

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER**

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**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Instrument

“affairs” means the relationship among a reporting issuer, its affiliates, and their securityholders, partners, directors and officers, other than the business carried on by the reporting issuer;

“annual report” means an annual report of a reporting issuer that includes the audited annual financial statements of the reporting issuer, and any other document required by Canadian securities legislation to be included in or sent with an annual report;

“beneficial owner” means, for a security held by an intermediary in an account, the person or company that is identified as providing the instructions contained in a client response form or, if no instructions are provided, the person or company that has the authority to provide those instructions;

“beneficial ownership determination date” means, for a meeting,

- (a) the record date for voting, or
- (b) in the absence of a record date for voting, the record date for notice;

“business day” means a day other than a Saturday, Sunday or statutory holiday in the local jurisdiction;

“CDS” means the Canadian Depository for Securities Limited and any successor to its depository business;

“client” means a person or company on whose behalf an intermediary directly holds a security;

“client response form” means the form of response set out in Form 54-101F1;

“corporate law” means, for a reporting issuer, any legislation, constating instrument or agreement that governs the affairs of the reporting issuer;

“day” means a calendar day unless express reference is made to a business day;

“depository” means CDS and any other person or company recognized as a depository by the securities regulatory authority for the purpose of this Instrument;

“explanation to clients” means an explanation to clients set out in the form of Form 54-101F1;

“FINS” means Financial Institution Numbering System;

“intermediary” means, for a security, a person or company that, in connection with its business, holds the security on behalf of another person or company, and that is not

- (a) a person or company that holds the security only as a custodian, and is not the registered securityholder of the security nor holding the security as a participant in a depository,
- (b) a depository, or
- (c) a beneficial owner of the security;

“intermediary master list” means a list of intermediaries that a depository maintains under section 5.1;

“intermediary search request” means the request referred to in section 2.3;

“legal proxy” means a voting power of attorney, in the form of Form 54-101F8, granted to a beneficial owner or to a person designated by the beneficial owner, by either an intermediary or a reporting issuer under a written request of the beneficial owner;

“meeting” means a meeting of securityholders of a reporting issuer;

“NOBO” means a non-objecting beneficial owner;

“NOBO list” means a non-objecting beneficial owner list;

“nominee” means a person or company that acts as a passive title-holder to hold securities and does not carry on business in its own right;

“non-objecting beneficial owner” means a beneficial owner of securities that

- (a) has provided instructions to an intermediary holding the securities in an account on behalf of the beneficial owner that the beneficial owner does not object, for that

account, to the intermediary disclosing ownership information about the beneficial owner under this Instrument, or

- (b) is a non-objecting beneficial owner under subparagraph (i) or (ii) of paragraph 3.3(b);

“non-objecting beneficial owner list” means, for an intermediary, a list that includes ownership information concerning NOBOs on whose behalf the intermediary, or another intermediary holding directly or indirectly through the intermediary, holds securities and information regarding instructions from those NOBOs concerning receipt of securityholder materials and

- (a) if prepared in non-electronic form, is in a clear and readable format and contains the information referred to in paragraph (b), or
- (b) if prepared in electronic form, is prepared in the form of, and contains the information prescribed in, Form 54-101F5;

“notification of meeting and record dates” means the notification referred to in section 2.2;

“NP41” means National Policy Statement No. 41;

“objecting beneficial owner” means a beneficial owner of securities that

- (a) has provided instructions to an intermediary holding the securities in an account on behalf of the beneficial owner that the beneficial owner objects, for that account, to the intermediary disclosing ownership information about the beneficial owner under this Instrument, or
- (b) is an objecting beneficial owner under subparagraph (iii) of paragraph 3.3(b);

“OBO” means an objecting beneficial owner;

“omnibus proxy” means, for a meeting,

- (a) for a depository, a proxy in the form of Form 54-101F3, and
- (b) for an intermediary, a proxy in the form of Form 54-101F4;

“ownership information” means, for a beneficial owner of securities that holds the securities through an intermediary in an account of the intermediary, the beneficial owner’s name, address, holdings of the securities in the account, preferred language of communication, if known, the electronic mail address of the beneficial owner, and

whether the beneficial owner has given to the intermediary a currently valid consent to the electronic delivery of documents from the intermediary;

“participant in a depository” means a person or company for whom a depository maintains an account in which entries may be made to effect a transfer or pledge of a security;

“preferred language of communication” means either the English language or the French language;

“proximate intermediary” means, for a security,

- (a) a participant in a depository holding the security, or
- (b) an intermediary that is the registered holder of the security;

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

“record date for notice” means, for a meeting, the date established in accordance with corporate law for the determination of the registered holders of securities that are entitled to receive notice of the meeting;

“record date for voting” means, for a meeting, the date, if any, established in accordance with corporate law for the determination of the registered holders of securities that are entitled to vote at the meeting;

“registered holder” means, for a security, the person or company shown as the holder of the security on the books or records of the reporting issuer;

“request for beneficial ownership information” means, for a security, a request for beneficial ownership information in the form of Form 54-101F2 sent by a reporting issuer to a proximate intermediary holding the security;

“request for voting instructions” means, for a security that carries the right to vote at a meeting,

- (a) if the request is made by the reporting issuer, a request for voting instructions from a beneficial owner of the security that is a NOBO, set out in the form of Form 54-101F6, and
- (b) if the request is made by an intermediary, a request for voting instructions from the beneficial owner of the security on whose behalf the intermediary holds the security set out in the form of Form 54-101F7;

“security” means a security of a reporting issuer;

“securityholder” means, for a security, the registered holder of the security, the beneficial owner of the security, or both, depending upon the context;

“securityholder materials” means, for a reporting issuer, materials that are sent to registered holders of securities of the reporting issuer;

“send” means to deliver, send or forward or arrange to deliver, send or forward in any manner, including by prepaid mail, courier or by electronic means; and

“special resolution” for a meeting,

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

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

“transfer agent” means a person or company that carries on the business of a transfer agent.

1.2 Holding of Security by Intermediary - In this Instrument, an intermediary is considered to hold a security if the security is held

- (a) by the intermediary directly; or
- (b) by the intermediary indirectly through another person or company on behalf of the intermediary.

1.3 Use of Required Forms

- (1) A person or company required to send or use a required form under this Instrument may substitute another form or document or combine the required form with another form or document, so long as the form or document used requests or includes the same information contemplated by the required form.
- (2) Subsection (1) does not apply to a NOBO list in the form of Form 54-101F5 unless both the party requesting and the party providing the NOBO list agree to an alternative form.

1.4 Fees - A fee payable under this Instrument shall be, unless prescribed by the regulator or securities regulatory authority, a reasonable amount.

PART 2 REPORTING ISSUERS

2.1 Establishment of Meeting and Record Dates - A reporting issuer that is required to give notice of a meeting to the registered holders of any of its securities shall fix

- (a) a date for the meeting;
- (b) a record date for notice of the meeting, which shall be no fewer than 30 and no more than 60 days before the meeting date; and
- (c) if required or permitted by corporate law, a record date for voting at the meeting.

2.2 Notification of Meeting and Record Dates

- (1) Subject to section 2.20, at least 25 days before the record date for notice of a meeting, the reporting issuer shall send a notification of meeting and record dates to
 - (a) all depositories;
 - (b) the securities regulatory authority; and
 - (c) each exchange in Canada on which securities of the reporting issuer are listed.
- (2) The notification of meeting and record dates referred to in subsection (1) shall specify
 - (a) the name of the reporting issuer;
 - (b) the date fixed for the meeting;
 - (c) the record date for notice;
 - (d) the record date for voting, if any;
 - (e) the beneficial ownership determination date;
 - (f) the classes or series of securities that entitle the holder to receive notice of the meeting;
 - (g) the classes or series of securities that entitle the holder to vote at the meeting; and
 - (h) whether the meeting is a special meeting.

2.3 Intermediary Search Request - Request to Depository

- (1) At the same time as a reporting issuer sends a notification of meeting and record dates for a meeting to a depository, the reporting issuer shall request the depository to send to the reporting issuer
 - (a) subject to section 2.4, a report that specifies the number of securities of the reporting issuer of each class or series that entitle the holder to receive notice of the meeting or to vote at the meeting that are currently registered in the name of the depository, the identity of any other person or company that holds securities of the reporting issuer of the series or class specified in the request on behalf of the depository and the number of those securities held by that other person or company;
 - (b) subject to section 2.4, a list of all intermediaries and their nominees shown on the intermediary master list;
 - (c) subject to section 2.4, a list setting out the names, addresses, telephone numbers, fax numbers, any electronic mail addresses and the respective holdings of participants in the depository of each class or series of securities that entitle the holder to receive notice of the meeting or to vote at the meeting; and
 - (d) the omnibus proxy required to be sent under subsection 5.4(1).
- (2) In addition to the request referred to in subsection (1), a reporting issuer may request, at any time, a depository to send any or all of the information referred to in subsection (1), other than paragraph (1)(d), for any class or series of securities of the reporting issuer, and as of a date, specified in the request.

2.4 No Intermediary Search Request if Reporting Issuer has Electronic Access - A reporting issuer shall not request from the depository information referred to in paragraph 2.3(1)(a), 2.3(1)(b) or 2.3(1)(c) if the information is included on a file maintained by the depository in electronic format and the reporting issuer has access to the file.

2.5 Request for Beneficial Ownership Information

- (1) Subject to section 2.20, at least 20 days before the record date for notice of a meeting, the reporting issuer, using information, including the intermediary master lists, provided by depositories under section 5.3 or referred to in section 2.4, shall complete Part 1 of a request for beneficial ownership information and send it to each proximate intermediary that is

- (a) identified by a depository 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.
- (2) In addition to making the request referred to in subsection (1) in connection with a meeting, a reporting issuer, using information, including the intermediary master lists, provided by depositories under section 5.3 or referred to in section 2.4, may make, for any class or series of securities of the reporting issuer, at any time, a request for beneficial ownership information by completing Part 1 of a request for beneficial ownership information and sending it to any proximate intermediary that is
- (a) identified by a depository as a participant in the depository holding the securities; 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 the securities.
- (3) A reporting issuer that makes a request for beneficial ownership information under either subsection (1) or subsection (2) that includes a request for NOBO lists shall provide a written undertaking to the proximate intermediary in the form of Form 54-101F9.
- (4) A reporting issuer that requests beneficial ownership information under this section shall do so through a transfer agent.

2.6 No Depositories or Intermediaries are Registered Holders - A reporting issuer is not subject to section 2.3 or 2.5 if, on the 25th day before the record date for notice of the meeting,

- (a) none of the registered holders of its securities is a depository, a nominee of a depository, or a person or company listed as an intermediary or the nominee of an intermediary on the intermediary master list of any depository; or
- (b) all of the information contemplated in Part 2 of the request for beneficial ownership information is known to the reporting issuer.

2.7 Sending Proxy-Related Materials to Beneficial Owners - A reporting issuer that is required by Canadian securities legislation to send proxy-related materials to the registered holders of any class or series of its securities shall, subject to section 2.10 and subsection 2.12(3) send the proxy-related materials to beneficial owners of the securities, by either sending

- (a) directly to NOBOs, and indirectly under section 2.12 to OBOs; or
- (b) indirectly under section 2.12 to beneficial owners.

2.8 Other Securityholder Materials - A reporting issuer may, but is not required to, send securityholder materials other than proxy-related materials to beneficial owners of its securities, by either sending

- (a) directly to NOBOs, and indirectly under section 2.12 to OBOs; or
- (b) indirectly under section 2.12 to beneficial owners.

2.9 Direct Sending of Proxy-Related Materials to NOBOs by Reporting Issuer - 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 shall, subject to section 2.10 and subsection 2.12(3), send, at its expense, at least 21 days before the date fixed for the meeting, the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request.

2.10 Sending Securityholder Materials Against Instructions - Except as required by securities legislation, no reporting issuer that uses a NOBO list to send securityholder materials directly to NOBOs on the NOBO list shall send the securityholder materials to NOBOs that are identified on the NOBO list as having declined to receive those materials unless the reporting issuer has specified in the request for beneficial ownership information sent under section 2.5 in connection with the sending of materials that the securityholder materials will be sent to all beneficial owners of securities.

2.11 Disclose How Information Obtained

- (1) A reporting issuer that uses a NOBO list to send securityholder materials directly to NOBOs on the NOBO list shall include in the materials the following statement:

These securityholder materials are being sent to both registered and non-registered owners of the securities. If you are a non-registered owner, and the issuer or its agent has sent these materials directly to you, your name and address and information about your holdings of securities, have been obtained in accordance with applicable securities regulatory requirements from the intermediary holding on your behalf.

- (2) A reporting issuer that uses a NOBO list to send proxy-related materials that solicit votes or voting instructions directly to a NOBO on the NOBO list shall include, after the text required by subsection (1), the following statement:

By choosing to send these materials to you directly, the issuer (and not the intermediary holding on your behalf) has assumed responsibility for (i) delivering these materials to you, and (ii) executing your proper voting instructions. Please return your voting instructions as specified in the request for voting instructions.

2.12 Indirect Sending of Securityholder Materials by Reporting Issuer

- (1) A reporting issuer sending securityholder materials indirectly to beneficial owners shall 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
- (a) at least four business days before the twenty-first day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by prepaid mail other than first class mail;
 - (b) at least three business days before the twenty-first day before the date fixed for the meeting, in the case of all other proxyrelated materials that are to be sent on by the proximate intermediary; or
 - (c) on the day specified in the request for beneficial ownership information, in the case of securityholder materials that are not proxy-related materials that are to be sent on by the proximate intermediary.
- (2) A reporting issuer may satisfy its obligation to send securityholder materials to an intermediary under this section by sending the securityholder materials to a person or company designated by the intermediary.
- (3) If a proximate intermediary in a foreign jurisdiction holds securities on behalf of NOBOs and
- (a) the law of the foreign jurisdiction prohibits the reporting issuer from sending securityholder materials directly to NOBOs; or
 - (b) the proximate intermediary has stated in 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, the reporting issuer shall not, in either case, send securityholder materials to those NOBOs and shall send to that proximate intermediary the number of sets of securityholder materials requested by the proximate intermediary in the response.

2.13 Fee for Search - A reporting issuer shall pay a fee to a proximate intermediary for furnishing the information requested in a request for beneficial ownership information made by the reporting issuer.

2.14 Fee for Sending Materials Indirectly

- (1) 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 in the request for beneficial ownership information
 - (a) a fee for sending the securityholder materials to the NOBOs;
 - (b) the actual cost of any postage incurred by the proximate intermediary in sending the securityholder materials to the NOBOs in accordance with any mailing instructions specified by the reporting issuer in the request for beneficial ownership information; and
 - (c) if the securityholder materials were sent by mail other than first class mail in accordance with the mailing instructions specified by the reporting issuer in the request for beneficial ownership information, the reasonable additional handling costs associated with the preparation by the proximate intermediary of the securityholder materials for mailing to NOBOs.

- (2) A reporting issuer that sends securityholder materials, indirectly through a proximate intermediary, to OBOs that have declined in accordance with this Instrument to receive those materials, shall pay to the proximate intermediary, upon receipt by the reporting issuer of a certificate of sending to OBOs in accordance with the instructions specified by the reporting issuer in the request for beneficial information
 - (a) a fee for sending the securityholder materials to the OBOs;
 - (b) the actual cost of any postage incurred by the proximate intermediary in sending the securityholder materials to the OBOs in accordance with any mailing instructions specified by the reporting issuer in the request for beneficial ownership information; and
 - (c) if the securityholder materials were sent by mail other than first class mail in accordance with the mailing instructions specified by the reporting issuer in the request for beneficial information, the reasonable additional handling costs associated with the preparation by the proximate intermediary of the securityholder materials for mailing to OBOs.

2.15 Adjournment or Change in Meeting - 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,

- (a) to each of the persons or companies referred to in subsection 2.2(1);
- (b) to each proximate intermediary to which the reporting issuer sent a request for beneficial ownership information for the meeting under subsection 2.5(1);
- (c) directly, in accordance with section 2.9, other than the timing requirement of that section, to each of the NOBOs to which it previously directly sent proxy-related materials for the meeting under section 2.9; and
- (d) indirectly, in accordance with section 2.12, other than the timing requirement of that section, to each of the NOBOs and OBOs to which it previously indirectly sent proxy-related materials for the meeting under section 2.12.

2.16 Explanation of Voting Rights - Proxy-related materials for a meeting sent to a beneficial owner of securities shall explain, in plain language, how the beneficial owner may exercise voting rights attached to the securities, including the right of the beneficial owner to attend and vote the securities directly at the meeting.

2.17 Request for Voting Instructions - A reporting issuer that sends proxy-related materials that solicit votes or voting instructions directly to a NOBO shall prepare and include with the proxy-related materials, in substitution for the proxy otherwise contained in the proxy-related materials, a request for voting instructions for the matters to which the proxy-related materials relate for return to the reporting issuer.

2.18 Request for Legal Proxy - If a reporting issuer that has sent directly to a NOBO proxy-related materials for a meeting that solicit voting instructions receives a written request from the NOBO for a legal proxy for the meeting, the reporting issuer shall arrange at no cost to the NOBO to deliver to the NOBO a legal proxy to the extent that the reporting issuer's management holds a proxy given directly by the registered holder or indirectly given by the registered holder through one or more other proxy holders in respect of the securities beneficially owned by the NOBO.

2.19 Tabulation and Execution of Voting Instructions - A reporting issuer shall

- (a) tabulate the voting instructions received from NOBOs in response to a request for voting instructions referred to in section 2.17; and

- (b) through the actions of management of the reporting issuer, execute the voting instructions as instructed by the NOBOs, to the extent that the management of the reporting issuer holds the corresponding proxy.

2.20 Abridging Time - A reporting issuer may abridge the time prescribed in subsections 2.1(b), 2.2(1) or 2.5(1) if the reporting issuer

- (a) arranges to have proxy-related materials for the meeting sent in compliance with this Instrument to all beneficial owners at least 21 days before the date fixed for the meeting;
- (b) arranges to have carried out all of the requirements of this Instrument in addition to those described in subparagraph (a); and
- (c) files at the time it files the proxy-related materials, a certificate of one of its officers reporting that it made the arrangements described in paragraphs (a) and (b) and that the reporting issuer is relying upon this section.

PART 3 INTERMEDIARIES' OBLIGATIONS CONCERNING THE OBTAINING OF BENEFICIAL OWNER INSTRUCTIONS

3.1 Intermediary Information to Depository

- (1) Before a person or company acts as an intermediary, the person or company shall send the following information to each depository:
 - (a) the intermediary's name and address;
 - (b) the name and address of each nominee of the intermediary in whose name the intermediary holds securities on behalf of beneficial owners; and
 - (c) the name, address, telephone number, fax number and any electronic mail address of a representative of the intermediary.
- (2) A person or company that is an intermediary on the date of the coming into force of this Instrument shall, on that date, send to each depository the information referred to in subsection (1), unless it has already done so.
- (3) An intermediary shall send notice to each depository of a change in the information contained in a notice given under this section within five business days after the change.

3.2 Instructions from New Clients - Subject to section 3.4, an intermediary that opens an account for a client shall,

- (a) as part of its procedures to open the account, send to the client an explanation to clients and a client response form; and
- (b) before the intermediary holds securities on behalf of the client in the account
 - (i) obtain instructions from the client on the matters to which the client response form pertains;
 - (ii) obtain the electronic mail address of the client, if available; and
 - (iii) if applicable, enquire whether the client wishes to consent and, if so, obtain the consent of the client, to electronic delivery of documents by the intermediary to the client.

3.3 Transitional - Instructions from Existing Clients - An intermediary that holds securities on behalf of a client in an account that was opened before the coming into force of this Instrument

- (a) may seek new instructions from its client in relation to the matters to which the client response form pertains; and
- (b) in the absence of new instructions from the client, shall rely on the instructions previously given or deemed to have been given by the client under NP41 in respect of that account, on the following basis:
 - (i) If the client chose to permit the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the client is a NOBO under this Instrument;
 - (ii) If the client was deemed to have permitted the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the intermediary may choose to treat the client as a NOBO under this Instrument;
 - (iii) If the client chose not to permit the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the client is an OBO under this Instrument;
 - (iv) If the client chose not to receive material relating to annual or special meetings of securityholders or audited financial statements, the client is considered to have declined under this Instrument to receive:
 - (A) proxy-related materials that are sent in connection with a securityholder meeting;

- (B) financial statements and annual reports that are not part of proxy-related materials; and
 - (C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders;
- (v) If the intermediary was permitted not to provide material relating to annual meetings of securityholders or audited financial statements, the client is considered to have declined under this Instrument to receive:
- (A) proxy-related materials that are sent in connection with a securityholder meeting that is not a special meeting;
 - (B) financial statements and annual reports that are not part of proxy-related materials; and
 - (C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders;
- (vi) If the client chose to receive material relating to annual or special meetings of securityholders and audited financial statements, the client is considered to have chosen under this Instrument to receive all securityholder materials sent to beneficial owners of securities;
- (vii) The client is considered to have chosen under this Instrument as the client's preferred language of communication the language that has been customarily used by the intermediary to communicate with the client.

3.4 Amending Client Instructions - A client may at any time change the instructions it has given or is deemed to have given in connection with any of the choices provided for in the client response form by advising the intermediary that holds securities on the client's behalf of the change.

3.5 Application of Instructions to Accounts - The instructions given to an intermediary by a beneficial owner under this Part apply in respect of all securities held by the beneficial owner in the account of the intermediary identified in the client response form.

PART 4 INTERMEDIARIES' OTHER OBLIGATIONS

4.1 Request for Beneficial Ownership Information - Response

- (1) A proximate intermediary that receives a request for beneficial ownership information from a reporting issuer, that pertains to a meeting, shall send to the reporting issuer, through the transfer agent of the reporting issuer that sent the request

- (a) within three business days of receiving the request, the information referred to in Part 2 of the request for beneficial ownership information other than Item 7;
 - (b) if the request contains a request for a NOBO list, within three business days after the beneficial ownership determination date for the meeting specified in the request, the NOBO list and other information required in accordance with Item 7 of Part 2 of the request for beneficial ownership information as at the beneficial ownership determination date of the meeting; and
 - (c) within three business days after the beneficial ownership determination date for the meeting specified in the request, if the request stated that the reporting issuer will send proxyrelated materials to, and seek voting instructions from, NOBOs, a form of omnibus proxy that appoints management of the reporting issuer as the proximate intermediary's proxy holder for the securities held, as of the beneficial ownership determination date, on behalf of each NOBO identified on the NOBO list, in respect of which the proximate intermediary is either the registered holder or proxy holder.
- (2) A proximate intermediary that receives a request for beneficial ownership information from a reporting issuer that pertains to the sending of securityholder materials other than in connection with a meeting shall, within three business days of receiving the request, send to the reporting issuer, through the transfer agent of the reporting issuer that sent the request, the NOBO lists if applicable and the other information referred to in Part 2 of the request for beneficial ownership information.
 - (3) A proximate intermediary that receives a request for beneficial ownership information from a reporting issuer that contains a request for a NOBO list but does not pertain to a meeting or the sending of securityholder materials shall, within three business days of receiving the request, send to the reporting issuer, through the transfer agent of the reporting issuer that sent the request, the NOBO lists if applicable and the other information referred to in Part 2 of the request for beneficial ownership information.
 - (4) The response of a proximate intermediary to a reporting issuer given under this section shall be a consolidated response relating to all beneficial owners of each class and series of securities, specified in the request for beneficial ownership information, that hold, directly or indirectly, through the proximate intermediary.
 - (5) An intermediary holding securities, directly or indirectly, through a proximate intermediary, shall take all necessary steps to ensure that the proximate intermediary is provided with the information required to enable it to satisfy its obligations under this section within the times required by this section.

- (6) An intermediary is not required under this Instrument to provide ownership information concerning an OBO to any person or company.

4.2 Sending of Securityholder Materials to Beneficial Owners by Intermediaries

- (1) Subject to sections 4.3 and 4.7, a proximate intermediary that receives securityholder materials from a reporting issuer for sending to beneficial owners shall send
- (a) one set of the materials to each OBO of the relevant securities that is a client of the proximate intermediary;
 - (b) one set of the materials to each NOBO of the relevant securities if the reporting issuer stated in the applicable request for beneficial ownership information, or otherwise advised the proximate intermediary, that the reporting issuer will send the materials to NOBOs indirectly through intermediaries; and
 - (c) appropriate quantities of materials to all intermediaries holding securities of the relevant class or series that are clients of the proximate intermediary, for sending by them under subsection (3).
- (2) A proximate intermediary shall comply with subsection (1)
- (a) within four business days after receipt in the case of securityholder materials to be sent by prepaid mail other than first class mail; and
 - (b) within three business days after receipt in the case of securityholder materials to be sent by any other means.
- (3) An intermediary that receives securityholder materials from another intermediary under this section shall send, within one business day of receipt
- (a) one set of the materials to each OBO that is a client of the intermediary; and
 - (b) appropriate quantities of the materials to all intermediaries holding securities of the relevant class or series that are clients of the intermediary for sending by them under this subsection.
- (4) The persons or companies to whom securityholder materials are sent under this section shall be determined
- (a) as at the beneficial ownership determination date, in the case of proxy-related materials; and

- (b) as at the date specified in the relevant request for beneficial ownership information, in the case of securityholder materials not sent in connection with a meeting.
- (5) An intermediary may satisfy its obligation to send securityholder materials to another intermediary under this section by sending the securityholder materials to a person or company designated by the other intermediary.

4.3 Sending Securityholder Materials Against Instructions - An intermediary that receives securityholder materials that are to be sent to a beneficial owner of securities shall not send the securityholder materials to the beneficial owner if the beneficial owner has declined in accordance with this Instrument to receive those materials unless the reporting issuer has specified in the request for beneficial ownership information sent under section 2.5 in connection with the sending of the securityholder materials that the securityholder materials shall be sent to all beneficial owners of securities.

4.4 Request for Voting Instructions - An intermediary that receives proxy-related materials that solicit votes or voting instructions from securityholders, for sending by the intermediary to beneficial owners of the securities, shall prepare and include with the proxy-related materials that it sends to the beneficial owners, in substitution for the proxy otherwise contained in the proxy-related materials, a request for voting instructions for the matters to which the proxy-related materials relate for return to the intermediary.

4.5 Request for Legal Proxy - An intermediary that receives a written request from a beneficial owner for a legal proxy for securities the intermediary holds on behalf of the beneficial owner as at the beneficial ownership determination date for a meeting shall send to the beneficial owner a legal proxy to the extent that the intermediary then holds a proxy directly given by the registered holder, or indirectly given by the registered holder through one or more other proxy holders, in connection with the securities held by the intermediary for the beneficial owner.

4.6 Tabulation and Execution of Voting Instructions - An intermediary shall

- (a) tabulate voting instructions received from beneficial owners of securities in response to a request for voting instructions sent by the intermediary under section 4.4; and
- (b) for each beneficial owner, execute the voting instructions received from the beneficial owner to the extent that the intermediary holds a proxy directly given by the registered holder, or indirectly given by the registered holder through one or more other proxy holders, in respect of the securities held by the intermediary for the beneficial owner.

4.7 Securities Legislation - Despite any other provision of this Part, nothing in this Part requires a person or company to send securityholder materials to a

beneficial owner if securities legislation specifically permits the person or company to decline to send those materials to the beneficial owner.

4.8 Fees from Persons or Companies other than Reporting Issuers – A proximate intermediary that receives securityholder materials from a person or company that is not a reporting issuer for sending to beneficial owners is not required to send the securityholder materials to any beneficial owners or intermediaries that are clients of the proximate intermediary unless the proximate intermediary receives reasonable assurance of payment for the delivery of the securityholder materials.

PART 5 DEPOSITORIES

5.1 Intermediary Master List - A depository shall maintain a current list of intermediaries containing the information received by the depository from intermediaries under section 3.1 and shall send a copy of that list to any new depository recognized under this Instrument.

5.2 Index of Meeting and Record Dates

- (1) A depository shall maintain an index of pending meetings containing the information that it receives from reporting issuers under section 2.2.
- (2) A depository shall arrange for the timely publication of the information it receives from a reporting issuer under section 2.2 in the national financial press and may charge the reporting issuer a publication fee in a reasonable amount for the publication.

5.3 Depository Response to Intermediary Search Request by Reporting Issuer - Within two business days of its receipt of an intermediary search request from a reporting issuer, a depository shall send to the reporting issuer a report, containing information that is as current as possible, that

- (a) specifies the number of securities of the reporting issuer of the series or class specified in the request that are registered in the name of the depository, the identity of any other person or company that holds on behalf of the depository securities of the reporting issuer of the series or class specified in the request and the number of such securities held by that other person or company;
- (b) specifies the names, addresses, telephone numbers, fax numbers, any electronic mail addresses and respective holdings of participants in the depository of securities of the series or class specified in the request, on whose behalf the depository holds the securities; and

- (c) contains a copy of the intermediary master list.

5.4 Depository to send Participant Omnibus Proxy to Reporting Issuer

- (1) Within two business days after the beneficial ownership determination date specified in the notification of meeting and record dates referred to in section 2.2, the depository shall send to the reporting issuer an omnibus proxy, appointing each participant, on whose behalf, and to the extent that, the depository holds, as of the beneficial ownership determination date, securities that entitle the holder to vote at the meeting, as the depository's proxy holder in respect of the securities held by the depository on behalf of the participant.
- (2) The depository shall send to each of the participants named in an omnibus proxy referred to in subsection (1), at the same time as the depository sends the omnibus proxy to the reporting issuer, confirmation of the proxy given by the depository.

PART 6 OTHER PERSONS OR COMPANIES

6.1 Requests for NOBO Lists from a Reporting Issuer

- (1) A person or company may request from a reporting issuer the most recently prepared NOBO list, for any proximate intermediary holding securities of the reporting issuer, that is in the reporting issuer's possession.
- (2) A request for a NOBO list under this section shall be accompanied by an undertaking in the form of Form 54-101F9 of the person or company making the request.
- (3) The person or company making a request under subsection (1) shall pay a fee to the reporting issuer for preparing the NOBO list for sending under this section.
- (4) A reporting issuer shall send any NOBO list requested under this section, within ten days of receipt of both the request and the fee for preparing the list for sending under this section.
- (5) A reporting issuer shall delete from any NOBO list sent under this section any reference to FINS numbers referred to in any form and any other information that would identify the intermediary through which a NOBO holds securities.

6.2 Other Rights and Obligations of Persons and Companies other than Reporting Issuers

- (1) A person or company may take any action permitted under this Instrument to be taken by a reporting issuer and, in so doing, has all the rights, and is subject to all of

the obligations, of a reporting issuer in connection with that action, unless this Instrument specifies a different right or obligation.

- (2) In connection with actions taken under subsection (1) by a person or company other than the reporting issuer, references in this Instrument to a “reporting issuer” shall be read as references to that person or company and all other persons and companies will have the same obligations under this Instrument to that person or company as they would have if the person or company were the reporting issuer.
- (3) Subsections (1) and (2) do not apply to sections 2.1, 2.2, subsections 2.3(1) and 2.5(1), paragraphs 2.12(1) (a) and (b), sections 2.14 and 2.18, paragraph 4.1(1)(c), section 5.4.
- (4) A person or company other than the reporting issuer to which the request relates that makes an intermediary search request under subsection 2.3(2) or a request for beneficial ownership information under subsection 2.5(2) shall concurrently send a copy of that request to the reporting issuer of the securities to which the request relates.
- (5) A person or company other than the reporting issuer to which the request relates that makes an intermediary search request under subsection 2.3(2) or a request for beneficial ownership information under subsection 2.5(2) shall provide an undertaking in the form of Form 54-101F9.
- (6) A person or company, other than a reporting issuer to which the request relates, that sends materials indirectly to beneficial owners shall pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners.

PART 7 USE OF NOBO LIST AND INDIRECT SENDING OF MATERIALS

7.1 Use of NOBO List – No reporting issuer or other person or company shall use a NOBO list or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument, except in connection with:

- (a) sending securityholder materials to NOBOs in accordance with this Instrument;
- (b) an effort to influence the voting of securityholders of the reporting issuer;
- (c) an offer to acquire securities of the reporting issuer; or
- (d) any other matter relating to the affairs of the reporting issuer.

7.2 Indirect Sending of Materials – No person or company other than the reporting issuer shall send any materials indirectly to beneficial owners of a reporting issuer under section 2.12 of this Instrument except in connection

with:

- (a) an effort to influence the voting of securityholders of the reporting issuer;
- (b) an offer to acquire securities of the reporting issuer; or
- (c) any other matter relating to the affairs of the reporting issuer.

PART 8 MISCELLANEOUS

8.1 Default of Party in Communication Chain - If a person or company fails to send information or materials in accordance with the requirements of this Instrument, the person or company whose required response or action under this Instrument is dependent upon receiving the information or materials shall use reasonable efforts to obtain the information or materials from the other person or company, and in so doing is exempt from the timing provisions of this Instrument in connection with the response or action to the extent that the delay arose from the failure of the other person or company.

8.2 Right to Proxy - Nothing in this Instrument shall be interpreted to restrict in any way

- (a) a beneficial owner's right to demand and to receive from an intermediary holding securities on behalf of the beneficial owner a proxy enabling the beneficial owner to vote the securities; or
- (b) the right of a depository or intermediary to vary an omnibus proxy in respect of securities to properly reflect a change in the registered or beneficial ownership of the securities.

PART 9 EXCEPTIONS AND EXEMPTIONS

9.1 Audited Annual Financial Statements or Annual Report - The time periods applicable to sending of proxy-related materials prescribed in this 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 directly or indirectly in accordance with the Instrument 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.

9.2 Exemptions

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

PART 10 EFFECTIVE DATES AND TRANSITION

10.1 Effective Date of Instrument - This Instrument comes into force on July 1, 2002.

10.2 Transition - A reporting issuer that has filed a notice of a meeting and record date with the securities regulatory authority in accordance with the provisions of NP41 before the coming into force of this Instrument is, with respect to that meeting, exempt from the provisions of this Instrument if the reporting issuer complies with the provisions of NP41.

10.3 Sending of Proxy-Related Materials - Despite section 2.7, a reporting issuer sending proxy-related materials to beneficial owners of securities under section 2.7 for a meeting to be held before September 1, 2004 shall send those materials only indirectly to the beneficial owners under section 2.12.

10.4 NOBO Lists - No person or company shall be obliged to furnish a NOBO list under this Instrument before September 1, 2002.