

September 11, 2000

## **FACT SHEET PREPARED BY IICC INVESTOR COMMUNICATIONS FOR CANADIAN PUBLIC CORPORATIONS**

### **IMPACT ON SHAREHOLDER COMMUNICATION COSTS CAUSED BY PROPOSED REGULATION NI 54-101 ALLOWING THE USE OF "NOBO" LISTS FOR PROXY MAILING AND TABULATION**

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The Canadian Securities Administrators ("CSA") have been working on a replacement policy for National Policy 41 on beneficial shareholder communications for several years. A draft instrument, NI 54-101, was last introduced for comment in 1998 and a new draft was released on September 1, 2000.

One of the key features of Draft NI 54-101 is the requirement for financial intermediaries to provide account information (e.g. name, address, holdings, etc.) to issuers for purposes of mailing proxy materials and tabulating voting instructions in connection with annual and special meetings. The proposal would allow issuers to communicate "directly" with those shareholders who have declared themselves to be "non-objecting" when it comes to revealing their information to issuers. These shareholders are referred to as NOBO shareholders (**N**on **O**bjecting **B**eneficial **O**wners). Shareholders that object to sharing their information with issuers are referred to as OBO shareholders (**O**bjecting **B**eneficial **O**wners). This proposed policy is contrary to practice in the U.S. where NOBO lists are provided but not used for direct proxy solicitation and raises concerns with regard to the costs of these processes as well as the integrity of the vote return system.

This document focuses on the potential cost implications to issuers as a result of this proposed feature of Draft NI 54-101. As the leading processor of beneficial proxy communications in Canada, IICC has a unique perspective on how the proposed change will impact the costs incurred by issuers in communicating with their beneficial holders. Shown below are five concerns that issuers should have regarding assumptions that this policy change will result in lower costs . . . in fact we believe just the opposite.

#### **1. Managed Account Processing Currently Saves Canadian Issuers An Estimated \$3.4 Million Per Year In Paper/Printing/Postage Costs**

- < IICC and their financial intermediary clients have built automated systems to "eliminate" proxy mailings to beneficial shareholders who wish to reduce the amount of paper documents arriving at their door. The software programs at IICC compare each shareholder account against specific "mail elimination" criteria and suppress the mailing of the issuer's material in favour of summarizing those individual accounts to a "managed" account. In effect, the individual maintains his proxy entitlement but does not receive a package in the mail. Only one package is mailed to the "account manager" containing a summary voting instruction form for all accounts under their care.

- < The paper/printing/postage cost savings to issuers from this service is substantial. As shown in Table 1, a sample of 15 issuer meetings demonstrates that close to 5% of the total beneficial accounts were eliminated from the postal mail stream. If we project this result over the 9 million beneficial proxy communications this year, the savings is roughly 430,000 mailings. At an average cost to issuers of \$8 per proxy mailing (annual report, meeting circular, other documents plus postage), the annual savings to the Canadian issuer community is over \$3.4 million.
- < In the proposed environment where NOBO lists are sold by the financial intermediaries to the issuers, these mail elimination practices and the associated savings will be lost.

## **2. Electronic Delivery Of Proxy Material Will Not Be Maximized Due To Lack Of Multiplier Effect**

- < The key to maximizing the further paper/printing/postage savings available to issuers by employing electronic delivery is to have as many shareholders as possible provide their consent for such a service. In preparation for e-delivery under the current policy, IICC is working with its financial intermediary clients to maintain a ?consent? database of beneficial holders. Under the proposed new instrument there will be no incentive for financial intermediaries to solicit and promote these enrollments.
- < When a beneficial shareholder consents to e-delivery they are doing so for all security positions held in their account. A multiplier effect results as each issuer can benefit from the savings generated by e-delivery. If each issuer independently attempts to generate their own ?consent? database from NOBO lists, they will absorb the cost of establishing and maintaining that database and they will not gain the advantage of having others essentially increase the size of the list for them.

## **3. Costs For Soliciting Proxies From The Important OBO Group Will Increase And Be Less Effective**

- < Under the proposed new instrument the cost for OBO proxy mailings and vote tabulation will be the responsibility of the financial intermediaries (except in those cases where the shareholder has declined to receive materials). Because processing volumes may be lower, intermediaries may face cost increases to complete these functions. As a result, intermediaries will tend to opt for providing the minimum levels of service required by the instrument.
- < The goal of the issuer is to maximize proxy vote returns as quickly as possible prior to the meeting. If financial intermediaries have little incentive to provide ?extra? proxy solicitation service for OBO?s, this goal will not be satisfied and issuers will face higher costs to get the results they want. For example, are financial intermediaries likely to maintain electronic voting applications for institutional holders? If institutions find it less convenient to vote, what will be the impact on total vote returns and the timeliness of those returns? The likely result will be additional spending by issuers to boost returns.

#### **4. Long-awaited Postage Savings Offered By Canada Post May Not Be Realized**

- < Canada Post recently introduced a discounted class of mail for oversize packages. This Incentive Lettermail is processed as first-class mail but is offered at discount prices if certain address sortation and mail preparation steps are completed. One key requirement is a minimum volume of 5,000 pieces.
- < With the potential separation of OBO and NOBO lists, many issuers and/or financial intermediaries may find themselves with mailings that fall below the minimum requirement. This will require each smaller mailing to pay the full first-class postage rate.

#### **5. Costs For Contested Meetings Or Corporate Actions Will Increase Dramatically**

- < When dissident shareholders or other parties **?contest?** meetings of specific issuers, the result is normally multiple mailings from one or both of the contestants involving multiply proxy solicitations.
- < Under the current policy most of the effort required to coordinate the multiple mailings and manage the vote returns is consolidated under one roof for the beneficial shareholders.
- < The proposed instrument would allow a scenario whereby communications would be required with three shareholder groups (Registered, OBO and NOBO) instead of two. These communications would be managed by three or more parties. As a result, the coordination and accurate processing of the vote instructions will require extensive oversight by the issuer and contesting parties and will lead to tremendous cost increases with added risk of error.

**Table 1**

**Managed Account Processing Results  
August 1999 ? June 2000**

<b>Company</b>	<b>Proxy Pieces Processed</b>	<b>Proxy Pieces Mailed</b>	<b>Proxy Pieces Eliminated</b>
A	281,016	271,510	9,506
B	131,823	127,099	4,724
C	47,179	46,439	740
D	38,974	36,813	2,161
E	32,945	28,895	4,050
F	26,358	22,743	3,615
G	24,354	22,733	1,621
H	23,507	19,790	3,717
I	22,963	22,440	523
J	14,796	14,421	375
K	5,864	5,668	196
L	5,131	5,117	14
M	1,855	1,723	132
N	1,190	1,170	20
O	914	877	37
	658,869	627,438	<b>31,431</b>
		4.8% of records processed	

October 13, 2000

**FACT SHEET PREPARED BY IICC INVESTOR COMMUNICATIONS FOR CANADIAN FINANCIAL INTERMEDIARIES**

PROPOSED AMENDMENTS TO DRAFT NATIONAL INSTRUMENT 54-101

The following is a summary of the major proposed changes to NP41 that appear in the September 1, 2000 draft release of NI 54-101. Our concerns are listed below each numbered change.

**Issuers may use NOBO lists for proxy communications.**

This is inconsistent with practice in the U.S. where NOBO lists are available for other uses but not for proxy mailing/tabulation.

U.S.-based intermediaries will not provide Canadian issuers with NOBO lists for proxy purposes, allowing those intermediaries to maintain strict confidentiality for their customers.

Intermediaries will be required to provide NOBO lists for 4,500 Canadian issuers and to all interested parties at any time. Fees are to be negotiated. These lists must be delivered to issuers and interested parties through transfer agents only. Intermediaries may be uncomfortable with providing these lists to such a wide audience and through parties that may have competitive interests. This will also require intermediaries and their record-keeping systems to establish electronic links with various agents.

Customers of intermediaries (NOBO?s) will seek information regarding proxy materials and voting rights from the intermediary rather than the issuer. This will be problematic since the intermediary will have to refer their customers to the issuer who in turn may have to refer them to the mailing and/or tabulation agent.

In certain situations, intermediaries may not know with certainty that proxy mailing/tabulation was executed for all their NOBO customers. Under the current policy, our clients can obtain accurate and timely response to voting inquiries, directions for revocation, and proxy appointments.

**Intermediaries must be prepared to reconcile positions.**

Intermediaries must be able to reconcile their OBO and NOBO records accurately with CDS or the issuer?s security register.

The total number of votes cast at a meeting by an intermediary or persons holding through intermediaries must not exceed the number of votes for which the intermediary is a proxyholder.

Both requirements stated directly above will place new burdens on intermediaries. An added complexity is the potential for having a record date for voting in addition to a record date for notice, resulting in multiple reconciliation possibilities.

**No prescribed fees.**

Fees for mailing, tabulation, NOBO lists, etc. are not prescribed in the Instrument but may be set by

applicable regulators and must be at least reasonable. This could produce situations where disagreements over fees result in late or cancelled mailings/meetings.

Intermediaries are responsible for cost of mailing/tabulating for OBO's, except where an issuer overrides the OBO's desire not to receive materials.

Currently, intermediaries use a portion of the proxy fees provided by issuers to cover the cost of managing proxy communication records and systems and to service the proxy-related needs of their customers. The reduction in revenue may not be compensated by a similar reduction in the proxy-related expenses at the intermediaries.

### **Legal Proxy.**

If beneficial owners wish to attend meetings, they must request a legal proxy in writing. If a NOBO receives their proxy materials from an issuer, they make their request to the issuer. If a NOBO or OBO receives their proxy materials from an intermediary, they make their request to the intermediary. This will require intermediaries to have the capability to not only deliver legal proxies, but also to update their records appropriately to allow for accurate reconciliation of positions.

### **Consenting to be a NOBO.**

Given the importance of the changes to the disclosure policy, intermediaries will likely want to collect new consents from their customers. While the current OBO proportion in Canada is roughly 25%, data from the U.S. and estimates from Canadian sources indicate that when investors are informed about the reality of disclosure and are prompted to respond, the OBO proportion trends upwards to the 40 to 45% range. For intermediaries, this will mean a significant increase in costs to solicit new consents and to mail/tabulate proxies for the OBO's.

### **Corporate Actions.**

The system in the proposed Instrument is not mandated for the distribution of other communications such as corporate actions but is optional. If issuers choose to use NOBO lists for these purposes, it puts intermediaries in a difficult position since they are obligated to advise their customers of these events. How will intermediaries know if their customers have been advised and will issuers provide these investors with information that is not applicable to beneficial holders?

### **Electronic Services.**

The proposed Instrument facilitates the use of e-services but does not provide the necessary incentives to promote them. For example, if an issuer wishes to send proxy material indirectly to NOBO's through an intermediary, the intermediary can provide electronic delivery instead of postal delivery but they are not allowed to levy a fee for that service (despite the fact that the issuer would save many dollars in paper, printing and postage costs).

Intermediaries will be required to pay for the development and delivery of e-services to OBO's. Based on the reduction in scale caused by creating smaller groups of shareholders, the costs for these services will be higher and there may be less incentive to keep pace with new technology.

### **Managed Account Processing.**

- < The Exception Processing available using IICC's Proxy Plus System allows the elimination of proxy mailings to beneficial holders who wish to reduce the amount of paper documents arriving at their door. The software programs at IICC compare each shareholder account against specific "mail elimination" criteria and suppress the mailing of materials in favour of summarizing those individual accounts to a "managed account". The individual maintains his proxy entitlement but does not receive a package in the mail.

In the proposed environment where NOBO lists are sold by the financial intermediaries to the issuers, this mail elimination service and the associated savings will be lost.

### **Standing Instructions.**

- < Enclosures being sent to beneficial holders are reviewed to ensure that special items such as tax election forms, DRIP brochures and election forms, Letters of Transmittal, and similar documents are not mailed out to your clients as per your standing instructions.

With issuers, transfer agents, and multiple parties being involved with the distribution under the proposed system, there will be no guarantee that these restricted documents will not be mailed to the beneficial holders.

### **Solicitation Reports.**

- < IICC currently provides intermediary clients with Vote Summary Reports to assist in claiming proxy solicitation fees.

Such reports may no longer be available from third party tabulators and may no longer be accepted as proof of claim.