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CANADIAN BANKERS ASSOCIATION

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Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés 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
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Re: Proposed Amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and Companion Policy 54-101 CP *Communication with Beneficial Owners of Securities of a Reporting Issuer*

Dear Sirs and Mesdames:

The Canadian Bankers Association ("**CBA**") works on behalf of 51 domestic chartered banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 263,400 employees to advocate for efficient and effective public policies governing banks and to promote an understanding of the banking industry and its importance to Canadians and the Canadian economy.

The CBA appreciates the opportunity to provide the Canadian Securities Administrators ("**CSA**") with our comments on the CSA's proposed amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("**NI 54-101**") and accompanying Forms and Companion Policy that were published for comment on April 9, 2010 (the "**Proposed Amendments**").

In addition to general comments set out below, our members have provided comments on some concerns they have with respect to the Proposed Amendments, as well as their views on certain of the specific requests for comments outlined by the CSA.

General Comments

The efforts made to improve the beneficial owner and registered holder communication procedure by allowing reporting issuers and intermediaries, as applicable, to send securityholders notice informing them that their proxy-related materials are available online, or on demand, rather than automatically sending the entire paper copy package of materials, are greatly appreciated. Our members believe that the Proposed Amendments make the communication procedure more efficient, cost-effective and environment-friendly.

Members' Concerns

Summary of Items to be Voted on

The Proposed Amendments require both the notice and press release to include "a summary of the items to be voted on". Our members believe that this requirement should be revised by deleting the words "a summary of" in Section 2.7.1(1)(a)(ii) and by stating in the Companion Policy that it is sufficient to state that shareholder proposals will be addressed at the meeting and are included in the proxy circular. We believe that a requirement to summarize proposals in the notice and in a press release may make issuers reluctant to use the notice-and-access system.

By way of background, our members issue a press release at the time proxy materials are released, identifying the items being addressed at the meeting. This release includes a statement that shareholder proposals will be considered, but does not provide details about each of the proposals. Issuers, including our members, receive numerous shareholder proposals. In recent years, the number of proposals submitted to our members has ranged from a few to approximately forty. The shareholder proposals themselves might be lengthy and detailed and therefore not easily reproduced in a press release. Issuers might be reluctant to summarize them because the issuer's judgement on the key elements of the proposal might differ from the proposer's. To avoid these issues, an issuer may decide to send the proxy-related materials rather than use the notice-and-access system.

In addition, corporate statutes such as the *Bank Act*, the *Canada Business Corporations Act* and the *Business Corporations Act* (Ontario), all provide that an entity does not incur any liability by reason only of having circulated a shareholder proposal in compliance with the relevant statute. These provisions protect a public entity from a possible libel claim for something contained in a proposal that is included in a proxy circular. The Proposed Amendments do not contain similar protection in respect of proposals summarized in the notice or press release.

Reporting issuers may be reluctant to summarize in a notice or press release a proposal which speaks negatively of an individual and instead may opt out of the notice-and-access system.

Restrictions on Collection of Information

There are two restrictions on the collection of information in the Proposed Amendments. Our members strongly believe in maintaining the privacy of securityholders who do not want to disclose their identities to issuers. However, our members also believe that the proposed restrictions may be too broadly worded and that they need to be narrowed.

Section 2.7.1(2)(a) states that a reporting issuer that receives a request for a paper copy of the information circular must not "obtain" any information about the person or company making the request other than the name and address to which the paper copy of the information circular is to be sent. However, an issuer may "obtain" information by having it freely given to them by the person making the request for a paper copy. For example, a person may, without prompting, disclose that they hold shares of the issuer through a brokerage account. We do not believe that the intention of the provision is to penalize an issuer for receiving this information, however, we believe that the term "obtain" in Section 2.7.1(2)(a) could be interpreted in this manner. We believe that it is more appropriate to require issuers to not "request" any information other than the name and address to which a paper copy of the information circular should be sent.

Pursuant to Section 2.7.1(3), an issuer that posts proxy-related materials online "must not use any means that would enable the reporting issuer to identify a person or company who has accessed the website address where the proxy-related materials are located". We believe that the term "enable" is too broad and can capture certain passive activities. Websites automatically log the IP address of the computer requesting a page or document. While an IP address would not enable a website host to identify an individual who has accessed a page or document, an IP address enables a host to see which companies have accessed a page or document if the host wishes to find out. The term "enable" could be interpreted as prohibiting this kind of passive recording of IP addresses that all websites are designed to do. We believe that the language in Section 2.7.1(3) should be amended to state that a reporting issuer that posts proxy-related materials pursuant to Section 2.7.1(1)(e)(ii) must not collect any information from its website for the purpose of identifying a person or company that has accessed the website address where the proxy-related materials are located, and that a statement should be added to the Companion Policy to clarify that the plurality of issuers' websites capture IP addresses as a matter of course and that Section 2.7.1(3) does not prohibit the passive recording of IP addresses. These changes would more narrowly focus the prohibition on active attempts to identify who is accessing proxy-related materials.

Deadline for Sending or Making Available, as Applicable, Proxy-Related Materials

Our members are concerned about the proposed deadline for sending or making available, as applicable, proxy-related materials for issuers that use notice-and-access. Currently, issuers are required to mail materials at least 21 days prior to the date of the meeting to which the meeting relates. This requirement is consistent with corporate legislation.

The requirement to have material available at least 30 days prior to the meeting date in the Proposed Amendments fundamentally alters the timeline. It reduces the amount of time that issuers have to prepare materials and may act as a disincentive to use the notice-and-access model. We believe that maintaining the 21-day requirement will keep securities requirements in line with corporate legislation, while still allowing sufficient time for securityholders to obtain paper copies of the proxy-related materials prior to meetings.

Deadline for Request for Paper Copies of the Information Circular

As currently drafted, Section 2.7.1(1)(f) requires that a toll-free number be provided for use by the beneficial owner to request a paper copy of the information circular at any time from the date

that the issuer sends the notice to the beneficial owner, up to and including the date of the meeting, including any adjournment. Section 2.7.1(1)(g) further provides that a paper copy of the information circular must be sent, on demand, no later than 3 business days after receiving the request.

We believe that the requirement to provide a paper copy of the information circular should apply only if a request is received at least 3 business days prior to the meeting. This would eliminate situations where material is being mailed after the meeting has already taken place.

CSA's Specific Requests for Comments

Issue 1
The CSA proposes to exclude proxy-related materials relating to special meetings from the notice-and-access model. The CSA queries whether notice-and-access should be expanded to include special meetings, and whether other types of meetings should be excluded from it.

Given the expected benefits of notice-and-access and the fact that securityholders can easily obtain paper copies of information circulars on demand, our members believe that notice-and-access should be expanded to include all securityholders' meetings, including special meetings. Issuers that choose to implement notice-and-access would incur significant costs in setting it up the system, and the transition to notice-and-access may not be justified if its use is limited to only certain types of meetings. Also, limiting the use of notice-and-access to only certain types of meetings may lead to confusion among the securityholders as to when and why notice-and-access is used and how proxy-related materials will be delivered, thus ultimately defeating the ultimate purpose of the Proposed Amendments. We note the CSA's comment that it would like to monitor the implementation of notice-and-access before extending it to special meetings. For the reasons set out above, if the CSA decides to proceed with the Proposed Amendments, we believe that it should take a holistic approach and expand notice-and-access to include all securityholders' meetings, including special meetings.

Issue 2
The CSA proposes 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. The CSA queries whether selective use of notice-and-access should be restricted.

Our members believe that selective use of notice-and-access may be appropriate in certain circumstances. For example, an issuer may wish to use notice-and-access with participants in its employee share ownership program and mail materials to other securityholders. As long as appropriate disclosure and explanation are provided, we think that public interest would be served.

Issue 3
The CSA notes that the U.S. model of notice-and-access seems to have resulted in a decrease in voting by retail shareholders. The Proposed Amendments contain certain differences from the U.S. model which are intended to minimize the impact on retail shareholders. The CSA has asked whether the proposed notice-and-access adequately meets the needs of retail shareholders who wish to vote, and whether there are any specific enhancements or ways that notice-and-access can be made more user-friendly.

We believe that the notice-and-access model set out in the Proposed Amendments adequately meets the needs of retail shareholders. In particular, the inclusion of a requirement to provide notice to shareholders of the availability of the proxy-related materials provides a significant enhancement over the U.S. model. In addition, we note that the decrease in voting by retail

shareholders in the U.S. after the introduction of the notice-and-access model may not be entirely attributable to using notice-and-access. Recent changes to the New York Stock Exchange rules regarding brokers voting on behalf of beneficial shareholders who did not cast a ballot may have also contribute to the decline in overall voting.

Issue 4

The CSA has requested input from issuers, service providers and other stakeholders on the anticipated costs and savings of implementing the notice-and-access system. The CSA queries whether notice-and-access will result in meaningful costs savings that make the proxy voting system more efficient.

Our members are of the view that costs savings associated with notice-and-access are potentially very high and encourage the CSA to adopt the notice-and-access system.

We appreciate the opportunity to express our views regarding the Proposed Amendments. We would be pleased to answer any questions that you may have about our comments.

Sincerely,