

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:

Winnie Sanjoto
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-8119
wsanjoto@osc.gov.on.ca

Donna Gouthro
Financial Analyst
Nova Scotia Securities Commission
902-424-7077
gouthrdm@gov.ns.ca

Lucie J. Roy
Senior Policy Advisor
Direction de la réglementation
Surintendance des marchés de valeurs
Autorité des marchés financiers
514-395-0337, ext 4464
lucie.roy@lautorite.qc.ca

Celeste Evancio
Legal Counsel, Corporate Finance
Alberta Securities Commission
403-355-3885
celeste.evancio@asc.ca

Eric Pau
Senior Legal Counsel
Corporate Finance/Capital Markets Regulation
British Columbia Securities Commission
604-899-6764
epau@besc.bc.ca