BY E-MAIL AND REGULAR MAIL

December 23, 2003

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

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

- and –

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montreal, QC H4Z 1G3

Dear Ladies and Gentlemen:

Re: PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

ADP Investor Communications ("ADP") is pleased to respond to the request for comments by the Canadian Securities Administrators ("CSA") on Proposed Amendments to National Instrument 54 – 101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (the "Instrument or NI 54-101") and Companion Policy 54–101CP.

ADP AND ITS BUSINESS

ADP has been an industry leader in providing investor communications services in the financial marketplace since 1987. Our investor communication services include beneficial and registered shareholder communications, delivery of documents in compliance with regulatory requirements, and transaction reporting. We service over 230 banks, brokers, and dealers and the majority of the mutual fund industry in Canada. Unique to ADP is our industry, regulatory and data processing expertise. Clients leverage ADP's industry and regulatory knowledge to fulfil their obligations to deliver information to investors. ADP is responsible for distributing the majority of proxy-related materials and continuous disclosure documents to investors in Canada, and during the last year delivered almost 11 million packages of proxy-related materials to beneficial owners of securities in Canada.

COMMENTS ON PROPOSED AMENDMENTS TO THE INSTRUMENT

We have two general comments that address practical issues relating to the implementation of the Instrument and the proposed amendments. We are also responding to one of the specific issues raised in the Notice.

GENERAL COMMENTS:

a. Transition Period Prior to Implementation

The CSA is proposing changes to the Instrument that affect a number of key parts of the shareholder communication process, including what instructions must be sought from beneficial owners, which beneficial owners get materials, what materials are to be sent and for which meetings. Implementing the amendments will require market participants to re-print and process securityholder response forms, as well as significant reprogramming of computer systems. The cost and complexity of some of these changes may be significant and cannot be made until the amendments are final. Market participants must have adequate time to test and implement the necessary changes.

The vast majority of shareholder meetings take place in the period between February and July each year, and we understand that there would be pressure for the proposed amendments to be effective for the next proxy season. However, we would note that most of the voting instruction forms needed either have been printed or are in the process of being printed for the coming proxy season. ADP used nearly 11 million voting instruction forms last year and it would be very difficult to make changes to the systems and forms during the peak proxy season and still deliver proxy-related materials to beneficial owners in a timely and efficient manner.

As a consequence of these concerns, ADP would ask that the CSA build into the Instrument a reasonable transition period after the amendments to the Instrument become final in order for the necessary changes to be made. We would suggest that there be a clear period of nine months between the time the instrument becomes final and its effective date, for this purpose. In addition, we would ask that this effective date not fall during the peak proxy season of mid-January to June.

b. Process for Sending Legal Proxies

The proposed changes to the Instrument that clarify the right of a beneficial owner to appoint a third party to act for the owner in exercising his or her proxy are helpful. However, we would like to raise an issue in this area that has emerged in the transition from National Policy 41 *Shareholder Communication* ("NP 41") to NI 54-101.

Under NP 41, most voting instruction forms ("VIFs") provided a space for the beneficial owner to insert his or her own name or that of a third party as appointee to attend the meeting in person. When the intermediary (or its service provider) received completed VIFs that indicated beneficial owners or appointees wished to attend the meeting in person, a cumulative proxy was issued to the transfer agent or scrutineer which included the names of all the requesting beneficial owners or their appointees, the number of shares held and any voting instructions contained on the forms sent in by the beneficial owners. As requests to attend meetings were received, new proxies were sent to the transfer agent, often daily as the date of the meeting approached. When the beneficial owners or their appointees arrived at the meeting, the scrutineer had all the necessary proxies and information at hand. Where the beneficial owner had given voting instructions on the VIF, the ability of the third party appointee to vote the shares could be limited to those items for which instructions had been received or could provide discretion for the appointee to vote for items where instructions had not been given.

The NP 41 process was simple, efficient, cost effective and could easily accommodate the processing of even very late appointee requests to attend the meeting using the electronic links between the intermediaries and the transfer agents.

The NI 54-101 process for issuing legal proxies takes a step back in achieving the goal of efficiently allowing beneficial owners or their appointees to attend and vote in person at shareholder meetings.

NI 54-101 seems to require the beneficial owner to make a separate, specific request to his or her intermediary for a legal proxy. The intermediary then must prepare and execute an individual legal proxy in the name of the beneficial owner or their appointee, which is then mailed to the beneficial owner or appointee. This process has a number of implications for shareholder communication:

- It is inefficient and imposes higher processing costs on all parties involved. Instead of one cumulative proxy being issued to the transfer agent on a daily basis, which contains all the necessary information, individual proxies must be prepared and mailed out. If the proxy is to be sent to someone other than the beneficial owner, the processing costs will be even higher as additional manual processing is required. Where late requests are received, it is less likely the beneficial owner will receive the legal proxy in time to attend the meeting.
- Except under section 2.18 of the Instrument, it is not clear who is to pay for the processing costs of preparing and sending individual legal proxies.
- It is not practical to follow the current practice regarding pre-voting by beneficial owners, as it is extremely difficult, if not impossible, to reconcile the instructions on the VIFs with the votes cast in person at a meeting using a legal proxy. This leaves each beneficial owner or their appointee with full discretion on how to vote at a meeting and may make the complete tallying of all the actual votes cast more complicated for scrutineers. This difficultly is expressly acknowledged in the US. There, if a beneficial owner ticks the box on the voting instruction form to receive a legal proxy, any other voting instructions on the form are not recorded. It is not clear that the same rule would apply under NI 54-101 as the obligation under section 4.6 rests with the intermediary to tabulate and execute voting instructions received and does not expressly deal with the situation where the legal proxy has been delivered to the beneficial owner or appointee under section 4.5.[1]

We would ask the CSA to consider amending the provisions dealing with legal proxies to allow the existing process that was followed under NP 41 to continue.

In any event, we would suggest that specific language be added to sections 2.19 and 4.6 exempting reporting issuers and intermediaries (respectively) from the obligation to tabulate or execute voting instructions contained on VIFs for those beneficial owners to whom they have sent legal proxies.

RESPONSE TO SPECIFIC REQUEST FOR COMMENT

In the Notice, the CSA asked for comments on how Proposed Instruments 51-102 *Continuous Disclosure* and 81-106 *Investment Fund Continuous Disclosure* should interact with the shareholder communication regime outlined in the Instrument. We would refer you to the comment letter dated August 20, 2003 that we filed with the CSA in response to the request for comments on Proposed National Instrument 51-102 *Continuous Disclosure,* particularly those under the heading "Integration between Proposed Instrument and NI 54-101". (For your convenience, a copy of our letter is attached). Specifically, we would like to emphasize the need for all three instruments to fit together without gaps or inconsistencies and for the CSA to consider providing guidance to all market participants on which instrument is paramount in the event of a conflict. We would be happy to participate in a detailed analysis of the three rules to ensure they are consistent with one another, as our experience in the shareholder communication process may be of assistance.

ADP would be pleased to answer any questions the CSA might have on our comments and appreciates the opportunity to comment on the Proposed Instrument. For further information, please feel free to contact me at 905-507- 5259.

Yours truly,

Patricia Rosch
Senior Vice President

Copy: Arden Cornford, ADP

Attachments: Copy of ADP Comment Letter on NI 51-102 dated August 20, 2003

[1] The same problem is present in sections 2.18 and 2.19 regarding the obligations of reporting issuers when they send out proxy related material to NOBOs.

BY E-MAIL AND REGULAR MAIL August 20, 2003

Rosann Youck
Chair of the Continuous Disclosure Harmonization Committee
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2

- and –

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246
22nd Floor
Montreal, QC H4Z 1G3

And to all of the CSA member securities commissions

Dear Ladies and Gentlemen:

Re: CHANGES TO PROPOSED NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

ADP Investor Communications ("ADP") is pleased to respond to the request for comments by the Canadian Securities Administrators ("CSA") on Changes to Proposed National Instrument 51 – 102 *Continuous Disclosure Obligations* (the "Proposed Instrument") and Companion Policy 51–102CP (the "Proposed Policy").

ADP AND ITS BUSINESS

ADP has been an industry leader in providing investor communications services in the financial marketplace since 1987. Our investor communication services include beneficial and registered shareholder communications, delivery of documents in compliance with regulatory requirements, and transaction reporting. We service over 230 banks, brokers, and dealers and the majority of the mutual fund industry in Canada. Unique to ADP is our industry, regulatory and data processing expertise. Clients rely on ADP for products and services that comply with securities laws and regulations, and as a result, depend on ADP to ensure they are in compliance. Clients leverage ADP's industry and regulatory knowledge to fulfil their obligations to deliver information to investors. ADP is responsible for distributing the majority of proxy-related materials and continuous disclosure documents to investors in Canada, and is by far the largest provider of fulfilment of mutual fund annual reports, prospectuses and amendments.

COMMENTS ON PROPOSED INSTRUMENT

Our primary concern with the Proposed Instrument relates to the provisions dealing with delivery of financial statements and MD&A (sections 4.6 and 6.7). We support the change made to the instrument that places the onus on the reporting issuer to determine if its securityholders want copies of its financial statements and MD&A. However, we have a few questions and comments about the delivery obligations set out in the Proposed Instrument. We also have a few other comments on the Proposed Instrument and Proposed Policy.

Integration between Proposed Instrument and NI 54-101. In order to get reporting issuer information to securityholders in an efficient manner, it is very important that the relevant CSA instruments work together as seamlessly as possible. For the purposes of this letter, the two key instruments are the Proposed Instrument and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("NI 54-101").[2] In this letter, we identify some places where additional clarification or changes should be made to fit, the two rules together better. We would strongly recommend that the CSA personnel responsible for the respective instruments perform a complete analysis using their combined expertise to ensure there are no other gaps or inconsistencies. We would be happy to participate in this analysis if our experience would be of help. It would also be advisable to consider providing guidance to the marketplace on which instrument is paramount in the event of a conflict.

Whose opt-in must be solicited? Subsection 4.6(2) says: "*the reporting issuer must … send the request form to the beneficial owners of its securities other than the beneficial owners that are identified under that instrument as having declined to receive materials*." However, the actual treatment of beneficial owners under NI 54-101 does not fit neatly into (or out of) "having declined to receive materials". Under the client response form contained in Form NI 54-101F1, a beneficial owner of securities can (a) opt for delivery of all securityholder materials sent to beneficial owners or (b) decline to receive any materials other than proxy-related materials for securityholder meetings at which non-routine business is to take place. If the beneficial owners had accounts with intermediaries that pre-dated NI 54-101 and had not returned client response forms under National Policy 41, they are deemed by NI 54-101 to have chosen the second option. NI 54-101 does not permit anyone to decline delivery of **all** materials. The need for these two rules to fit together seamlessly will be an on-going one and should be kept in mind in the event either instrument is amended in the future.

- Does 'declined to receive materials' mean declined **all** materials or would declining some materials be enough?
- Does the phrase mean actively declined to receive materials or does it include those who were deemed to opt for no materials?

Simply changing the delivery options in NI 54-101 so that a beneficial owner may decline all materials will not solve this problem, as most of the executed client instruction forms on record at the intermediaries will contain the current options or those under the predecessor instrument, National Policy 41. If the intention is to require the reporting issuer to send the request form only to those who have indicated they want all materials, it would be clearer to recast the provision in the positive as: "*the reporting issuer must … send the request form to the beneficial owners of its securities that are identified under that instrument as wanting to receive all materials*."

Duplication and Potential for Confusion. There is a fair degree of duplication and a potential for significant confusion on the part of beneficial owners using the process set out in section 4.6 of the Proposed Instrument. The reporting issuer is going back to beneficial owners who have already indicated under NI 54-101 that they want securityholder materials (which include the annual financial statements) for all reporting issuers in which they have invested and asking "are you sure that you want financial statements and MD&A for this particular reporting issuer?" The effect of a failure to respond to the reporting issuer's request under the Proposed Instrument is not entirely apparent. Does a failure to respond overrule the blanket request under NI 54-101 for all securityholder materials? If the annual report for an issuer, which contained the annual financial statements and MD&A, was being sent to beneficial owners, would a shareholder that didn't return the NI 51-102 request form get the annual report or not? It should be made clear in the Proposed Instrument (and in NI 54-101) which instruction by the beneficial owner takes precedence. The Proposed Instrument should also require reporting issuers to inform beneficial owners what will be the effect of a failure to respond.

There would be less duplication and possibility of confusion if the Proposed Instrument adopted a combination of opt-in and opt-out processes. A failure to return the response form would be interpreted as requesting delivery of annual financial information and declining the material for interim periods. The investor would have to respond to refuse delivery of the annual statements or ask for delivery of the interims. This approach would be consistent with the investor's standing instructions under NI 54-101 and parallel the requirement under NI 54-102 *Supplemental Mailing List and Interim Financial Statement Exemption* that investors actively ask for interim information.

[2] The third instrument that deals with the shareholder communication process is National Instrument 81-106 Investment Fund Continuous Disclosure. Any overall review for consistency should also include this instrument.

Opt-in vs. Opt-out Request Process. We would caution the CSA that interpreting a non-response from an investor as a conscious answer to the question asked might not be appropriate. We have extensive experience with soliciting responses from investors and have found that the rate of opt-in by Canadian investors is fairly constant regardless of the question asked: about 5% have opted in for electronic delivery of materials and for delivery of financial statements for mutual funds. If the pre-eminent concern is a fully informed investor community, an opt-out procedure would better achieve that aim; that is, shareholders who did not respond would be sent at least the annual audited financial statements and related MD&A.

Automatic Exemption. Under NI 54-101, all issuers retain the option of sending securityholder materials to all beneficial owners, despite any stated preference for no materials. Under the Proposed Instrument, even if an issuer decided to send all its financial statements to all securityholders, it would still be required to carry out the annual request process. The Proposed Instrument should provide an automatic exemption from the requirements of s.4.6 (1) if a reporting issuer sends its financial statements and MD&A to all securityholders.

Continuing Right to Get Financial Information. The Proposed Instrument should also make it clear that any securityholder (regardless of status as a registered or beneficial owner or what delivery option may have been chosen by a beneficial owner under NI 54-101) retains the right to request that the reporting issuer send that securityholder its financial statements & MD&A and that the issuer must deliver this material without charge to the investor. Simply deleting the phrase "in the request form required in subsection (1)" from the language of subsection 4.6(3) will achieve this result. A parallel change also should be made to subsection 6.7(1) regarding the obligation to deliver the MD&A. Further, reporting issuers should be required to include a statement in its annual information form, proxy circular or annual financial statements telling securityholders how to exercise this right.

Lack of Guidance on the Form and Timing of the Request. The Proposed Instrument provides no guidance about the timing of the request process and does not specify the form to be used. We assume that this means that reporting issuers and intermediaries will need to prepare their own form of request form. While we agree that this gives each reporting issuer the maximum flexibility to order its affairs to suit its particular circumstances, we question whether this is in the best interests of investors and marketplace efficiency.

We believe that the regulators should mandate certain information be given to securityholders on (or with) the request form. This information should include an explanation of the effect a failure to respond will have on the receipt of financial statements; that the investor may change their choice regarding delivery of financial information at any time; and who to contact to make changes.

The absence of guidance on the content of the form, when the request must be made and the process to be followed will also mean that there will be a wide range of practices across the investment community, resulting in confusion and adding costs to the process. We believe that an effective mechanism to obtain requests annually could be through the annual proxy process (specifically the form of proxy). We would appreciate clarification in the Proposed Instrument that it is up to the reporting issuer and/or the intermediaries to develop the necessary mechanisms to comply with the request form requirement.

Timing of Delivery of Financial Statements. Subsection 4.6(3) provides that the reporting issuer must send a copy of any requested financial statements by the later of the filing deadline for those financial statements and 10 days after the issuer receives the request. This flexible timing requirement may pose a practical compliance problem for reporting issuers for the first sending of financial statements after the annual response process. From a practical point of view, the tendency will be to schedule the annual request process to ensure there is plenty of time to get copies of the relevant financial statements printed in time to send out the information. However, while the issuer may control when the response forms are sent to the securityholders, the timing of the receipt of responses from securityholders is less amenable to control. If the requests come in after a filing deadline, the language in subsection 4.6(3) will require the issuer to undertake several separate mailings of materials, thereby increasing overall costs.

Cost of Request Process. Subsection 4.6(2) of the Proposed Instrument provides that the requests are to be sent to beneficial owners "applying the procedures set out in NI 54-101". Subsection 4.6(3) goes on to provide that the issuer is required to send, without charge, a copy of the financial statements & related MD&A to any registered or beneficial owner of securities that requested the material. Under NI 54-101, intermediaries are responsible for obtaining their clients' overall instructions regarding delivery of materials and reporting issuers are only required to pay for delivery of securityholder materials to non-objecting beneficial owners. Therefore, the fit between NI 54-101

and NI 51-102 regarding costs is not entirely clear. We would appreciate it if the provisions in subsections 4.6(1) and (2) of the Proposed Instrument expressly state that the reporting issuer is responsible for the cost of sending out the requests to **all** registered and beneficial owners.

Content of Form of Proxy. Sections 9.1 to 9.3 of the Proposed Instrument clearly refer to the duties of the issuer to its registered securityholders. However, except for subsection 9.4(6), the whole of section 9.4 uses the term "securityholder" without specifying registered or/and beneficial owners. As "securityholder" is not specially defined in any of the Proposed Instrument, National Instrument 54-101 *Definitions* or in the Ontario Securities Act, we are assuming that the requirements in the section apply to both registered and beneficial owners. It would reduce the potential for confusion if the language were amended to refer expressly to both registered and beneficial owners.

COMMENTS ON PROPOSED POLICY

Safeguarding Privacy of Objecting Beneficial Owners. Section 3.9 of the Proposed Policy says the method used for the return of the request form should not require objecting beneficial owners under NI 54-101 to disclose their ownership identity to the reporting issuer. This language should be expanded to make it clear that any requested financial statements must be sent to objecting beneficial owners through their intermediaries. It would also be better if these provisions appeared in the Proposed Instrument, rather than the Proposed Policy, so that they would be legally binding on issuers.

TECHNOLOGY SOLUTIONS

Technology has the potential to enhance both investor protection and the efficiency of the communication process with investors. It can substantially reduce the costs of printing and distribution of material, while ensuring complete information is delivered to investors in a timely fashion. Two examples of the use of technology are electronic delivery of documents and print-on-demand document services.

We welcome the CSA's guidance set out in section 7.1 of the Proposed Policy that all continuous disclosure documents may be delivered electronically so long as the delivery is in compliance with the relevant Quebec Staff Notice and CSA National Policy. Electronic delivery is fast, efficient and eliminates the need for commercially printed documents. However, we would note that the rate of adoption of e-delivery by Canadian investors is very low and shows no sign of increasing quickly.

A print-on-demand service does just what the name suggests: it takes a document as filed on SEDAR, prints a paper copy of the whole document, or specified parts, and delivers that copy to a securityholder promptly in response to a request. It eliminates the need for costly and wasteful printing, warehousing and physical handling of a large volume of commercially printed documents. Only the number of copies actually needed is printed and they can be sent to investors almost immediately after the electronic document is made available, thereby eliminating the long lead-time required for printing commercial copies. For financial statements, this has the potential to significantly reduce the time between when the audited financial statements have been finalized and when they can be sent to securityholders. It also eliminates one of the impediments to shorter filing deadlines if an issuer is required to send financial statements to securityholders no later than the date of filing.

This technology could be particularly valuable for printing and delivery of financial information given the lack of structure around the request process and the delivery timing requirements set out in subsections 4.6(3) and 6.7(1) as it allows for cost effective on-demand printing and delivery of documents, even in response to one-off requests.

However, for the full benefits of print-on-demand and other comparable technology solutions to be realized by reporting issuers, the rules need to be drafted to permit the use of technology without having to get express exemptions from the regulators. When ADP introduced its "Smart Prospectus[SM]"[3] product, we had to apply for exemptive relief, which entailed significant costs and delays. Our reading of the Proposed Instrument leaves us

[3] The product is described in detail in the MRRS decision document granted on April 21, 2003 (see http://www.osc.gov.on.ca/en/Regulation/Orders/2003/ord20030425_2511_adpindependent.htm). In effect, the Smart Prospectus[SM] takes a prospectus filed for a group of mutual funds and extracts from the document the parts of the disclosure that apply specifically to the particular fund(s) that an investor has purchased. These parts are then printed and delivered to the investor in satisfaction of the prospectus delivery requirements under securities legislation.

uncertain about the degree to which this sort of technology could be used for delivery of continuous disclosure documents, without having to come back to the CSA for relief. The Request for Comments accompanying the Proposed Instrument makes it clear that the CSA declined to require issuers to combine the financial statements and related MD&A in a single document. But what happens if the financials and MD&A are combined with other information in one document, such as an annual report? Will issuers be permitted to extract the financial information and MD&A from the annual report, and send only that information to investors who request it, or, absent a specific relief order, will they be required to send the whole document as filed? The addition of some specific language, preferably in the Proposed Instrument, allowing the delivery to securityholders of only those relevant parts of a filed document would be very welcome. We note that it would both help investors compare information across issuers and reduce costs for issuers using this type of technology if there was some standardization of where certain relevant information appears in continuous disclosure documents and how it is labeled.

Technology is also available that would permit "householding" of the material that a reporting issuer is required to deliver to its securityholders. Householding technology identifies accounts of people living in the same household and delivers one set of information materials, and for proxy-related mailings, individual proxies for each securityholder at that address, in a single envelope thereby reducing costs for issuers.[4] It would be helpful if the regulators acknowledged in the Proposed Instrument or Proposed Policy and in other relevant instruments that this practice would be permissible, provided that the affected securityholders consented.

ADP would welcome the opportunity to consult with the CSA about available technology for their consideration of appropriate methods to deliver continuous disclosure documents to securityholders. ADP has a great deal of experience, information and technological knowledge, which it believes could be helpful to the CSA. ADP appreciates the opportunity to comment on the Proposed Instrument. For further information, please feel free to contact me at 905-507-5336.

Yours very truly,

Sue Britton
Vice President, Business Development

Copy: A. Cornford, ADP

[4] For a description of householding see the relevant notice issued by the US Securities and Exchange Commission which can be found at http://www.sec.gov/answers/householding.htm and the SEC final rule *Delivery of Proxy Statements and Information Statements to Households* (Release Nos. 33-7912, 34-43487, IC-24715; File No. S7-26-99) which can be found at: http://www.sec.gov/rules/final/33-7912.htm.