later date.

(b) Notice and permitted information in the notice package

We received a number of detailed comments on proposed s. 2.7.1 to 2.7.6 of NI 54-101, which set out the notice-and-access process. The main comments comprised the following recommendations:

- allowing or requiring all the requisite information to be provided in a single notice document, rather than a notice and a separate document explaining notice-and-access;
- removing the requirement to reference page numbers in the information circular;
- requiring a factual description of matters to be voted on only if the matter to be voted on is not otherwise fully described in the voting instruction form or proxy;
- removing the requirement to specify a date and time by which a request for a paper copy of the information circular must be received;
- removing the requirement for the reporting issuer to explain its reason for using notice-and-access;
- requiring the reporting issuer to disclose whether it is paying for intermediaries to forward proxy-related materials to OBOs.

Response: We generally have accepted most of the recommendations specified above, although in some cases we have made modifications to the specific alternatives proposed. We have, among other changes, amended s. 1.3 of NI 54-101 to clarify that any required document (and not just forms) that a person or company is required to send can be substituted for another form or document or combined with another form or document, so long as the form or document used requests or includes the same information contemplated by the required form or document.

However, we are not adopting the recommendation regarding disclosure of whether the reporting issuer is paying for intermediaries to forward proxy-related materials to OBOs. We do not think this information needs to be included in the notice, as it is already provided in the notification of meeting and record dates which is filed on SEDAR. We strongly

encourage all market participants to work together to develop industry best practices and standards for the notice to make it as user-friendly and consistent for investors as possible.

(c) Notice in advance of first use of notice-and-access

We received several comments that questioned the utility of the requirement in proposed s. 2.7.2 that a reporting issuer provide advance notice not more than 6 months and not less than 3 months before the first meeting for which notice-and-access would be used. Several alternatives were suggested, including that the notification of meeting and record dates required by s. 2.2 of NI 54-101 filed on SEDAR would be adequate. It was noted by one commenter that shareholders would be unlikely to act upon three months advance notice to educate themselves on notice-and-access; that the need for advance notice for a reporting issuer adopting notice-and-access for the first time would diminish as shareholders became increasing familiar with the process; and that the concept of an “expected date” for the meeting is an unworkable standard.

Response: We have adopted this recommendation. A reporting issuer that uses notice-and-access for the first time must file the notification of meeting and record dates, which includes information on whether the issuer will use notice-and-access, on SEDAR at least 25 days before the record date for notice, which in turn must be at least 40 days before the meeting. We think that this greater lead time will enable issuers using notice-and-access for the first time to more smoothly implement notice-and-access. We strongly encourage all market participants to work together to develop industry best practices and standards as notice-and-access is introduced for the first time.

(d) Consent to other delivery methods/Electronic delivery of notice package

We received several comments and questions regarding how notice-and-access will interact with the delivery of proxy-related materials, including annual financial statements and related MD&A.

Response: We have made a number of changes to address these comments. In particular, please see new s. 3.5(2) of 51-102CP, which clarifies that annual financial statements and related MD&A can be sent for purposes of s. 4.6(5) using notice-and-access.

Our understanding is that currently, the primary service provider for intermediaries has a separate e-delivery platform for delivering proxy-related materials which is intended to be distinct from the notice-and-access platform. The guidance clarifies that this type of separate e-delivery platform can be used in conjunction with notice-and-access. In

addition, the notice package can also be delivered electronically (subject to obtaining the beneficial owner's consent) if this delivery option is available.

(e) Standing instructions to receive paper copies of information circulars and/or annual financial statements and related MD&A

We received a comment proposing that changes be made to Form 54-101F1 *Client Response Form* to accommodate standing instructions, and requiring the provision of information on standing instructions in the explanation of notice-and-access required to be sent under s. 2.7.1. Another commenter also noted that some dealers expressed concern around implementation and management of a standing instruction database and that dealers wished to have the opportunity to consider and discuss the changes with regulators and service providers before stating a view.

We also received a comment that a reporting issuer should give effect to standing instructions it receives from registered shareholders whether or not it has taken steps to obtain standing instructions.

*Response: The intent of the provisions relating to standing instructions and intermediaries is to permit **but not require** intermediaries to obtain standing instructions on the inclusion of paper copies of the information circular and/or annual financial statements and related MD&A. It is ultimately the intermediaries' decision (in consultation with service providers) whether to implement operational procedures to obtain standing instructions, and whether, as a result, intermediaries will need to give additional information to clients in Form 54-101F1 Client Response Form regarding provision of standing instructions.*

We have not adopted the recommendation that a reporting issuer give effect to standing instructions whether or not it has taken steps to obtain them. To require this would effectively require reporting issuers to implement and manage a database of standing instructions, and we do not think that this measure is warranted at this time.

(f) Stratification

One commenter cautioned that it may be necessary or advisable to limit the criteria applied to stratification and asked for clarification as to what other criteria for stratification it foresees as being acceptable.

*Response: The intent of the provisions relating to stratification is to permit **but not require** stratification to be used by, or available as an option to, reporting issuers and intermediaries. It is ultimately for reporting issuers and intermediaries (in consultation with the various*

service providers) to decide whether stratification is an appropriate and feasible feature for notice-and-access, subject to the guidance we have provided on the appropriate objectives for stratification. We do not propose to mandate specific permitted stratification criteria, although we will continue to monitor this issue. We strongly encourage market participants to develop best practices for stratification criteria should stratification be introduced as a feature of notice-and-access in the Canadian context. We note that stratification has been a feature of US notice-and-access for several years, and this experience may be helpful to market participants in developing stratification options and best practices.

(g) Record date for notice

A commenter noted that if the record date for notice was set at 30 days before the meeting date as currently permitted in s. 2.1 of NI 54-101, there would be operational challenges for all parties in the process to verify the record date information and send the requisite materials no more than 30 days before the meeting. The commenter requested that s. 2.1 be modified so that the record date for notice under notice-and-access leaves sufficient time for compliance with the posting and delivery requirements.

Response: We have adopted this recommendation.

(h) Collection of information on websites

One commenter noted that there may be some significant practical problems associated with permitting the collection of information on some securityholders (i.e. registered holders) and not others (i.e., beneficial owners) on the website to which proxy-related materials are posted.

Response: It is up to the reporting issuer using notice-and-access, in conjunction with relevant service providers, to determine how to comply with the restrictions on collecting information in a cost-effective manner.

(i) Availability of exemption to use US notice-and-access

A commenter submitted that any issuer that is mandatorily subject to Rule 14a-16 should be able to use US notice-and-access exclusively, and not have to comply with the Canadian notice-and-access requirements. Alternatively, it proposed that any disqualifying criteria from accessing the exemption should be tied solely to the trading volume of the issuer's securities in Canada relative to its trading volume in the United States. Finally, it also proposed that an SEC issuer that voluntarily complies with Rule 14a-16 despite being an exempt "foreign private issuer" under the SEC's rules should also be entitled to rely on the Canadian notice-and-access requirements exemption, subject to whatever disqualification test based on connections to Canada is ultimately adopted.

Response: We are not adopting this recommendation at this time. Although the Shareholder Voting Communication Process in the United States and Canada are broadly similar, there are important differences. These include differences in the mechanisms by which a beneficial owner obtains authority to attend and vote at a meeting and differences in what documents are required to be sent as part of proxy-related materials. The Canadian notice-and-access procedures have been formulated to take these and other specific features of the Canadian Shareholder Voting Communication Process into account. We note that there are a number of exemptions from Canadian securities legislation that also apply to “SEC issuers”.

(j) Use of notice-and-access by third parties

A commenter requested clarification on the obligations and restrictions applicable to third parties in using notice-and-access, particularly in light of s. 6.2 of NI 54-101. For example, how would the restriction in s. 2.7.1(2) (requiring the reporting issuer to send a paper copy of the information circular if the notice-and-access package includes any particulars of any matter submitted to the meeting that go beyond what is permitted in s. 2.7.1) apply to third parties?

Response: We have added s. 2.7.7 to address this point. We note that notice-and-access is a delivery mechanism for proxy-related materials, and does not modify any existing legal obligations of third parties such as dissident shareholders in the Shareholder Voting Communication Process.

(k) Miscellaneous comments

We received a number of other detailed drafting and technical comments and have adopted a number of them.

2. Sending “notice only” package when reporting issuer decides not to pay for delivery to OBOs

A commenter asked that we mandate that a reporting issuer who chooses not to pay for an intermediary to forward proxy-related materials to OBOs pay for the forwarding of a “notice only” package, defined as a package without a paper copy of an information circular.

Response: We are not adopting this suggestion at this time, and will consider this issue separately. We note that we would have no concerns if, where a reporting issuer chose not to pay, an intermediary voluntarily sent the “notice only” package to its beneficial owner clients.

3. Indirect sending of securityholder materials by reporting issuer

A commenter took the view that removing the present s. 2.12(2) of NI 54-101 and instead providing guidance in 54-101CP effectively permits an issuer to choose to deliver materials for forwarding to beneficial owners to any office of an intermediary, rather than to the designated agent of that intermediary. The commenter noted that this would impede timely delivery of materials to investors, add costs and reduce the overall efficiency of the delivery process. The commenter also requested that s. 2.12 be amended to clearly require that reporting issuers pay for delivery of material to intermediaries for forwarding.

Response: Our view is that the present s. 2.12(2)'s use of the word "may" can be interpreted as permitting, but not requiring a reporting issuer to deliver materials to the intermediary's agent. This was not the intent of the provision, which was to clarify that a reporting issuer would not have failed to comply with its obligations to send securityholder materials because it followed an intermediary's instruction to send the materials to the intermediary's third-party agent. We have added language to s. 2.7 of 54-101CP to further clarify that we expect reporting issuers to send materials to the agent designated by the intermediary unless alternate arrangements have been made with that intermediary.

We think the wording of s. 2.12 (as amended) clearly states the reporting issuer's obligation to send a proximate intermediary the requisite number of sets of materials specified by the proximate intermediary. A reporting issuer that refuses to send these materials to a proximate intermediary is not complying with its obligations under this section. We have modified the guidance in s. 3.4.1(3) of 54-101CP to further clarify this point.

The same commenter took the view that an issuer should be obligated to deliver materials to all intermediaries in a foreign jurisdiction for forwarding to beneficial owners in that jurisdiction.

Response: NI 54-101 effectively only requires reporting issuers to send proxy-related materials to beneficial owners who hold their securities through intermediaries that are covered by the request for beneficial ownership information. Section 2.5(1) specifies that the request only applies to each proximate intermediary that is:

- (a) identified by a depository (currently only CDS) as a participant in the depository holding securities that entitle the holder to receive notice of the meeting or to vote at the meeting; or*
- (b) listed as an intermediary on the intermediary master list provided by a depository where the intermediary, or a nominee of the intermediary that is identified on the intermediary master list, is a registered holder of securities that entitle the holder to receive notice of the meeting or*

to vote at the meeting.

We are not adopting this recommendation at this time and will consider this issue separately. In the meantime, we strongly encourage reporting issuers to send proxy-related materials to any intermediary in a foreign jurisdiction who requests them on behalf of beneficial owners.

4. Requests for NOBO lists

A commenter raised a concern that proposed s. 2.5(4) requires an intermediary to make an assessment about whether a person or company requesting a NOBO list has the technological capacity to receive the list. The commenter also noted concerns on the part of dealers about their ability to assess the technological capacities of a wide variety of reporting issuers and third parties, and also about issues that could arise should an intermediary determine not to provide the list. The commenter proposed an alternative self-certification process, whereby the requester certifies as to its technological capacity to receive the list.

Response: We have adopted this recommendation and made changes to the undertaking in Form 54-101F9.

Another commenter recommended that s. 2.5 be amended to not require any request for beneficial ownership information to come through a transfer agent, regardless of whether the request is only for the limited purpose of requesting a NOBO list.

Response: We are not adopting this recommendation.

5. Appointing beneficial owner as proxy holder

A commenter was concerned that requiring a beneficial owner or its nominee appointed under s. 2.18(2) or s. 4.5(2) be given authority to attend, vote and otherwise act for and on behalf of management of the reporting issuer or intermediary (as applicable) could conflict with the laws applicable to certain, largely foreign companies which only permit proxyholders to vote on items set out in the information circular. The commenter also was concerned that requiring that this authority be limited if expressly instructed by a beneficial owner would be difficult to implement.

Response: We have modified the relevant sections to clarify that the required grant of authority is subject to any prohibitions under corporate law. We have removed the reference to express limitations on voting authority by beneficial owner. In our view, a beneficial owner that wishes to provide more limited voting authority can make appropriate arrangements with its appointee without necessarily involving management of the reporting issuer or the intermediary (as applicable).

A commenter requested that proposed s. 2.18 be amended to permit management of the reporting issuer to use the power of substitution in the proxy they hold on behalf of NOBOs (where the reporting issuer is sending proxy-related materials directly to NOBOs) to send proxies instead of VIFs to NOBOs. Conversely, another commenter requested that s. 3.6 of 54-101CP be amended to expressly state that sending proxies instead of VIFs is not permitted.

Response: We are not adopting either recommendation at this time. We will consider this issue at a later date. While we support in principle measures to simplify the voting process of all beneficial owners, we believe the process described above needs to be studied further in the context of the larger Shareholder Voting Communication Process before determining whether it is appropriate to codify it in NI 54-101.

6. Use of alternate forms

A commenter requested that s. 1.3 of NI 54-101 be expanded to a more general provision that allows participants to use forms and documents that are acceptable for the purposes of corporate statutes and for achieving the purpose of NI 54-101. The objective would be to prevent technical non-compliance with the Instrument from being a factor that could potentially invalidate the vote for the meeting under corporate statutes, if otherwise acceptable documentation exists to allow non-registered holders to exercise their rights to vote.

Response: We are not adopting this recommendation at this time. We will consider this issue at a later date. We believe the issue described above is an important one, but that it needs to be studied further in the context of the larger Shareholder Voting Communication Process before determining whether it is appropriate to make the requested changes to NI 54-101.

7. Reconciliation of positions

A commenter called for NI 54-101 to explicitly require intermediaries to:

- Reconcile the files of beneficial ownership data with their registered, depository and nominee positions;
- Give clear direction to the tabulator regarding through which depository, nominee or intermediary securities being voted are held;
- Ensure that any omnibus proxy required from an intermediary or depository through whom they hold shares is being filed; and

- Ensure that a restricted proxy is not issued by the intermediary without verifying that a position has not been voted.

Response: We are not adopting this recommendation at this time. We will consider this issue at a later date. We believe the issue of reconciliation of voting positions is an important one and needs to be studied further in the context of the larger Shareholder Voting Communication Process before determining whether it is appropriate to codify provisions affecting this issue in NI 54-101 and the form those provisions should take.

ANNEX B

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2012-16
(Section 149.1, *The Securities Act*)

AMENDMENTS 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 is amended by*

(a) *repealing the definition of "legal proxy",*

(b) *adding the following definition:*

"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*, or

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

(c) *in the definition of "proxy-related materials", adding "or beneficial owners" between "registered holders" and "of the securities",*

(d) *repealing the definition of "request for voting instructions",*

(e) *adding the following definition:*

"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;

(f) *in the definition of "securityholder materials", adding "or beneficial owners" between "registered holders" and "of securities", and*

(g) adding the following definition:

"**stratification**", in relation to a reporting issuer using notice-and-access, means procedures whereby a paper copy of the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b), are 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);

3. Subsection 1.3(1) is replaced with the following:

Use of required forms

1.3(1) A person or company required to send or use a required form or document under a provision of this Instrument may substitute for that form or document another form or document, or combine the required form or document with another form or document, if the substituted or combined form or document requests or includes the same information contemplated by the form or document that is otherwise required.

4. Paragraphs 2.2(2)(g) and (h) are replaced 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;

5. Subsection 2.2(2) is amended by adding the following paragraphs:

(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 or other proxy-related materials;

(j) whether the reporting issuer is sending the proxy-related materials directly to NOBOs; and

(k) whether the reporting issuer intends to pay for a proximate intermediary to send the proxy-related materials to OBOs..

6. Subsection 2.5(4) is replaced with the following:

2.5(4) A reporting issuer that requests beneficial ownership information under this section must do so through a transfer agent.

7. Section 2.5 is amended by adding the following subsection:

2.5(5) Despite subsection (4), a reporting issuer may request beneficial ownership information without using a transfer agent for the sole purpose of obtaining a NOBO list if the reporting issuer has provided an undertaking using Form 54-101F9..

8. The Instrument is amended by adding the following sections:

Notice-and-Access

2.7.1(1) A reporting issuer that is not an investment fund may use notice-and-access to send proxy-related materials relating to a meeting to a beneficial owner of its securities if all of the following apply:

(a) the beneficial owner is sent a notice that contains the following information and no other information:

- (i) the date, time and location of the meeting for which the proxy-related materials are being sent;
- (ii) a description of each matter or group of related matters identified in the form of proxy to be voted on, unless that information is already included in a Form 54-101F6 or Form 54-101F7 as applicable, that is being sent to the beneficial owner under paragraph (b);
- (iii) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;
- (iv) a reminder to review the information circular before voting;
- (v) an explanation of how to obtain a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b) from the reporting issuer;
- (vi) a plain-language explanation of notice-and-access that includes the following information:
 - (A) if the reporting issuer is using stratification, a list of the types of registered holders or beneficial owners who will receive paper copies of the information circular, and if applicable, the documents in paragraph (2)(b);
 - (B) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), is to 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;
 - (C) an explanation of how the beneficial owner is to return voting instructions, including any deadline for return of those instructions;
 - (D) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the notice can be found;
 - (E) a toll-free telephone number the beneficial owner can call to get information about notice-and-access;

(b) using the procedures referred to in section 2.9 or 2.12, as applicable, the beneficial owner is sent, by prepaid mail, courier or the equivalent, the notice required by paragraph (a) and a Form 54-101F6 or Form 54-101F7, as applicable;

(c) the reporting issuer files on SEDAR the notification of meeting and record dates on the same date that it sends the notification under subsection 2.2(1);

(d) public electronic access to the information circular and the notice in paragraph (a) is provided on or before the date that the reporting issuer sends the notice in paragraph (a) to beneficial owners, in the following manner:

- (i) the documents are filed on SEDAR;
- (ii) the documents are posted until the date that is one year from the date that the documents are posted, on a website other than the website 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 and, if applicable, the documents in paragraph (2)(b), at any time from the date that the reporting issuer sends the notice in paragraph (a) to the beneficial owner up to and including the date of the meeting, including any adjournment;

(f) if a request for a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), is received at the toll-free telephone number provided under paragraph (e) or by any other means, a paper copy of any such document requested is sent free of charge by the reporting issuer to the requester 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.

2.7.1 (2) Unless an information circular is included with the proxy-related materials, 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 materials any information or document that relates to the particulars of any matter to be submitted to the meeting, except for the following:

(a) the information required to be included in the notice under paragraph (1)(a);

(b) financial statements of the reporting issuer to be approved at the meeting, and MD&A related to those financial statements, which may be part of an annual report.

Notice in advance of first use of notice-and-access

2.7.2 Despite paragraph 2.7.1(1)(c) and subsection 2.20(a.1), the first time that a reporting issuer uses notice-and-access to send proxy-related materials to a beneficial owner of its securities, the reporting issuer must file on SEDAR the notification of meeting and record dates at least 25 days before the record date for notice.

Restrictions on information gathering

2.7.3(1) A reporting issuer that receives a request for a paper copy of the information circular or other documents referred to in paragraph 2.7.1(1)(e) using the toll-free telephone number or by any other means must not do any of the following:

(a) ask for any information about the requester, other than the name and address to which the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b), are to be sent;

(b) disclose or use the name or address of the requester for any purpose other than sending the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b).

2.7.3(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 posted.

Posting materials on non-SEDAR website

2.7.4(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 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 each matter or group of matters to be voted on at the meeting, whether or not they were sent to registered holders or beneficial owners of its securities.

2.7.4(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 easily:

(a) access, read and search the documents on the website;

(b) download and print the documents.

Consent to other delivery methods

2.7.5 For greater certainty, section 2.7.1 does not

(a) prevent a beneficial owner from consenting to a reporting issuer, an intermediary or another person or company's use of other delivery methods to send proxy-related materials,

(b) terminate or modify a consent that a beneficial owner of voting securities previously gave to a reporting issuer, an intermediary or another person or company regarding the use of other delivery methods to send proxy-related materials, or

(c) prevent a reporting issuer, an intermediary or another person or company from sending proxy-related materials using a delivery method to which a beneficial owner has consented prior to February 11, 2013.

Instructions to receive paper copies

2.7.6(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 and, if applicable, the documents in paragraph 2.7.1(2)(b), be sent to the beneficial owner in all cases when a reporting issuer uses notice-and-access.

2.7.6(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, indicate in the NOBO list provided to the reporting issuer those NOBOs who have provided standing instructions under subsection (1) as at the date the NOBO list is generated;

(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 and, if applicable, the documents in paragraph 2.7.1(2)(b), from the reporting issuer for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;

(c) include with the proxy-related materials a description, or otherwise inform the beneficial owner of, the means by which the beneficial owner may revoke the beneficial owner's standing instructions.

Application to non-management solicitations

2.7.7(1) A person or company other than management of a reporting issuer that is required by law to send materials to registered holders or beneficial owners of securities in connection with a meeting may use notice-and-access to send the materials.

2.7.7(2) Section 2.7.1, other than paragraph (1)(c), and sections 2.7.3, 2.7.4 and 2.7.5 apply to a person or company in subsection (1) as if the person or company were a reporting issuer.

2.7.7(3) Paragraph 2.7.1(1)(c) and section 2.7.8 apply to a person or company referred to in subsection (1) only if the person or company has requisitioned a meeting.

Record date for notice

2.7.8 Despite subsection 2.1(b), a reporting issuer that uses notice-and-access must set a record date for notice that is no fewer than 40 days before the date of the meeting.

9. *Section 2.9 is replaced with the following:*

Direct sending of proxy-related materials to NOBOs by a reporting issuer

2.9(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 at its own expense the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request.

2.9(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 of the meeting.

2.9(3) A reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access must send the notice required by paragraph 2.7.1(1)(a) and, if applicable, any paper copies of information circulars and documents in paragraph 2.7.1(2)(b), at least 30 days before the date of the meeting..

10. *Section 2.10 is amended by inserting "and despite subsection 2.9(1)," after "Except as required by securities legislation,".*

11. *Section 2.12 is replaced with the following:*

Indirect sending of securityholder materials by a reporting issuer

2.12(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.

2.12(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 of 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, or

(b) at least 4 business days before the 21st day before the date of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.

2.12(3) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using notice-and-access must send the notice required by paragraph 2.7.1(1)(a) and, if applicable, any paper copies of information circulars and documents in paragraph 2.7.1(2)(b), to the proximate intermediary

(a) at least 3 business days before the 30th day before the date of 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, or

(b) at least 4 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.

2.12(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 date specified in the request for beneficial ownership information.

2.12(5) Despite section 2.9, a reporting issuer must not send securityholder materials directly to a NOBO if a proximate intermediary in a foreign jurisdiction holds securities on behalf of 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.

12. Section 2.16 is replaced with the following:

Explanation of voting rights

2.16(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.

2.16(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 and, if applicable, the documents in paragraph 2.7.1(2)(b);

(b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(c) whether the reporting issuer intends to pay for an intermediary to deliver to OBOs the proxy-related materials and Form 54-101F7, and if the reporting issuer does not intend to pay for such delivery, a statement that OBOs will not receive the materials unless their intermediary assumes the costs of delivery.

13. *Section 2.17 is replaced with the following:*

Voting instruction form (Form 54-101F6)

2.17 A reporting issuer that sends proxy-related materials directly to a NOBO that solicit votes or voting instructions from securityholders must include with the proxy-related materials a Form 54-101F6.

14. *Section 2.18 is replaced with the following:*

Appointing beneficial owner as proxy holder

2.18(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 filled in and submitted the 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 or a nominee of the NOBO be appointed as a proxyholder.

2.18(2) 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, 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, unless corporate law prohibits the giving of that authority.

2.18(3) A reporting issuer who appoints a NOBO as a proxy holder pursuant to subsection (1) must deposit the proxy within any time specified for the deposit in the information circular if the reporting issuer obtains the instructions under subsection (1) at least one business day before the termination of that time.

2.18(4) If corporate law requires an intermediary or depository to appoint the NOBO or nominee of the NOBO as a proxy holder in respect of securities beneficially owned by the NOBO in accordance with any written voting instructions received from the NOBO, and the intermediary has received the written voting instructions, the reporting issuer must provide, upon request by the intermediary, confirmation of both of the following:

(a) management of the reporting issuer will comply with subsections 2.18(1) and (2);

(b) management of the reporting issuer is acting on behalf of the intermediary or depository to the extent it appoints the NOBO or nominee of the NOBO as proxy holder in respect of the securities of the reporting issuer beneficially owned by the NOBO.

2.18(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.

15. *Subsection 2.20(a) is 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;

16. Section 2.20 is amended by adding the following subsection:

(a.1) if the reporting issuer uses notice-and-access, fixes the record date for notice to be at least 40 days before the date of the meeting and sends the notification of meeting and record dates under section 2.2 at least 3 business days before the record date for notice;

17. Subsection 4.1(1) 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".

18. Section 4.4 is replaced with the following:

Voting instruction form (Form 54-101F7)

4.4 An intermediary that forwards proxy-related materials to a beneficial owner that solicit votes or voting instructions from securityholders must include with the proxy-related materials a Form 54-101F7.

19. Section 4.5 is replaced with the following:

Appointing beneficial owner as proxy holder

4.5(1) An intermediary who is the registered holder of, or holds a proxy in respect of, securities owned by a beneficial owner must arrange, without expense to the beneficial owner, to appoint the beneficial owner or a nominee of the beneficial owner as a proxy holder in respect of those securities if the beneficial owner has instructed the intermediary to do so using either of the following methods:

(a) the beneficial owner filled in and submitted the 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 or a nominee of the beneficial owner be appointed as a proxy holder.

4.5(2) 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, 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, unless corporate law does not permit the giving of that authority.

4.5(3) An intermediary who appoints a beneficial owner as proxy holder pursuant to subsection (1) must deposit the proxy within any time specified for deposit in the information circular if the intermediary obtains the instructions under subsection (1) at least one business day before the termination of that time..

20. Section 5.4 is amended by adding the following subsections:

5.4(3) If corporate law requires a depository to appoint a beneficial owner or nominee of the beneficial owner as a proxy holder in respect of securities beneficially owned by the beneficial owner in accordance with any written voting instructions received from the beneficial owner, and the depository has received the written voting instructions, any participant described in subsection (1) must provide, upon request by the depository, confirmation of all of the following:

(a) the participant will comply with subsections 4.5(1) and (2);

(b) the participant is acting on behalf of the depository to the extent it appoints a beneficial owner or nominee of a beneficial owner as proxy holder in respect of the securities of the reporting issuer beneficially owned by the beneficial owner;

(c) if the participant is required to execute an omnibus proxy under section 4.1, that the participant will take reasonable steps to request the confirmation set out in subsection 2.18(4).

5.4(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..

21. *Subsection 6.2(6) is replaced with the following:*

6.2(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 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..

22. *Part 7 is replaced with the following:*

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

Use of NOBO list

7.1(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.

7.1(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 the reporting issuer and obtained under this Instrument, in any manner other than any of 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.

Sending of materials

7.2(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.

7.2(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 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.

23. *The Instrument is amended by adding the following section:*

Compliance with SEC Notice-and-Access Rules

9.1.1(1) Despite section 2.7, a reporting issuer that is an SEC issuer can send proxy-related materials to beneficial owners using a delivery method permitted under U.S. federal securities law, if all of the following apply:

(a) the SEC issuer is subject to, and complies with 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 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% of the votes for the election of directors, and none of the following apply:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50% of the consolidated assets of the issuer are located in Canada;

(iii) the business of the issuer is administered principally in Canada.

9.1.1(2) Part 4 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..

24. *Form 54-101F2 Request for Beneficial Ownership Information is amended by*

(a) *in Item 1, adding "in English and, if applicable, French" after "reporting issuer";*

(b) *replacing Item 2 with the following:*

Item 2 – Contact person(s)

State the name, address, telephone number, facsimile number and email address of the contact person(s) of the reporting issuer, and of the reporting issuer's agent, if applicable, with whom the intermediary should deal. If different from the foregoing, also state the name, address, telephone number, facsimile number and email address of the contact person(s) of the reporting issuer responsible for dealing with invoices.;

(c) *in Item 6.7, adding "State whether the reporting issuer would like materials to be sent electronically when consent has been obtained from the beneficial owner of securities." after "National Instrument.";*

(d) *in Item 6.9, replacing "If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state." with "State if securityholder materials are to be sent to (a) all beneficial owners of securities (including beneficial owners that have declined to receive them), (b) only those beneficial owners who have requested to receive all securityholder materials, or (c) only those beneficial owners who have requested to receive all securityholder materials or special meeting materials.";*

(e) in Item 7.9, adding "State whether the reporting issuer would like materials to be sent electronically when consent has been obtained from the beneficial owner of securities." after "National Instrument.";

(f) in Item 7.11, replacing "If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state." with "State if securityholder materials are to be sent to (a) all beneficial owners of securities (including beneficial owners that have declined to receive them), (b) only those beneficial owners who have requested to receive all securityholder materials, or (c) only those beneficial owners who have requested to receive all securityholder materials or special meeting materials.";

(g) adding the following Item:

7.12 State whether the reporting issuer is using notice-and-access, and any stratification criteria to be used. *[Before completing this item, the reporting issuer should discuss with the intermediary what stratification criteria the intermediary is able to apply.]*;

(h) in Item 8.5, adding "State whether the reporting issuer would like materials to be sent electronically when consent has been obtained from the beneficial owner of securities." after "National Instrument.";

(i) in Item 8.6, replacing "If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state." with "State if securityholder materials are to be sent to (a) all beneficial owners of securities (including beneficial owners that have declined to receive them), (b) only those beneficial owners who have requested to receive all securityholder materials, or (c) only those beneficial owners who have requested to receive all securityholder materials or special meeting materials.";

(j) in Item 9.7, adding "State whether the reporting issuer would like materials to be sent electronically when consent has been obtained from the beneficial owner of securities." after "National Instrument.";

(k) in Item 9.8, replacing "If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state." with "State if securityholder materials are to be sent to (a) all beneficial owners of securities (including beneficial owners that have declined to receive them), (b) only those beneficial owners who have requested to receive all securityholder materials, or (c) only those beneficial owners who have requested to receive all securityholder materials or special meeting materials.";

(l) adding the following Item:

9.9 State whether the reporting issuer is using notice-and-access, and any stratification criteria to be used. *[Before completing this item, the reporting issuer should discuss with the intermediary what stratification criteria the intermediary is able to apply.]*; **and**

(m) replacing "National Policy 11-201 and, in Québec, Staff Notice 11-201" with "National Policy 11-201 Electronic Delivery of Documents" wherever the expression occurs.

25. Form 54-101F5 Electronic Format for NOBO List is repealed and replaced with the following:

**FORM 54-101F5
ELECTRONIC FORMAT FOR NOBO LIST**

HEADER RECORD DESCRIPTION	TYPE	LENGTH	POSITION	COMMENTS
RECORD TYPE	A	1	1	Header record = A
FINS NUMBER	A	4	2-5	Prefix T,M,V or C
ISIN	A	12	6-17	
FILLER	X	3	18-20	Blank
SECURITY DESC.	A	32	21-52	Security Description
REC ORD DATE	N	8	53-60	Format YYYYMMDD
CREATION DATE	N	8	61-68	Format YYYYMMDD
FILLER	X	250	69-318	Blank
DETAIL RECORD DESCRIPTION	TYPE	LENGTH	POSITION	COMMENTS
RECORD TYPE	A	1	1	Detail Record = B
FINS NUMBER	A	4	2-5	Same as in Header record
ISIN	A	12	6-17	
FILLER	X	3	18-20	Blank
FILLER	X	20	21-40	Blank
NAME	A	32	41-72	Holder Name
ADDRESS	A	32 x 6	73- 264	Occurs 6 times
FILLER	X	32	265- 296	Blank
POSTAL CODE	A	9	297- 305	
POSTAL REGION	A	1	306	C=Canada; U=USA; F=Foreign; (other than USA); H=Hand Deliver
NOTICE AND ACCESS	A	1	307	Y=Full Package; N=Notice Only
FILLER	X	1	308	Blank
E-MAIL ADDRESS	A	32	309- 340	
LANGUAGE CODE	A	1	341	E=English; F=French
NUMBER OF SHARES	N	9	342- 350	Shareholder Position
RECEIVE ALL MATERIAL	A	1	351	A – ALL Material, S – Material for SPECIAL Meetings only, D – DECLINE to receive Materials
AGREE TO ELECTRONIC DELIVERY BY INTERMEDIARY	A	1	352	Y/N
TRAILER RECORD DESCRIPTION	TYPE	LENGTH	POSITION	COMMENTS
RECORD TYPE	A	1	1	Trailer record = C

FINS NUMBER	A	4	2-5	Same as in Header Record
ISIN	A	12	6-17	
FILLER	X	3	18-20	
TOTAL SHAREHOLDERS	N	7	21-27	Number of "B" type records
TOTAL SHARES	N	11	27-38	Total Shares on "B" type records
FILLER	X	280	39-318	Blank

26. Form 54-101F6 Request for Voting Instructions Made by Reporting Issuer is amended by replacing the paragraph that begins "Should you wish to attend the meeting and vote in person..." with the following:

If you want to attend the meeting and vote in person, 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 prohibited by law, 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 those matters are not set out in this form or the information circular. Consult a legal advisor if you wish to modify the authority of that person in any way. If you require help, contact [insert name].

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

If you want to attend the meeting and vote in person, 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 prohibited by law, 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 those matters are not set out in this form or the information circular. Consult a legal advisor if you wish to modify the authority of that person in any way. If you require help, contact [insert name].

28. Form 54-101F8 Legal Proxy is repealed.

29. Form 54-101F9 Undertaking is amended by

(a) replacing paragraph 2 with 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 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) replacing paragraph 4 with 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.;

(c) adding the following paragraph:

5. I declare that I (or the person or company I am using to make this request) has the technological capacity to receive the NOBO list.

30. *The Instrument is amended by adding the following form:*

**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 person or company other than an individual, set out the full legal name of that person or company, position of the individual signing on behalf of that person or company and address for service.)

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

31.(1) Despite section 2.7.1 of National Instrument 54-101, as enacted by section 8 of this Instrument, a person or company must not use notice-and-access to send proxy-related materials to a beneficial owner of voting securities of a reporting issuer in respect of a meeting of the reporting issuer that takes place before March 1, 2013.

31.(2) Despite subsection 2.5(5) of National Instrument 54-101, as enacted by section 7 of this Instrument, a reporting issuer must not request beneficial ownership information without using a transfer agent for the sole purpose of obtaining a NOBO list before February 15, 2013.

31.(3) Despite paragraph 6.2(6)(b) of National Instrument 54-101, as enacted by section 21 of this Instrument, a person or company is not required to provide the undertaking for a request to send materials indirectly to beneficial owners made before February 15, 2013.

31.(4) Despite section 22 of this Instrument, sections 7.1 and 7.2 of National Instrument 54-101 do not apply to NOBO lists requested before February 15, 2013 and requests to send materials indirectly to beneficial owners made before February 15, 2013.

31.(5) Despite section 23 of this Instrument, a reporting issuer must not rely on section 9.1.1 of National Instrument 54-101 in respect of a meeting that takes place before February 15, 2013.

32. This Instrument comes into force on February 11, 2013.

33. This Instrument may be cited as MSC Rule 2012-16.

ANNEX C

THE MANITOBA SECURITIES COMMISSION MSC Rule No. 2012-17 (Section 149.1, *The Securities Act*)

AMENDMENTS TO NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. *National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.*

2. *Section 1.1 is amended by adding the following definitions:*

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

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

"**proxy-related materials**" means securityholder material relating to a meeting of securityholders that a person or company that solicits proxies is required under corporate law or securities legislation to send to the registered holders or beneficial owners of the securities;

"**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. *Section 4.6 of National Instrument 51-102 is amended by*

(a) replacing subsection (1) with the following:

Delivery of financial statements

4.6(1) Subject to subsection (2), a reporting issuer must send annually a 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 any of the following:

(a) a paper copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements;

(b) a copy of the reporting issuer's interim financial reports and MD&A for the interim financial reports., *and*

(b) replacing "two years" in subsection (4) with "one year".

4. *The Instrument is amended by adding the following sections:*

Notice-and-access

9.1.1(1) A person or company soliciting proxies may use notice-and-access to send proxy-related materials to a registered holder of voting securities of a reporting issuer if all of the following apply:

(a) the registered holder of voting securities is sent a notice that contains the following information and no other information:

(i) the date, time and location of the reporting issuer's meeting for which the proxy-related materials are being sent;

(ii) a description of each matter or group of related matters identified in the form of proxy to be voted on, unless that information is already included in a form of proxy that is being sent to the registered holder of voting securities under paragraph (b);

(iii) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;

(iv) a reminder to review the information circular before voting;

(v) an explanation of how to obtain a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b) from the person or company;

(vi) a plain-language explanation of notice-and-access that includes the following information:

(A) if the person or company is using stratification, a list of the types of registered holders or beneficial owners who will receive paper copies of the information circular and, if applicable, the documents in paragraph (2)(b);

(B) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), is to 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;

(C) an explanation of how the registered holder is to return the proxy, including any deadline for return of the proxy;

(D) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the notice can be found;

(E) a toll-free telephone number the registered holder can call to get information about notice-and-access;

(b) the registered holder of voting securities is sent, by prepaid mail, courier or the equivalent, the notice required by paragraph (a) and a form of proxy for use at the meeting and, in the case of a solicitation by or on behalf of management of the reporting issuer, the notice and form of proxy are sent at least 30 days before the date of the meeting;

(c) in the case of a solicitation by or on behalf of management of the reporting issuer, the reporting issuer files on SEDAR the notification of meeting and record dates in the manner and within the time specified by NI 54-101;

(d) public electronic access to the information circular, form of proxy and the notice in paragraph (a) is provided on or before the date that the person or company soliciting proxies sends the notice in paragraph (a) to registered holders in the following manner:

(i) the documents are filed on SEDAR as required by section 9.3;

(ii) the documents are posted until the date that is one year from the date that the documents are posted, on a website other than the website for SEDAR;

(e) 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 and, if applicable, the documents in paragraph (2)(b), at any time from the date that the person or company soliciting proxies sends the notice in paragraph (a) to the registered holder up to and including the date of the meeting, including any adjournment;

(f) if a request for a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), is received at the toll-free telephone number provided under paragraph (e) or by any other means, a paper copy of any such document requested is sent free of charge by the person or company soliciting proxies to the requester 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.

9.1.1(2) Unless an information circular is included with the proxy-related materials, a reporting issuer that sends proxy-related materials to a registered holder of voting securities using notice-and-access must not include with the proxy-related materials any information or document that relates to the particulars of any matter to be submitted to the meeting, except for the following:

(a) the information required to be included in the notice under paragraph (1)(a);

(b) financial statements of the reporting issuer to be approved at the meeting and MD&A related to those financial statements, which may be part of an annual report.

9.1.1(3) A notice under paragraph (1)(a) and the form of proxy may be combined in a single document.

Posting materials on non-SEDAR website

9.1.2(1) A person or company that posts proxy-related materials in the manner referred to in subparagraph 9.1.1(1)(d)(ii) must also post on the website the following documents:

(a) any 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 each matter or group of matters to be voted upon at the meeting, whether or not they were sent to registered holders or beneficial owners of voting securities.

9.1.2(2) Proxy-related materials that are posted under subparagraph 9.1.1(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 easily:

(a) access, read and search the documents on the website;

(b) download and print the documents.

Consent to other delivery methods

9.1.3 For greater certainty, section 9.1.1 does not

- (a) prevent a registered holder of voting securities from consenting to a person or company's use of other delivery methods to send proxy-related materials,
- (b) terminate or modify a consent that a registered holder of voting securities previously gave to a person or company regarding the use of other delivery methods to send proxy-related materials, or
- (c) prevent a person or company from sending proxy-related materials using a delivery method to which a registered holder has consented prior to February 11, 2013.

Instructions to receive paper copies

9.1.4(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 and, if applicable, the documents in paragraph 9.1.1(2)(b), be sent to the registered holder in all cases when the reporting issuer uses notice-and-access.

9.1.4(2) If a reporting issuer has obtained standing instructions from a registered holder under subsection (1), the reporting issuer must do both of the following:

- (a) include with the notice required by paragraph 9.1.1(1)(a) any paper copies of information circulars and, if applicable, the documents in paragraph 9.1.1(2)(b), required to comply with standing instructions obtained under subsection (1);
- (b) include with the notice under paragraph (a) a description, or otherwise inform the registered holder of, the means by which the registered holder may revoke the registered holder's standing instructions.

Compliance with SEC Notice-and-Access Rules

9.1.5 A reporting issuer that is an SEC issuer can send proxy-related materials to registered holders under section 9.1 using a delivery method permitted under U.S. federal securities law, if both of the following apply:

- (a) the SEC issuer is subject to, and complies with Rule 14a-16 under the 1934 Act;
- (b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50% of the votes for the election of directors, and none of the following apply:
 - (i) the majority of the executive officers or directors of the issuer are residents of Canada;
 - (ii) more than 50% 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 section:

4.3 The information circular must include the following, if applicable:

- (a) a statement that the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access and, if stratification will be used, a description of the types of registered holders or beneficial owners who will receive paper copies of the information circular and, if applicable, the documents in paragraph 9.1.1(2)(b);
- (b) a statement that the reporting issuer is sending proxy-related materials directly to non-objecting beneficial owners under NI 54-101;

(c) a statement that management of the reporting issuer does not intend 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 in the case of an objecting beneficial owner, the objecting beneficial owner will not receive the materials unless the objecting beneficial owner’s intermediary assumes the cost of delivery..

6.(1) Despite section 9.1.1 of National Instrument 51-102, as enacted by section 4 of this Instrument, a person or company must not use notice-and-access to send proxy-related materials to a registered holder of voting securities of a reporting issuer in respect of a meeting of the reporting issuer that takes place before March 1, 2013.

6.1(2) A reporting issuer must not rely on section 9.1.5 of National Instrument 51-102, as enacted by section 4 of this Instrument, in respect of a meeting that takes place before February 15, 2013.

7. This Instrument comes into force on February 11, 2013.

8. This Instrument may be cited as MSC Rule 2012-17.

ANNEX D

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

This Annex shows, by way of blackline, changes approved to Companion Policy 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer*. These changes become effective on February 11, 2013.

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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 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~~ or 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.

- (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. Subsection 2.12(3) does not require a reporting issuer to send proxy-related materials to all beneficial owners outside Canada. A reporting issuer need only send proxy-related materials to beneficial owners who hold through proximate intermediaries that are either participants in a recognized depository, or intermediaries on the depository's intermediary master list.
- (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) For the purposes of the Instrument, if an intermediary that holds securities has discretionary voting authority over the securities, it will be the beneficial owner of those securities for purposes of providing instructions in a client response form, 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. In particular, section 11.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (“NI 31-103”) requires any person or company that is a registered firm under NI 31-103 to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation.

A person or company is permitted to 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 the proximate intermediary designates an agent to whom the reporting issuer will provide the materials, and the reporting issuer sends the materials to such agent. If an intermediary has designated an agent in the foregoing circumstances, we expect reporting issuers to send materials to that designated agent unless a reporting issuer previously has made alternate arrangements agreeable to that intermediary well in advance of the reporting issuer's meeting. We expect that any such alternate arrangements would be at least as efficient and user-friendly as established industry practices.

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 40 days before the date of the meeting, and send the notification of meeting and record dates at least 25 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 results in the meeting becoming a special meeting, it may be necessary to conduct new intermediary searches in order to ensure that beneficial owners that had elected to receive only proxy-related materials that are sent in connection with a special meeting 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 requester has provided the necessary undertaking in Form 54-101F10.

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 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. If the reporting issuer does not intend to pay for such delivery, the information circular must disclose this fact and state that an OBO will not receive the materials unless the OBO's intermediary assumes the costs of delivery.

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, section 2.12 still requires that it send to a 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, which 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 in the information circular 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. Section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* requires reporting issuers to send

annually a request form to the registered holders and beneficial holders of its securities that the holders may use to request a copy of the reporting issuer's financial statements and MD&A. 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 this Instrument in respect of the financial statements.

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 Instructions from Existing Clients** – A client deemed to be a NOBO under NP41 can continue to be treated as a NOBO under paragraph 3.3(b)(ii) of this Instrument. However, intermediaries are responsible for ensuring that they comply with their obligations under privacy legislation with respect to their clients’ personal information. Intermediaries may find that, notwithstanding paragraph 3.3(b)(ii), privacy legislation requires that they take measures to obtain their clients’ consent before they disclose their clients’ names and security holdings to a reporting issuer or other sender of material.

4.9 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 method used to appoint the beneficial owner as proxy holder. One method 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>Delivery Method</u>	<u>Documents Sent</u>	<u>Beneficial Owner Prior Consent Required?</u>
<u>Prepaid mail, courier or the equivalent</u>	<u>Reporting issuer sends paper copies of proxy-related materials, including notice of meeting, management information circular, Form 54-101F6 and, if applicable, annual financial statements and related MD&A, which may be part of an annual report.</u>	<u>No.</u>
<u>Notice-and-access</u>	<u>Reporting issuer files management information circular and notice on SEDAR and posts on non-SEDAR website. Reporting issuer sends notice and Form 54-101F6. Reporting issuer is responsible for providing on request paper copy of information circular and, if applicable, the annual financial statements and related MD&A. Reporting issuer may send some NOBOs paper copies of the information circular and, if applicable, the annual financial statements and related MD&A, pursuant to stratification and/or previously obtained or standing instructions.</u>	<u>No, if notice package is sent using prepaid mail, courier or the equivalent.</u> <u>Yes, if notice package is being sent by other method, i.e., electronically.</u>
<u>Other delivery method</u>	<u>Reporting issuer sends proxy-related materials and Form 54-101F6 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access, e.g., an e-mail with embedded links.</u>	<u>Yes.</u>

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>Delivery Method</u>	<u>Documents Sent</u>	<u>Beneficial Owner Prior Consent Required?</u>
<u>Prepaid mail, courier or the equivalent</u>	<u>Reporting issuer sends paper copies of proxy-related materials, including notice of meeting, management information circular and, if applicable, annual financial statements and related MD&A, which may be part of an annual report. Proximate intermediary (or in some cases, intermediary) will add to that package a paper copy of Form 54-101F7.</u>	<u>No.</u>
<u>Notice-and-access</u>	<u>Reporting issuer files management information circular and notice on SEDAR and posts on non-SEDAR website. Reporting issuer sends requested number of copies of notice to proximate intermediaries (and in some cases, intermediaries) for sending to beneficial owners. Reporting issuer also sends appropriate numbers of paper copies of the information circular and, if applicable, annual financial statements and related MD&A, for proximate intermediaries</u>	<u>No, if notice package is sent using prepaid mail, courier or the equivalent.</u> <u>Yes, if notice package is being sent by other method, i.e., electronically.</u>

	<u>(in some cases, intermediaries) to send pursuant to stratification and/or previously obtained or standing instructions. Proximate intermediary (or in some cases, intermediary) will add to that package a paper copy of Form 54-101F7.</u>	
<u>Other delivery method</u>	<u>Proximate intermediary (or in some cases, intermediary) sends proxy-related materials 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.

When using notice-and-access for the first time, a reporting issuer must file on SEDAR the notification of meeting and record dates at least 25 days before the record date for notice, i.e., the abridgment provisions in section 2.20 do not apply. 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 beneficial owner 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 at least 30 days before the meeting the notice required by paragraph 2.7.1(1)(a) and Form 54-101F6 (subsection 2.9(3) of the Instrument). The reporting issuer also must at the same time send any paper copies of the information circular and, if applicable, annual financial statements and annual MD&A required to comply with previously obtained or standing instructions.

Indirect sending to beneficial owners:

The reporting issuer must send within the relevant timelines set out in subsection 2.12(3) the notice required by paragraph 2.7.1(1)(a). The reporting issuer also must at the same time send any paper copies of the information circular and, if applicable, annual financial statements and annual MD&A required to comply with previously obtained or standing instructions. The proximate intermediary (or in some cases, the intermediary) must prepare a Form 54-101F7 and forward it with the foregoing documents (section 4.4 of the Instrument). The notice can be combined with Form 54-101F7 in a single document.

- (3) With respect to matters to be voted on at the meeting, the notice must only contain a description of each matter or group of related matters identified in the form of proxy, unless the information is already included in an applicable voting instruction form. We expect that reporting issuers will state each matter or group of related matters in the proxy (or voting instruction form) in a reasonably clear and user-friendly manner. For example, it would be inappropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular as follows: “To vote For or Against the resolution in Schedule A of management’s information circular”.

The notice must contain a plain-language explanation of notice-and-access. The explanation also can address other aspects of the proxy voting process. However, there should not be 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 directly 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 on SEDAR the notification of meeting and record dates required by subsection 2.2(1) on the same date that it sends the notification under subsection 2.2(1). This provision is subject to section 2.7.2, which specifies that the first time that a reporting issuer uses notice-and-access, the reporting issuer must file on SEDAR the notification of meeting and record dates at least 25 days before the record date for notice.
- (6) Paragraph 2.7.1(1)(d) of the Instrument requires the notice and the information circular 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.
- (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:

5.4—Electronic Communication

- 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 beneficial owner 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 beneficial owners 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 and if applicable, annual financial statements and annual MD&A 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 relevant documents.
 - Subsection 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) establishes an annual request form mechanism for registered holders and beneficial owners 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 can also contain a request that the notice package for the registered holder or beneficial owner contain a paper copy of the information circular.
 - Notice-and-access also can be used to send annual financial statements and annual MD&A pursuant to subsection 4.6(5) of NI 51-102. Notice-and-access is consistent with the principles for electronic delivery set out in National Policy 11-201 *Electronic Delivery of Documents* (“NP 11-201”).
- ~~(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.~~

(1) 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, except if it is necessary to comply with standing instructions or other 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 beneficial owner instructions does so in order to enhance effective communication, and not to disenfranchise beneficial owners. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which types of beneficial owners 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, National Policy 11-201 Delivery of Documents by Electronic Means (the “11-201 Documents”) discuss **5.5 Consent to Electronic Delivery** – NP 11-201 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 if applicable, 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~~

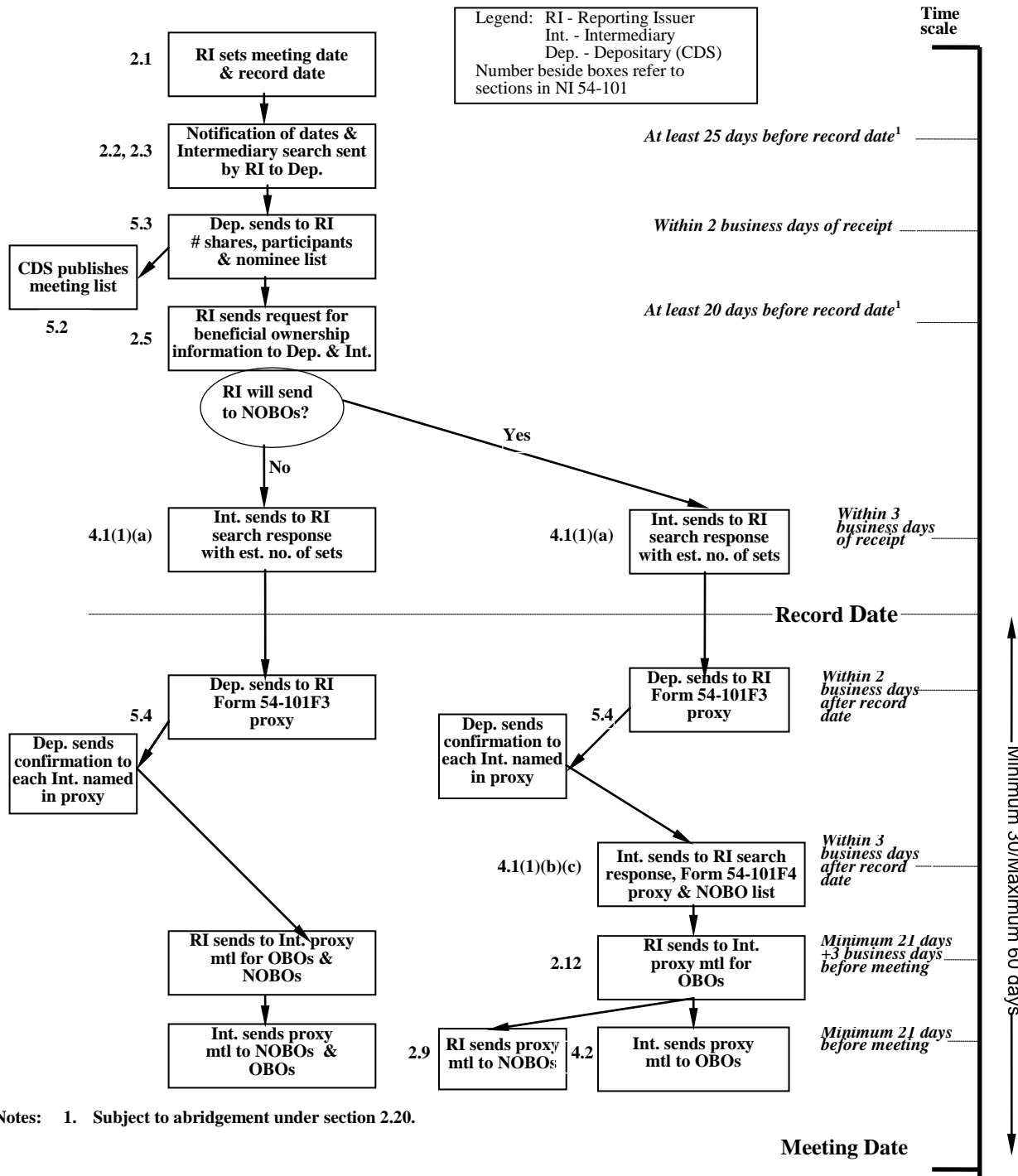
encouraged to send their audited annual financial statements or annual report at the same time as other proxy-related materials.

- 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.

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



Notes: 1. Subject to abridgement under section 2.20.

ANNEX E
CHANGES TO COMPANION POLICY 51-102CP
CONTINUOUS DISCLOSURE OBLIGATIONS

This Annex shows, by way of blackline, changes approved to Companion Policy 51-102CP *Continuous Disclosure Obligations*. These changes become effective on February 11, 2013.

3.5 Delivery of Financial Statements and Paper Copies of Information Circulars

~~Section~~(1) Subsection 4.6(1) of the Instrument requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities, other than debt instruments. The registered holders and beneficial owners may use the request form to request a paper copy of the reporting issuer's annual financial statements and related MD&A, ~~an~~ interim financial ~~report~~reports and related MD&A, or both.

In addition, the request form also may (but is not required to) be used to request a paper copy of the information circular and annual financial statements and related MD&A where a reporting issuer uses notice-and-access to deliver proxy-related materials.

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.

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

(2) Subsection 4.6(5) provides that subsection 4.6(1) and the requirement to send annual financial statements under subsection 4.6(3) do not apply to a reporting issuer that sends its annual financial statements to its securityholders, other than holders of debt instruments, within 140 days of the issuer's financial year-end and in accordance with NI 54-101. Notice-and-access can be used to send the annual financial statements and related MD&A under subsection 4.6(5). Notice-and-access is consistent with the principles for electronic delivery set out in National Policy 11-201 *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) This Instrument permits a reporting issuer to use notice-and-access to send proxy-related materials to registered holders.
- (2) With respect to matters to be voted on at the meeting, the notice must only contain a description of each matter or group of related matters identified in the form of proxy, unless such information is already included 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 be inappropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular as follows: "To vote For or Against the resolution in Schedule A of management's information circular".

The notice must contain a plain-language explanation of notice-and-access. The explanation also can address other aspects of the proxy voting process. However, there should not be 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 the form of proxy as part of the notice package. The notice package must be sent by prepaid mail, courier or the equivalent; however, section 9.1.3 permits an alternate delivery method (e.g., email) to be used if the registered holder's consent has been or is obtained. 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.
- (4) Paragraph 9.1.1(1)(c) of the Instrument requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) of NI 54-101 in the manner and within the time specified by NI 54-101. See the guidance in Companion Policy 54-101CP to NI 54-101.
- (5) Paragraph 9.1.1(1)(d) of the Instrument requires the notice, information circular and form of proxy 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.
- (6) Paragraph 9.1.1(1)(e) 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)(f) of the Instrument.
- (7) Subsection 9.1.2(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.
- (8) 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 9.1.3 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 or intermediaries may have previously obtained (and continue to obtain) consents from registered holders for proxy-related materials to be sent

by email. This delivery method would still be available.

- Section 9.1.4 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 and if applicable, annual financial statements and annual MD&A 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 relevant documents.

(9) 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 and in NI 54-101.

We do not mandate the use of stratification, except if it is necessary to comply with standing instructions or other 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 registered holder instructions does so in order to enhance effective communication, and not to disenfranchise registered holders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which types of registered holders will receive a copy of the information circular.