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October 30, 2000

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Securities Registry, Government of the Northwest Territories
Registrar of Securities, Government of the Yukon Territory
Registrar of Securities, Government of Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

And To:

Claude St. Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3

Dear Sirs and Madames:

Re: Proposed National Instrument 54-101 and Related Documents

The Canadian Bankers Association (CBA) appreciates this opportunity to provide you with our comments on the third draft of proposed National Instrument 54-101, Communication with Beneficial Owners of Securities of a Reporting Issuer (“NI 54-101”), Proposed National Instrument 54-102 - Supplemental Mailing List And Interim Financial Statement Exemption ("NI 54-102") and related documentation. As you review our comments, please bear in mind that our members endorse the views presented in this submission as both intermediaries and as reporting issuers.

General Comment

The CBA remains of the view that the existing shareholder communication process is operating efficiently, and that the goal of increasing transparency of securityholder ownership and enabling issuers to identify and communicate with their shareholders could be achieved without disrupting the existing process. In our view, the proposed process will bring increased fragmentation and complexity to the shareholder communication process, place significant administrative burdens on intermediaries and result in increased costs and deterioration of service. Given that the goals could be reached with less cost and disruption, we can see no compelling reason to adopt this particular approach to the shareholder communication process.

Specific Comments

1. Right to Decline To Receive All Materials

(a) Beneficial securityholders

The CBA is of the view that beneficial securityholders should have the option to decline all securityholder materials, including all proxy materials relating to non-routine meetings. The decision whether or not to receive securityholder materials should be a matter of individual choice.

Many individuals prefer not to receive any shareholder materials, and simply discard such material when it arrives. Some regard the printing and distribution of such unwanted shareholder materials as a waste of money and natural resources. As well, some individuals consider that the arrival of unwanted proxy materials on their doorstep and in their mailboxes, by potentially disclosing aspects of their financial affairs to third parties who might see such materials, compromises their personal privacy in a more immediate way than would the disclosure of their identity in a NOBO list.

While in a more perfect world, all investors might consider themselves duty-bound to inform themselves thoroughly as to the affairs of the issuer, read all securityholder materials and participate in corporate governance, the reality is that many investors treat shares as a commodity, choose not to rely on shareholder materials for information about their investments, and prefer not to receive such materials at all. It seems to us unduly paternalistic for regulators to require that materials be sent to individuals who do not wish to receive them.

Even if issuers are permitted to distribute printed copies of "non-routine" proxy materials to individuals who, given the choice, would elect not to receive them, the great likelihood is that such materials, once received, will be discarded unread.

(b) Registered securityholders should have option to decline materials

The CBA is of the view that *registered* securityholders, other than intermediaries, should also have the option to decline to receive all securityholder materials, including all proxy materials relating to non-routine meetings. Reporting issuers should be authorized to send to their registered securityholders substantially the same client response form that intermediaries send to beneficial securityholders, so that the registered securityholders may elect not to receive securityholder materials.

(c) Clarify default obligation where new client does not give instructions

NI 54-101 should make clear whether the intermediary is required to send securityholder materails to a new client who has not given instructions in that regard. The proposed National Instrument provides that an intermediary shall obtain instructions from a new client, but is silent as to the obligation of the intermediary to send materials where the client has not given any instructions. This differs from present section 3 of Part V of NP41, which stipulates that a client that does not provide instructions is deemed to have given instructions not to send securityholder materials.

2. Interim Financial Statements

(a) Amend Client Response Form to refer to interim financial statements

NI 54-101 and the Explanation to Clients and Client Response Form (Form 54-101F1) permit clients of intermediaries to decline to receive annual reports and financial statements, but do not specifically include interim financial statements. It would seem reasonable to presume that a beneficial owner who expressly declines to receive annual reports and financial statements does not wish to receive interim financial statements. This apparent omission in proposed Form 54-101F1 might be corrected by adding the words "(including interim financial statements)" after the words "annual reports and financial statements" in paragraph c of the form.

(b) Permit issuers to send client response form to registered securityholders

As indicated above, in the CBA's view, reporting issuers should be permitted to send their registered securityholders the revised client response form (including reference to interim financial statements). This would give registered securityholders of unincorporated entities the same right to elect not to receive securityholder materials that is extended to beneficial securityholders, and would permit such reporting issuers to minimize administrative burdens and costs.

3. Some clients with managed accounts should be presumed not to want materials

NI 54-101 as drafted may require portfolio managers and trustees of existing managed accounts to solicit instructions from clients who, we would submit, should be taken to have implicitly waived the provision of securityholder materials when they conferred full discretionary authority.

Some portfolio managers and trustees that exercise discretionary authority to manage client accounts did not fall within the definition of "intermediary" in NP 41, but are within the ambit of "intermediary" in proposed NI 54-101. Proposed NI 54-101 should make it clear that clients with such managed accounts that are in existence before NI 54-101 comes into force are presumed not to want to receive securityholder materials. Intermediaries who are portfolio managers or trustees should not be required to seek new instructions from such clients.

4. Retain $1 per name fee payable to intermediaries for deliveries to OBOs

NI 54-101 should prescribe the same basic fee of $1 per name that is currently required under Part X of National Policy 41("NP41") to be paid by the issuer to the intermediary for delivering proxy related materials to non-registered holders that are OBOs.

We are concerned that if the current tariff is not continued in NI 54 – 101, the fees payable to intermediaries for deliveries to OBOs will become unreasonably high, owing to the market dominance of one service provider.

Section 1.5 of proposed NI 54-101 provides that fees are to be either as prescribed by the regulator or a "reasonable amount" if the amount of the fee has not been prescribed.

In our view, the current fee level is reasonable, and what constitutes a reasonable amount should not be left to be determined by the service provider.

5. Form 54-101F1 should give option to decline specified types of documents:

Form 54-101F1 - Explanation to Clients and Client Response Form asks the securityholder to request all or decline all of three specified types of documents. The Form should offer the option of deciding specifically which types of documents are to be sent or not sent.

6. Form 54-101F2

(a) Part 1, Item 4 – Purpose of Request

Item 4 of Part 1 of Form 54-102F2 is confusing. We would suggest revising Item 4 as follows:

State whether or not the request is being made:

(a) in connection with a meeting;
(b) in connection with sending securityholder materials; and
(c) for the purpose of sending out a NOBO list.

(b) Item 7 - Information to be included when requesting NOBO list

It is not clear from reading Item 7.4 of Part 1 as drafted, whether an issuer could send materials directly to NOBOs and instruct the NOBOs to forward voting instructions to an intermediary. This should be clarified.

7. Consent to electronic delivery

In our view, reporting issuers should be permitted to rely upon the consent to electronic delivery provided to the intermediary by the beneficial owner, to effect delivery of securityholder materials to NOBOs and to OBOs. This would be consistent with National Policy 11-201, Delivery of Documents by Electronic Means, which includes among its aims the facilitation of the use of electronic delivery methods for communications with beneficial owners of securities. The Client Response Form should be formatted and a process should be prescribed, to ensure that reporting issuers have access to that portion of the Client Response Form. We note that section 5.4(5) of NI 54-101CP, which provides that "(a)ny consent of a beneficial owner restricted to its intermediary cannot be used by a reporting issuer" (sic.) would have to be changed to provide that a reporting issuer can rely on a consent that is not expressly restricted to the intermediary.

8. Clarify voting of loaned securities

In the CBA comment letter dated May 29,1998, we submitted that the proposed National Instrument should address the issue of who, as between a borrower or lender of securities, is entitled to vote. In the Summary of Comments Received that was published concurrently with the present Request for Comments, the CSA responded that "the issue of who votes the securities that are subject to a securities lending arrangement is a contractual matter between the borrower or lender and beyond the scope of the proposed National Instrument."

We would draw the attention of the CSA to Clause 61 of Bill S-19, An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act, which was before Parliament during the most recent legislative session. Clause 61 would amend section 140(5) of the Canada Business Corporations Act to specifically provide that, in the absence of a specification of voting rights in a loaned share agreement, voting rights shall accrue to the borrower of the share.

According to the clause-by-clause analysis of the Bill on the Industry Canada website (at http://strategis.ic.gc.ca/SSG/cl00178e.html) the amendment would harmonize the Canadian system with the United States and Great Britain, and also would harmonize the CBCA with Quebec practice. We submit that it would be entirely appropriate and would contribute to even greater harmony of corporate and securities law and regulation, for the proposed National Instrument to address the matter of who is entitled to vote in the absence of a contractual specification, in a manner that is consistent with the law in the United States and Great Britain, practice in Quebec and proposed Canadian corporate legislation.

We would be pleased to answer any questions that you may have about our comments.

Yours truly,

WL/DI/sh