

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

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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 increasingly not 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the information and materials, in 1987, the CSA approved National Policy Statement No. 41 (“NP41”), which has since been replaced by National Instrument 54-101 (the “Instrument”).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 the Instrument are applicable to all securityholder materials sent by a reporting issuer to holders of securities of the reporting issuer under Canadian securities legislation including, but not limited to, proxy-related materials. Securityholder materials include materials required by securities legislation or applicable corporate law to be sent to registered holders of securities of a reporting issuer, such as interim financial statements and issuer bid and directors circulars. Securityholder materials can also include materials sent to registered holders absent any legal requirement to do so; an example of these types of materials would be corporate communications containing product information.

- (2) As provided in section 2.7 of the Instrument, compliance with the procedures set out in the Instrument is mandatory for reporting issuers when sending proxy-related materials to beneficial owners, and, under section 2.8 of the Instrument, is optional for the sending of other materials. Once a reporting issuer, or another person or company pursuant to Part 6 of the Instrument, chooses to use the communications procedures specified in the Instrument for a reporting issuer, depositories, intermediaries and other persons or companies must comply with their corresponding obligations under the Instrument.

2.2 Application to Foreign Securityholders and U.S. Issuers

- (1) As provided in subsection 2.12(3) of the Instrument, a reporting issuer that is precluded from sending securityholder materials directly to NOBOs because of conflicting legal requirements in the United States or elsewhere outside of Canada shall send the materials indirectly, i.e., by forwarding the materials to NOBOs through proximate intermediaries for those securities.

- (2) National Instrument 71-101 *The Multijurisdictional Disclosure System* provides, in Part 18, that a “U.S. issuer”, as defined in that Instrument, is considered to satisfy the requirements of National Instrument 54-101, other than in respect of fees, if the issuer complies with the requirements of Rule 14a-13 under the 1934 Act for any Canadian clearing agency and any intermediary whose last address as shown on the books of the issuer is in the local jurisdiction. Those requirements are designed to achieve the same purpose as the requirements of the Instrument.

- (3) A Canadian reporting issuer may be exempt from complying with U.S. requirements under a reciprocal provision in the U.S. Multijurisdictional Disclosure regime.

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

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

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

2.5 Definition of “Corporate Law” - Section 1.1 of the Instrument defines “corporate law” as any legislation, constating instrument or agreement that governs the affairs of a reporting issuer. The term “corporate law” therefore

encompasses Canadian and foreign laws, a declaration or deed of trust in the case of a trust, and the partnership agreement in the case of a partnership.

2.6 Fees - Section 1.4 provides that fees payable under the Instrument, unless prescribed by the regulator or securities regulatory authority, shall be a reasonable amount. Section 2.13 provides that a reporting issuer shall pay a fee to a proximate intermediary for furnishing the information requested in a request for beneficial ownership information (which would be used by reporting issuer to request a NOBO list) made by the reporting issuer. Paragraph 2.14(1)(a) provides that a reporting issuer that sends securityholder materials indirectly to NOBOs through a proximate intermediary shall pay to the proximate intermediary, upon receipt by the reporting issuer of a certificate of sending to NOBOs in accordance with the instructions specified by the reporting issuer and the request for beneficial ownership information, a fee for sending the securityholder materials to the NOBOs. In determining what is a reasonable amount the Canadian securities regulatory authorities expect that market participants will be guided by fees previously prescribed by Canadian securities regulatory authorities and by the fees payable for comparable services in other jurisdictions such as the United States, as well as by technological developments. In the case of fees for sending securityholder materials to NOBOs, referred to in paragraph 2.14(1)(a), the CSA would regard as currently reasonable an amount not exceeding \$1 (being the amount previously specified in NP41).

2.7 Agent - A depository, intermediary or reporting issuer that uses an agent to comply with the requirements of the Instrument is reminded that it remains fully responsible for such compliance.

PART 3 REPORTING ISSUERS

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

(1) Subject to section 2.20, 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 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 upon filing of an officer's certificate containing the information specified in section 2.20. Nevertheless, reporting issuers should commence the notice and searches referred to in sections 2.2, 2.3 and 2.5 at an early date and in sufficient time to allow the completion of all steps and actions required before the sending of materials, including allowing for the response time permitted for intermediaries in section 4.1 and depositories in section 5.3, so that the

materials may be sent within the times contemplated by sections 2.9 and 2.12 of the Instrument.

- (2) The time frames stipulated by sections 2.9 and 2.12 of the Instrument are minimum requirements. For a meeting that will deal with contentious matters, the CSA expect that good corporate practice will often require that materials be sent earlier than the minimum required dates to ensure that securityholders have a full opportunity to understand and react to the matters raised.
- (3) It remains the reporting issuer's responsibility when planning a meeting timetable to factor in all timing considerations, including deadlines external to the Instrument. For example, reporting issuers that have obligations under corporate law to advertise in advance of a record date for notice, or satisfy other publication obligations, would need to comply with those obligations. Reporting issuers that intend to satisfy their advance publication obligation by relying upon publication by CDS of meeting and record dates under subsection 5.2(2) of the Instrument would need to factor in the timing of publication by CDS and the advance notice required by CDS, as described in section 3.4 of this Policy, in order to permit inclusion of meeting and record date information in the publication. Reporting issuers will also need to factor in the time needed to produce and assemble the relevant securityholder materials after quantities have been determined.
- (4) Proximate intermediaries are required under section 4.1 of the Instrument to furnish the information requested in a request for beneficial ownership information, in certain circumstances, within three business days of receipt. It should be noted that this timing refers to receipt of the request by the proximate intermediary, which may not be the same date as the request was sent by the reporting issuer. The time necessary for a request for beneficial ownership information to be received by a proximate intermediary should be factored into a reporting issuer's planning.

3.2 Adjournment or Change in Meeting

- (1) Under section 2.15, a reporting issuer that sends a notice of adjournment or other change for a meeting to registered holders of its securities shall concurrently send the notice, including any change in the beneficial ownership determination date, to the persons and companies listed in section 2.15. Issuers are reminded of a number of other potential implications associated with an adjournment or other change, including those set out below.
- (2) If additional proxy-related materials are sent in connection with the meeting after proxy-related materials have previously been sent, a new

intermediary search may be required if the beneficial ownership determination date for the meeting is changed.

- (3) New intermediary searches may have to be conducted if the nature of the business to be transacted at the meeting is materially changed. If the nature of the business is changed to add business that is not routine business, it may be necessary to conduct new intermediary searches in order to ensure that beneficial owners that had elected not to receive proxy-related materials for meetings at which only routine business was to be conducted receive proxy-related materials for the meeting.
- (4) If an adjournment or other change to the business of the meeting requires that new proxy-related materials be sent to securityholders, the meeting date or the date of the adjourned meeting may have to be delayed to satisfy the time periods specified in the Instrument, unless an exemption from the time periods of the Instrument is obtained. If the change in the business of the meeting is significant, such as a change from only routine business to special business, Canadian securities regulatory authorities will not generally grant exemptions from timing requirements for sending proxy-related materials in the absence of exceptional circumstances.

3.3 Request for Beneficial Ownership Information

- (1) A request for beneficial ownership information made under subsection 2.5(2) of the National Instrument may be for any class or series of securities and is not restricted to only those securities carrying the right to receive notice of, or to vote at, a meeting, as is the case with a request under subsection 2.5(1). A request under subsection 2.5(2) need not necessarily be addressed to all proximate intermediaries holding the class or series of securities.
- (2) If it is able to do so, a proximate intermediary is required to respond to a request for a NOBO list by providing the NOBO list in electronic format. All requests for beneficial ownership information including NOBO lists are required to 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.

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.

- 3.5 Voting Instructions** - 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 the instructions received from NOBOs to the extent that management has the corresponding proxy. That proxy is given to management by the proximate intermediary that provides the NOBO list under subsection 4.1(1) of the Instrument.

PART 4 INTERMEDIARIES

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

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

4.4 Identification of Intermediary

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

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

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

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

PART 5 MEANS OF SENDING

5.1 General - All parties should use the most efficient means of sending information or securityholder material, including, if practicable, sending materials in bulk.

5.2 Materials in Bulk for 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.

5.3 Number of Sets of Materials - 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.

5.4 Electronic Communication

- (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.
- (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.
- (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 the sending of materials by electronic means. The guidelines set out in the 11-201 Documents, particularly the suggestion that consent be obtained to an electronic transmission of a document, are applicable to documents sent under the Instrument. Under the 11-201 Documents, securityholder materials could be sent to beneficial owners by electronic means in satisfaction of the requirements of the Instrument if the beneficial owner has consented to receive them in that form.

- (4) Section 3.2 of the Instrument requires intermediaries that hold securities on behalf of a client in an account to obtain the electronic mail address of the client, if available, and to enquire whether the client wishes to consent to electronic delivery of documents by the intermediary to the client. The client's electronic mail address and whether they have consented to electronic delivery by the intermediary forms part of the "ownership information" associated with a beneficial owner that will be contained in NOBO lists. The electronic form of NOBO list has a field for this information. Because the consent identified in the NOBO list relates to electronic delivery by the intermediary only, the reporting issuer cannot rely on the consent for its electronic delivery. However, the field in the NOBO list for this consent may be of interest to a reporting issuer. It may assist the reporting issuer in ascertaining whether the intermediary will forward electronically the securityholder materials that the reporting issuer elects to send indirectly through the intermediary. It may also assist the reporting issuer to determine the feasibility of sending materials directly to NOBOs and whether to use electronic delivery itself. Where the reporting issuer chooses to obtain consent for the purposes of satisfying the provisions of the 11-201 Documents, the Canadian securities regulatory authorities anticipate that the reporting issuer will use the electronic mail address contained in the NOBO list.

5.5 Multiple Deliveries to One Person or Company - It is noted that sometimes a single investor holds securities of the same class in two or more accounts with the same address. The Canadian securities regulatory authorities note that the delivery of 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 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, contrary to Part 7 of the Instrument, will constitute a breach of the Instrument and securities legislation, and that the penalty provisions of securities legislation may be applied.

PART 7 EXEMPTIONS

7.1 Materials Sent Less Than 21 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 in sections 2.9 and 2.12 of the Instrument.

- 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 comply with the procedures in the Instrument within shorter time limits may wish to provide for recovery by the intermediary of reasonable costs attributable to the shorter time limits that it would not otherwise incur (for example, courier, long distance telephone and overtime costs) to ensure forwarding of the materials to OBOs.
- 7.4 Applications** - Applicants should be aware that major exemptions from the requirements of the Instrument will probably 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.

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.