Securities Transfer Association of Canada

William J. Speirs
President

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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

c/o John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

c/o Anne-Marie Beaudoin
Corporate Secretary
Autorité des marches financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

Dear Sir/Madam

The Securities Transfer Association of Canada ("STAC") welcomes the opportunity to comment upon the proposed changes to National Instrument 54-101 ("NI 54-101"). STAC is a non-profit association of Canadian transfer agents that among others has the following purposes:

- **To promote professional conduct and uniform procedures among its members and others;**
- **To study, develop, implement and encourage new and improved requirements and practices within the securities industry;**
- **To develop solutions to complex industry-wide problems;**
- **To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities.**

On behalf of our members we are providing responses to the specific questions posed by the Canadian Securities Administrators ("CSA"), as well as including more general comments on the proposed instrument.

In developing its comments, STAC has endeavoured to keep in mind the principal goals of the instrument, being:

- **Equitable treatment of all shareholders**
- **Practical and flexible ways to allow beneficial owners of securities to vote their securities and attend the meeting in person if they want;**
- **Efficiency in the process;**
- **Explicit definition of the obligations of all stakeholders in the communication process;**
- **Ensuring that there is a balance between maintaining a shareholder's expected right of privacy and the Issuers right to know who its shareholders are.**

STAC thanks the members of the CSA for all their efforts to improve NI 54-101.

We would be glad to discuss these comments and provide additional feedback as the CSA continues its efforts in the evolution of NI 54-101.

Yours truly,

William J. Speirs
President
Phone: 416-364-8081 ext. 446
Fax: 416-364-1827
Email: speirsw@olympiatrust.com

Request for comments
(a) The Proposed Amendments

We welcome your comments on the Proposed Amendments, and also invite comments on the following specific questions:

Questions relating to notice-and-access

1. We propose to exclude proxy-related materials relating to special meetings from notice-and-access. Should we expand notice-and-access to include special meetings? Should other types of meetings be excluded from notice-and-access as well?

STAC does not believe that a blanket exclusion of use of Notice and Access ("N&A") for special meetings is required, as it would reduce potential efficiencies that issuers may be able to take advantage of under the proposed instrument.

We do recognize that there may be contentious meetings, whether special or not, where N&A would not be appropriate for the distribution of material. We suggest that issuers use their judgement, perhaps combined with guidelines to be developed by the CSA and other participants in the meeting process, to determine when N&A should be used.

2. We propose that reporting issuers be able to use notice-and-access to send proxy-related materials to some, but not all beneficial owners, so long as this fact is publicly disclosed and an explanation provided. Should there be restrictions on when a reporting issuer can use notice-and-access selectively?

STAC notes that selective use of N&A in the U.S. has increased voting results relative to the results obtained using full N&A. While use of two distribution systems may be contrary to the goal of treating all shareholders equally, and may introduce additional costs, the need to maximize shareholder participation should take precedence.

It is not clear to us in any case what purpose would be served by announcing this fact in shareholder meeting materials unless it was to ensure full transparency of the different processes the issuer used to distribute the material.

3. The US model of notice-and-access seems to have resulted in a decrease in voting by retail shareholders. Our notice and-access proposal has some significant differences from the US model which are intended to minimize the impact on retail shareholders. Does our notice-and-access proposal adequately meet the needs of retail shareholders who wish to vote? Are there any specific enhancements or other ways that notice-and-access can be made more user-friendly?

STAC is of the view that the main cause for a decrease of retail voting in the U.S. is the absence of the Voting Instruction Form ("VIF") from the N&A mailing, therefore the CSA proposal adequately meets the needs of the retail holders.

Furthermore, between the flexibility available for additional materials that would be sent with the N&A mailing and the presence of a VIF, the model, as proposed, should not lead to material decreases of previous voting results. In fact, shareholder voting levels could be enhanced were issuers permitted to rely upon electronic consents obtained by intermediaries under NP 11-201.

4. We would appreciate data from issuers, service providers and other stakeholders on the anticipated costs and savings of implementing and using the notice-and-access process. Will notice-and-access result in meaningful costs savings that make the proxy voting system more efficient?

The reduction in paper, printing, and distribution costs for mailing should result in a more efficient system, even given relatively small increases in fulfilment costs for those shareholders that request paper copies. When coupled with electronic proxy voting options, efficiencies would be even more apparent.

In relation to point 2 above, some cost savings would be reduced if issuers elect to do stratified mailings.

We would like the regulators to examine the current practice of restricting the electronic consents obtained by financial intermediaries under National Policy 11-201 to only their own use for electronic delivery. Allowing other parties to act under those consents when performing the same activities they were given for will further reduce costs to the issuer, while not compromising any disclosure requirement.

STAC notes that in some cases, participants in the communication process in the U.S. have levied additional fees for use of N&A on top of the existing fee. The CSA may wish to investigate the justification for such a surcharge and if it sees fit, mandate that such surcharges are not appropriate.

5. We propose to give reporting issuers flexibility in the form and content of the notice provided the notice contains certain specified information. Is this approach appropriate, or should there be a prescribed form?

STAC agrees that issuers should have maximum flexibility in preparing the content of the documents they send to their shareholders provided they contain the substance of information mandated by the CSA. Therefore, we do not feel that a prescribed form is necessary.

6. The CSA proposal does not impose any restrictions on additional materials that can be included with the notice and voting instruction form. We do not have any concerns with including additional material that explains the notice-and-access process, such as a Q&A. However, is it appropriate for reporting issuers and others to include materials that address the substance of the matters to be voted on at the meeting? Would this create a disincentive for investors to read the full information circular? Should there be restrictions on what can be included in this these types of materials? Should there be requirements prescribing basic information that these types of materials must contain?

STAC does not foresee any negative issues in providing Issuers with flexibility in deciding on the content of the materials they would send. That said, we recognize that creating abridged versions of proxy circulars that appear to eliminate the need to review the complete information circular is probably not in the best interest of either the investor or the issuer. It could also be argued that the VIF and Notice of Meeting already contain abridged versions of the full text of the resolutions found in the proxy circular.

STAC supports the concept of providing general investor education on N&A in the material to be set to the holders. One way to accomplish this is for the CSA to create a brochure or host a website that could be made available to all investors, rather than issuers creating a wide variety of materials on their own.

7. Is the requirement in subsection 4.6(1) of NI 51-102 that requires reporting issuers to send an annual request form to registered holders and beneficial owners of their securities to request financial statements and management's discussion and analysis adequately integrated with the requirements to send proxy-related materials? Will notice-and-access have any impact?

It is common practice for both reporting issuers and service providers to integrate delivery of financial statement request forms required under NI 51-102 within the VIF. We do not believe that the proposed changes to NI 54-101 will substantially change the existing process.

Other questions

8. The Proposed Amendments require management of reporting issuers that choose not to pay for delivery to OBOs to disclose this fact in the management information circular. The intent is to make the proxy voting system more transparent and easier to navigate. Will this disclosure facilitate this objective?

STAC does not believe that requiring the issuer to disclose the fact that they have opted not to pay for the distribution of material to OBOs will materially impact the proposed process. STAC notes that if none of the issuer, the intermediary or the shareholder is willing to absorb delivery costs, the shareholder would have no way of ever knowing that this was even disclosed since they would never receive the document.

The transparency objectives would be better served by ensuring that any party who wishes to become an OBO should be made aware of the costs of this decision when they are making the choice on the initial disclosure form.

(b) Other issues relating to the beneficial owner voting process generally

The focus of the Proposed Amendments is on improving the process by which beneficial owners are sent proxy-related materials and their voting instructions are solicited. This process is one aspect of the larger proxy voting system, i.e. the entire process by which votes are solicited, submitted and tabulated.
In recent months, the proxy voting system as a whole has been the subject of some debate. Questions are being raised as to whether it is functioning with appropriate reliability, integrity and transparency. We therefore also invite general comments on:

- the integrity of the proxy voting system as a whole; and
- whether there are any particular areas that require regulatory attention or reform, and if so, what priority should be assigned.

1. **STAC respectfully suggests that CSA closely monitor the discussions associated with the SEC's recent proxy concept release document as it continues to review the beneficial shareholder voting process. We note that many of the issues discussed there have similar parallels in Canada. There are many efficiencies inherent in coordinating policy with a regulatory regime in a country where so many Canadian issuers are inter-listed, especially since the CSA has suggested explicitly permitting Canadian issuers to follow U.S. N&A rules if they wish.**

2. **STAC feels that the language of NI 54-101 needs to be strengthened to make intermediaries more accountable for fulfilling their obligations, particularly with respect to**

    a. **reconciling the files of beneficial ownership data with their registered, depository and nominee positions**
    b. **giving clear direction to the tabulator through which depository, nominee or intermediary securities being voted are held**
    c. **ensuring that any omnibus proxy required from an intermediary or depository through whom they hold shares is being filed, and**
    d. **ensuring that, if a proxy is issued under section 8.2, any prior proxy is revoked.**

    We also suggest each financial intermediary subject to NI 54-101 (including proximate intermediaries) should file an annual certification indicating compliance with the instrument. This would draw attention to mitigating some of the reconciliation problems issuers and their transfer agents now encounter.

3. **As noted above, STAC suggested that the CSA permit any party involved in the beneficial shareholder voting process be entitled to rely upon the consent for electronic distribution of material form obtained by another party since the processes used by all parties to deliver these documents are consistent technically and the document formats are also consistent.**

4. **STAC does agree that the shareholder has the right to confidentially when voting their shares. We therefore suggest that confidential voting could be used to protect the voting patterns of a shareholder while still permitting the issuer to know who their shareholders are.**

5. **We also note that while the distinction between the OBO and NOBO has been a long standing feature of Canadian shareholder communication, the concept is inconsistent with the transparency that is becoming sought by many issuers. This is identified as an issue in the recent SEC 'concept release on the U.S. proxy system'. The paper contemplates eliminating the distinction between NOBOs and OBOs.**

6. **Section 2.18(3) mandates that a reporting issuer must provide, in a format that is acceptable to the intermediary, confirmation that management of the reporting issuer will appoint the NOBO as proxy holder where the NOBO has so requested. While STAC recognizes that this clause is geared to permit intermediaries and their clients with confirmation that their request has been addressed, it has the potential to be logistically problematic.**

Under the current wording, each intermediary could mandate a different format as the one that is acceptable to it, leading the reporting issuer and its transfer agent to have to maintain and apply multiple formats in order to reply in a compliant fashion. STAC recommends that the format not be at the sole discretion of the intermediary. If a format must be mandated, STAC recommends that the CSA provide the format as an additional appendix to the Instrument.

STAC also notes that the majority of appointments are received in the last few days leading up to the proxy cut-off. The current wording of the clause permits an intermediary to demand confirmation of each and every proxy appointment submitted on behalf of their clients. This will create logistical issues, especially on meetings for large reporting issuers during the height of meeting season. It is entirely possible that, due to volume, such confirmations will not be created and sent in time for the intermediary or their client to react prior to the proxy cut-off rendering this confirmation moot.

7. **STAC recommends that the Instrument be amended to be less prescriptive and to allow intermediaries and security holders more flexibility as to how securities are voted. Each year there are new participants in the voting process using different forms and documents to relay votes and, as a practical matter, transfer agents are working with issuers to adapt so as to let holders vote but preserve the integrity of the meeting. In particular:**
    a. **the definition of Omnibus Proxy needs to be amended as neither CDS nor DTC are following the prescribed form as it stands;**
    b. **the same definition needs to be amended to allow for the other forms of omnibus proxy that are received from intermediaries which are either participants in a depository or holding through another intermediary;**
    c. **issuers should be allowed to use an omnibus proxy to appoint NOBOs instead of being forced to use a voting instruction form and wait to be asked to allow a NOBO to vote in person;**
    d. **there should be some recognition of the form of "proxy" used by intermediaries' agents such as Broadridge which are simply a computer printout with a short paragraph and facsimile signature: there is no proxy language on the forms conveying authority or indicating the terms of the resolutions being voted on; these types of "proxy" are also coming from other proxy companies.**

8. **We are concerned with the proposal to repeal and replace Subsection 2.5(4) of the National Instrument with a provision that permits the requisitioning of beneficial ownership information by transfer agents and any other person or company that is in the business of providing services to assist persons or companies soliciting proxies and/or the reporting issuer has reasonable grounds to believe that the person or company has the technological capacity to receive the beneficial ownership information.**

    We have three main concerns:

    First, we believe that the replacement subsection needlessly opens up access to beneficial ownership information to any party who wishes access without regard to the intermediaries' right to protect their customer list.

    Second, we do not believe that beneficial owners completing their Client Response Form (NI 54-101 F1) have the expectation that their information would be accessible to virtually any person or firm under this regulation.

    Third, we understand that the requirement to only use a transfer agent to request beneficial ownership information was put in place for a number of practical reasons. Transfer agents are trusted entities that are recognized by the regulators and Exchanges and they are active participants in the daily affairs of publicly traded companies. Other parties may not be equally engaged, nor are there any regulatory controls around their entry into the business. Further, there are relatively few transfer agents serving all publicly traded companies in Canada. There is efficiency and protection of the integrity of the process in having a few recognized entities able to requisition beneficial ownership information.

    In short, we believe that the current system provides the expected degree of privacy of beneficial holders and maintains the integrity of the process.

President: William Speirs, Olympia Trust Company, 120 Adelaide Street West, Suite 920, Toronto, Ontario M5H 1T1
Phone: (416) 364-8081 Fax: (416) 364-61827
Secretary/Treasurer: Terry Martinuk, Equity Transfer & Trust Company, 200 University Avenue, Suite 400, Toronto, Ont. M5H 4H1
Phone: (416) 361-0930 ext. 333 Fax: (416) 361-0470