

**Kathy Byles**  
Director, Compliance

**RBC Global Services**  
Institutional & Investor Services  
77 King St. W. Royal Trust Tower  
12<sup>th</sup> Floor  
Toronto, Ontario M5W 1P9  
Tel: 416-955-2891  
Fax: 416-955-2899  
E-mail: [kathy.byles@rbc.com](mailto:kathy.byles@rbc.com)

January 2, 2004.

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 Mr. John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, Ontario M5H 3S8

and

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

Dear Sirs,

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

RBC Global Services ("RBC GS") is pleased to provide comments on the proposed amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("NI 54-101"), which were published for comment on October 3, 2003.

RBC GS is the global corporate and institutional securities custody and transaction processing arm of RBC Financial Group ("RBC"), the master brand of Royal Bank of Canada and its

subsidiaries. RBC is Canada's largest financial institution as measured by market capitalization (C\$40 billion as at July 31, 2003) and corporate assets (C\$409 billion as at July 31, 2003) and is one of North America's largest diversified financial services companies.

In terms of custody, RBC GS ranks first in Canada as measured by assets under administration, with over \$1.4 trillion, and is the 10<sup>th</sup> largest global custodian worldwide. We provide custody services to more than 3,200 institutional clients, representing 37,000 accounts. Our clients include administrators of large institutional funds – pension plans, mutual funds, insurance companies, domestic and foreign financial institutions, corporations, governments and their investment managers, as well as investment counsellors representing high net worth individuals.

One of the specific issues on which the Canadian Securities Administrators (“CSA”) have requested comments is the interaction between NI 54-101 and National Instrument 51-102, *Continuous Disclosure Obligations* (“NI 51-102”), which was published on December 19, 2003, and draft National Instrument 81-106, *Investment Fund Continuous Disclosure*. The CSA's press release announcing NI 51-102 states that the new rule “will eliminate the problem of companies having to meet different disclosure requirements in multiple jurisdictions”. Unfortunately, the new rule creates many new problems of companies having to meet different distribution requirements in multiple national instruments. The duplication and discord between the rules will undoubtedly cause industry confusion, shareholder disenfranchisement, deficient corporate governance and significant unnecessary costs.

This submission will focus on the issue of materials distribution as it relates to the institutional investors who have appointed RBC GS as their trustee and/or custodian, and does not necessarily reflect the concerns for individual retail accounts managed in other areas of RBC. Our principal concerns are that, if the rules are not harmonized:

### 1) Industry confusion would reign

The evolving NI 54-101 has been very confusing to our clients, especially our foreign clients. RBC GS services the majority of the world's top broker/dealers, eight of the world's largest global custodians, and we have subcustody relationships with over 400 foreign financial institutions. These clients in turn represent global investors wanting to invest in Canada. These foreign financial institutions are mystified and frustrated by NI 54-101. We have faced challenges, as a Canadian custodian, in explaining to them the evolving labyrinthine requirements of NI 54-101 in comprehensible terms in order to obtain their instructions. We cannot imagine how they would react to our overlaying the duplicative, conflicting and regressive requirements of NI 51-102. As these clients' other global custodians do not have to address such requirements, this puts not only RBC GS – but also Canada – at a competitive disadvantage.

Specifically, the current NI 54-101 requires **intermediaries** to obtain one **one-time-only** instruction from beneficial owners as to receipt of financial statements, proxy materials, etc. issued by all the issuers whose securities are held by the beneficial owner (“relevant issuers”). NI 51-102, on the other hand, requires **each issuer** to ask, on an **annual** basis, their beneficial owners who have requested all the issuer's material under NI 54-101 whether they want to receive annual and interim financial statements and the MD&A (but does not address proxy materials). If the instruments are not harmonized, this would cause significant confusion throughout the global industry, in the following ways:

- a) Beneficial owners, who have already given their intermediary one global, one-time-only instruction that they want to receive proxy materials and financial statements for all the securities in their accounts, would receive annual solicitations from multiple issuers. Some of RBC GS' clients may hold up to three hundred different Canadian equity issues in their accounts. This would mean the investment manager would have to make three hundred separate elections for each of its clients (which, in some cases, number in the thousands) each year in order to receive the material he needs. In these days of industry streamlining, this is clearly a regressive step, which would cause a significant waste of time, and financial and human resources.
- b) Beneficial owners, who have already given their intermediary one global, one-time-only instruction that they want to receive proxy materials and financial statements for all the securities in their accounts, would receive annual solicitations from issuers about some, but not all, of this material.
- c) Beneficial owners would be able to request financial statements for some (as opposed to all) issuers whose securities they hold, but not to be able to make this same choice in respect of the proxy materials, which are typically distributed in the same envelope.
- d) It is not clear how beneficial owners would be advised that failing to request financial statements from the issuers on an annual basis overrides their NI 54-101 instructions, so many beneficial owners may remain unaware of this.
- e) The CSA suggest that the annual request form be delivered to beneficial owners as part of the proxy materials. On receipt, a beneficial owner might reasonably wonder why the request form in the proxy materials refers to the financial statements and MD&A – but excludes the proxy materials.
- f) As there is no deadline for responding to the issuers' annual solicitations, issuers and intermediaries would not know the wishes of beneficial owners who do not respond, and could therefore not accurately estimate the quantities of material to order.
- g) Similarly, in view of the NI 51-102 provision that beneficial owners may order financial statements up to two years old, the issuer and intermediary would be unable to accurately estimate the quantities of material to order.

## **2) Receipt of proxy materials without financial statements is a corporate governance deficiency**

If the rules are not harmonized, beneficial owners who do not respond to issuers annually could receive proxy materials but not the financial statements. Such a beneficial owner may want to vote but may not do so without the financial statements, and thus become disenfranchised. Worse, he or she may go ahead and vote anyway. This would be a severe deficiency from a corporate governance point of view, and call into question the integrity of the vote.

There are any number of reasons why a beneficial owner may not respond to issuers, as follows:

- a) Beneficial owners may not realize that failing to respond to issuers annually will override their NI 54-101 instructions with respect to financial statements.

- b) As beneficial owners have through the years been used to communicating with their intermediary, it is likely they would expect that their one-time-only request for materials under NI 54-101, including proxy materials and financial statements, would prevail indefinitely, notwithstanding annual requests from relevant issuers.
- c) Beneficial owners may simply despair at being inundated with annual requests from each relevant issuer. As noted above, some of RBC GS' clients may hold up to three hundred Canadian equity issues in their accounts, which would mean the investment manager would have to make three hundred separate elections each year for one client alone. This would have to be multiplied by the thousands of clients that some investment managers serve. An overloaded investment manager would undoubtedly not have the resources to handle this extra workload.

### **3) Intermediaries' systems would be unable to accommodate issuer-by-issuer directions**

NI 51-102 contemplates that the annual instructions of OBOs to issuers would be captured on an issuer-by-issuer basis and maintained by the intermediaries. As noted above, some of RBC GS's clients hold up to three hundred Canadian equity issues in their accounts. Intermediaries have previously been required to make significant programming changes to deal with the various combinations and permutations required by NI 54-101. Because of our legacy systems, which have no capability to handle more fields and coding changes, we were challenged in the extreme to accommodate the NI 54-101 requirements on our systems. You should not assume that intermediaries would be able to capture instructions on an issuer-by-issuer basis and for varying pieces of material – today or in the foreseeable future. Many intermediaries would be forced instead to order all material of all the issuers in the portfolio of each OBO who requests at least one piece of material for at least one issuer.

### **4) Annual request form**

NI 51-102 requires reporting issuers to send, using the NI 54-101 process, an annual request form to all beneficial owners, who had requested all material through NI 54-101. This means that intermediaries would be required to mail a request form for every issuer to such OBOs each year. RBC GS already carries out approximately 3,700 shareholder mailings each year through ADP Investor Communications to its institutional clients, which stretches our resources to the limit. The CSA had previously required, for the purposes of NI 54-101, one one-time-only instruction across an account. Against this background, the CSA's new requirement in NI 51-102 to solicit annual, issuer-by-issuer instructions can only be construed as an unnecessary and inefficient ongoing waste of time and financial and human resources.

This waste is compounded by the widespread confusion that would be caused across the industry by the fact that the issuers' annual request form covers only some, but not all, the required materials, and that the CSA have not prescribed the content of the form, when it should be sent, or the exact procedures for sending it.

In addition to sending out the request form, intermediaries would be expected to record and track responses on behalf of the issuers. Issuers should be required to pay for these additional services the intermediaries are expected to provide to them, the systems enhancements that would be needed, and annual maintenance fees.

### **5) Costs**

The provisions of NI 51-102 create large numbers of individual, one-off mailings of materials by both issuers and intermediaries (1) because there is no mandated deadline for returning

the annual response form and (2) because of the mailing deadlines imposed by the instruments. Against the current industry trend towards streamlining and cost-efficiency, this would clearly be inefficient and costly, especially where proxy materials have to be mailed separately from financial statements because of timing differences.

In general, the additional costs of accommodating the duplicative and discordant requirements of the two rules, as noted above, would be astronomical for both intermediaries and investment managers. Both these groups would pass these costs on to their clients, the institutional investors. For global investors, this would surely be a deterrent to investing in Canada. We question who would derive benefit, if any, from such expenditures, and whether any value at all would be added.

We cannot speak with respect to individual, retail investors, but we see no benefits to institutional investors, for whom the process prior to NI 54-101 was working extremely well and efficiently. The new overlapping NI 54-101 and NI 51-102 processes would be very costly, unnecessarily complex, confusing, and inefficient. We therefore would like to propose that institutional investors be exempted from the NOBO/OBO process.

RBC GS would be happy to take part in further consultations, and discuss these issues with you or your delegate at your convenience.

Yours truly,

Kathy Byles  
Director, Compliance  
Institutional & Investor  
Services