

Ontario Securities Commission

National Instrument 54-101

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NATIONAL INSTRUMENT 54-101

COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1.1 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;

"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;

"notice-and-access" means

- (a) in respect of registered holders of voting securities of a reporting issuer, the delivery procedures referred to in section 9.1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*, or
- (b) in respect of beneficial owners of securities of a reporting issuer, the delivery procedures referred to in section 2.7.1;

"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 or beneficial owners 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;

"SEC issuer" means an issuer that

- (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, and
- (b) is not registered or required to be registered as an investment company under the *Investment Company Act* of 1940 of the United States of America, as amended;

"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 or beneficial owners 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;

"stratification", in relation to a reporting issuer using notice-and-access, means procedures whereby a paper copy of the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b), are included with either or both of the following:

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

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

Holding of Security by Intermediary

- 1.2** 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.

Use of Required Forms

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

(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.

Fees

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

PART 2 REPORTING ISSUERS

Establishment of Meeting and Record Dates

- 2.1** 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.

Notification of Meeting and Record Dates

- 2.2 (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;
- (h) whether the meeting is a special meeting;
- (i) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access and, if stratification will be used, the types of registered holders or beneficial owners who will receive paper copies of the information circular or other proxy-related materials;
- (j) whether the reporting issuer is sending the proxy-related materials directly to NOBOs; and
- (k) whether the reporting issuer intends to pay for a proximate intermediary to send the proxy-related materials to OBOs.

Intermediary Search Request - Request to Depository

2.3 (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.

No Intermediary Search Request if Reporting Issuer has Electronic Access

2.4 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.

Request for Beneficial Ownership Information

2.5 (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 must do so through a transfer agent.

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

No Depositories or Intermediaries are Registered Holders

2.6 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.

Sending Proxy-Related Materials to Beneficial Owners

2.7 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.

Notice-and-Access

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

- (a) the beneficial owner is sent a notice that contains the following information and no other information:
 - (i) the date, time and location of the meeting for which the proxy-related materials are being sent;
 - (ii) a description of each matter or group of related matters identified in the form of proxy to be voted on, unless that information is already included in a Form 54-101F6 or Form 54-101F7 as applicable, that is being sent to the beneficial owner under paragraph (b);
 - (iii) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;
 - (iv) a reminder to review the information circular before voting;
 - (v) an explanation of how to obtain a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b) from the reporting issuer;
 - (vi) a plain-language explanation of notice-and-access that includes the following information:
 - (A) if the reporting issuer is using stratification, a list of the types of registered holders or beneficial owners who will receive paper copies of the information circular, and if applicable, the documents in paragraph (2)(b);
 - (B) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), is to be received in order for the requester to receive the paper copy in advance of any deadline for the submission of voting instructions and the date of the meeting;
 - (C) an explanation of how the beneficial owner is to return voting instructions, including any deadline for return of those instructions;
 - (D) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the notice can be found;
 - (E) a toll-free telephone number the beneficial owner can call to get information about notice-and-access;
- (b) using the procedures referred to in section 2.9 or 2.12, as applicable, the beneficial owner is sent, by prepaid mail, courier or the equivalent, the notice required by paragraph (a) and a Form 54-101F6 or Form 54-101F7, as applicable;

- (c) the reporting issuer files on SEDAR the notification of meeting and record dates on the same date that it sends the notification under subsection 2.2(1);
- (d) public electronic access to the information circular and the notice in paragraph (a) is provided on or before the date that the reporting issuer sends the notice in paragraph (a) to beneficial owners, in the following manner:
 - (i) the documents are filed on SEDAR;
 - (ii) the documents are posted until the date that is one year from the date that the documents are posted, on a website other than the website for SEDAR;
- (e) a toll-free telephone number is provided for use by the beneficial owner to request a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), at any time from the date that the reporting issuer sends the notice in paragraph (a) to the beneficial owner up to and including the date of the meeting, including any adjournment;
- (f) if a request for a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), is received at the toll-free telephone number provided under paragraph (e) or by any other means, a paper copy of any such document requested is sent free of charge by the reporting issuer to the requester at the address specified in the request in the following manner:
 - (i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;
 - (ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.

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

- (a) the information required to be included in the notice under paragraph (1)(a);
- (b) financial statements of the reporting issuer to be approved at the meeting, and MD&A related to those financial statements, which may be part of an annual report.

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

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

Restrictions on information gathering

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

- (a) ask for any information about the requester, other than the name and address to which the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b), are to be sent;
- (b) disclose or use the name or address of the requester for any purpose other than sending the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b).

(2) A reporting issuer that posts proxy-related materials pursuant to subparagraph 2.7.1(1)(d)(ii) must not collect information that can be used to identify a person or company who has accessed the website address where the proxy-related materials are posted.

Posting materials on non-SEDAR website

2.7.4 (1) A reporting issuer that posts proxy-related materials in the manner referred to in subparagraph 2.7.1(1)(d)(ii) must also post on the website the following documents:

- (a) any disclosure material regarding the meeting that the reporting issuer has sent to registered holders or beneficial owners of its securities;
- (b) any written communications the reporting issuer has made available to the public regarding each matter or group of matters to be voted on at the meeting, whether or not they were sent to registered holders or beneficial owners of its securities.

(2) Proxy-related materials that are posted under subparagraph 2.7.1(1)(d)(ii) must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following easily:

- (a) access, read and search the documents on the website;
- (b) download and print the documents.

Consent to other delivery methods

2.7.5 For greater certainty, section 2.7.1 does not

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

Instructions to receive paper copies

2.7.6 (1) Despite section 2.7.1, an intermediary may obtain standing instructions from a beneficial owner that is a client of the intermediary that a paper copy of the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b), be sent to the beneficial owner in all cases when a reporting issuer uses notice-and-access.

(2) If an intermediary has obtained standing instructions from a beneficial owner under subsection (1), the intermediary must do all of the following:

- (a) if the reporting issuer is sending proxy-related materials directly under section 2.9, indicate in the NOBO list provided to the reporting issuer those NOBOs who have provided standing instructions under subsection (1) as at the date the NOBO list is generated;
- (b) if the intermediary is sending proxy-related materials to a beneficial owner on behalf of a reporting issuer using notice-and-access, request appropriate quantities of paper copies of the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b), from the reporting issuer for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;
- (c) include with the proxy-related materials a description, or otherwise inform the beneficial owner of, the means by which the beneficial owner may revoke the beneficial owner's standing instructions.

Application to non-management solicitations

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

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

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

Record date for notice

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

Other Securityholder Materials

2.8 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.

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

2.9 (1) A reporting issuer that has stated in its request for beneficial ownership information sent in connection with a meeting, that it will send proxy-related materials to, and seek voting instructions from, NOBOs must send at its own expense the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request.

(2) A reporting issuer that sends by prepaid mail, courier or the equivalent, paper copies of proxy-related materials directly to a NOBO must send the proxy-related materials at least 21 days before the date of the meeting.

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

Sending Securityholder Materials Against Instructions

2.10 Except as required by securities legislation, and despite subsection 2.9(1), 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.

Disclose How Information Obtained

2.11 (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.

Indirect Sending of Securityholder Materials by a Reporting Issuer

2.12 (1) A reporting issuer sending securityholder materials indirectly to beneficial owners must send to each proximate intermediary that responded to the applicable request for beneficial ownership information the number of sets of those materials specified by that proximate intermediary for sending to beneficial owners.

(2) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner by having the proximate intermediary send the proxy-related materials by prepaid mail must send the proxy-related materials to the proximate intermediary

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

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

- (a) at least 3 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent, or

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

(4) A reporting issuer that sends securityholder materials that are not proxy-related materials indirectly to beneficial owners must send the securityholder materials to the intermediary on the date specified in the request for beneficial ownership information.

(5) Despite section 2.9, a reporting issuer must not send securityholder materials directly to a NOBO if a proximate intermediary in a foreign jurisdiction holds securities on behalf of the NOBO and one or both of the following applies:

- (a) the law of the foreign jurisdiction does not permit the reporting issuer to send securityholder materials directly to NOBOs;
- (b) the proximate intermediary has stated in a response to a request for beneficial ownership information that the law in the foreign jurisdiction requires the proximate intermediary to deliver securityholder materials to beneficial owners.

Fee for Search

2.13 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.

Fee for Sending Materials Indirectly

2.14 (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.

Adjournment or Change in Meeting

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,

- (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.

Explanation of Voting Rights

2.16 (1) If a reporting issuer sends proxy-related materials for a meeting to a beneficial owner of its securities, the materials must explain, in plain language, how the beneficial owner can exercise voting rights attached to the securities, including an explanation of how to attend and vote the securities directly at the meeting.

(2) Management of a reporting issuer must provide the following disclosure in the information circular:

- (a) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used, the types of registered holders or beneficial owners who will receive paper copies of the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b);
- (b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;
- (c) whether the reporting issuer intends to pay for an intermediary to deliver to OBOs the proxy-related materials and Form 54-101F7, and if the reporting issuer does not intend to pay for such delivery, a statement that OBOs will not receive the materials unless their intermediary assumes the costs of delivery.

Voting instruction form (Form 54-101F6)

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

Appointing beneficial owner as proxy holder

2.18 (1) A reporting issuer whose management holds a proxy in respect of securities beneficially owned by a NOBO must arrange, without expense to the NOBO, to appoint the

NOBO or a nominee of the NOBO as a proxy holder in respect of those securities if the NOBO has instructed the reporting issuer to do so using either of the following methods:

- (a) the NOBO filled in and submitted the Form 54-101F6 previously sent to the NOBO by the reporting issuer;
- (b) the NOBO submitted any other document in writing that requests that the NOBO or a nominee of the NOBO be appointed as a proxyholder.

(2) If management appoints a NOBO or a nominee of the NOBO as a proxy holder under subsection (1), the NOBO or nominee of the NOBO, as applicable, must be given authority to attend, vote and otherwise act for and on behalf of management of the reporting issuer in respect of all matters that may come before the applicable meeting and at any adjournment or continuance, unless corporate law prohibits the giving of that authority.

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

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

- (a) management of the reporting issuer will comply with subsections 2.18(1) and (2);
- (b) management of the reporting issuer is acting on behalf of the intermediary or depository to the extent it appoints the NOBO or nominee of the NOBO as proxy holder in respect of the securities of the reporting issuer beneficially owned by the NOBO.

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

Tabulation and Execution of Voting Instructions

2.19 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.

Abridging Time

2.20 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 the applicable timing requirements in sections 2.9 and 2.12;
- (a.1) if the reporting issuer uses notice-and-access, fixes the record date for notice to be at least 40 days before the date of the meeting and sends the notification of meeting and record dates under section 2.2 at least 3 business days before the record date for notice;

- (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

Intermediary Information to Depository

3.1 (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.

Instructions from New Clients

3.2 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.

Transitional - Instructions from Existing Clients

3.3 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.

Amending Client Instructions

3.4 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.

Application of Instructions to Accounts

3.5 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

Request for Beneficial Ownership Information - Response

4.1 (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, or in the case of a NOBO list, a person or company described in subsection 2.5(5) 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 proxy-related 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.

Sending of Securityholder Materials to Beneficial Owners by Intermediaries

4.2 (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.

Sending Securityholder Materials Against Instructions

4.3 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.

Voting instruction form (Form 54-101F7)

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

Appointing beneficial owner as proxy holder

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

- (a) the beneficial owner filled in and submitted the Form 54-101F7 previously sent to the beneficial owner by the intermediary;
- (b) the beneficial owner submitted any other document in writing that requests that the beneficial owner or a nominee of the beneficial owner be appointed as a proxy holder.

(2) If an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder under subsection (1), the beneficial owner or nominee of the beneficial owner, as applicable, must be given authority to attend, vote and otherwise act for and on behalf of the intermediary in respect of all matters that may come before the applicable meeting and at any adjournment or continuance, unless corporate law does not permit the giving of that authority.

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

Tabulation and Execution of Voting Instructions

4.6 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.

Securities Legislation

4.7 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.

Fees from Persons or Companies other than Reporting Issuers

4.8 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

Intermediary Master List

5.1 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.

Index of Meeting and Record Dates

5.2 (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.

Depository Response to Intermediary Search Request by Reporting Issuer

5.3 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.

Depository to send Participant Omnibus Proxy to Reporting Issuer

5.4 (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.

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

- (a) the participant will comply with subsections 4.5(1) and (2);
- (b) the participant is acting on behalf of the depository to the extent it appoints a beneficial owner or nominee of a beneficial owner as proxy holder in respect of the securities of the reporting issuer beneficially owned by the beneficial owner;
- (c) if the participant is required to execute an omnibus proxy under section 4.1, that the participant will take reasonable steps to request the confirmation set out in subsection 2.18(4).

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

PART 6 OTHER PERSONS OR COMPANIES

Requests for NOBO Lists from a Reporting Issuer

6.1 (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.

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

6.2 (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 the reporting issuer to which the request relates, that sends materials indirectly to beneficial owners must comply with the following:

- (a) the person or company must pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners;
- (b) the person or company must provide an undertaking to the proximate intermediary in the form of Form 54-101F10.

PART 7 USE OF NOBO LIST AND INDIRECT SENDING OF MATERIALS

Use of NOBO List

7.1 (1) A reporting issuer may use a NOBO list, or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument, in connection with any matter relating to the affairs of the reporting issuer.

(2) A person or company that is not the reporting issuer must not use a NOBO list, or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument, in any manner other than any of the following:

- (a) for sending securityholder materials directly to NOBOs in accordance with this Instrument;
- (b) in respect of an effort to influence the voting of securityholders of the reporting issuer;
- (c) in respect of an offer to acquire securities of the reporting issuer.

Sending of Materials

7.2 (1) A reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, in connection with any matter relating to the affairs of the reporting issuer.

(2) A person or company that is not the reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, only in connection with one or both of the following:

- (a) an effort to influence the voting of securityholders of the reporting issuer;
- (b) an offer to acquire securities of the reporting issuer.

PART 8 MISCELLANEOUS

Default of Party in Communication Chain

8.1 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.

Right to Proxy

- 8.2** 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

Audited Annual Financial Statements or Annual Report

9.1 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.

Compliance with SEC Notice-and-Access Rules

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

- (a) the SEC issuer is subject to, and complies with Rule 14a-16 under the 1934 Act;
- (b) the SEC issuer has arranged with each intermediary through whom the beneficial owner holds its interest in the reporting issuer's securities to have each intermediary send the proxy-related materials to the beneficial owner by implementing the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act;

- (c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50% of the votes for the election of directors, and none of the following apply:
- (i) the majority of the executive officers or directors of the issuer are residents of Canada;
 - (ii) more than 50% of the consolidated assets of the issuer are located in Canada;
 - (iii) the business of the issuer is administered principally in Canada.

(2) Part 4 does not apply to an intermediary with whom a reporting issuer has made arrangements under paragraph (1)(b) if the intermediary implements the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act.

Exemptions

9.2 (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

[Part 10 is not reproduced. It contained historical coming-into-force and transitional provisions.]