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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 marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Northwest Territories
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Re: Proposed Amendments to NI 54-101 - *Communication with Beneficial Owners of Securities of a Reporting Issuer* and related amendments to NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) and NP 11-201 *Delivery of Documents by Electronic Means*.

Thank you for the opportunity to comment on the proposed amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101 or the Instrument) and related amendments to NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) and NP 11-201 *Delivery of Documents by Electronic Means*.

My responses to the issues on which the CSA has sought comment are set out below, followed by some other observations on the proposed amendments to the various instruments.

RESPONSES TO SPECIFIC CSA QUESTIONS

CSA Q.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?

It is difficult to provide a concise answer to the CSA's questions as the reasons for limiting the type of meetings for which notice and access may be used have not been stated.

Meeting type should not dictate use of notice and access. In my view, the issue of use of notice and access goes to whether the proposed system:

- provides shareholders with reliable access to information that is equivalent to the information that would be delivered using the traditional paper documents;
- gives investors time to make informed decisions; and
- ensures their votes are exercised in accordance with their wishes.

A properly designed electronic delivery system can fulfill these requirements and I cannot see any particular policy reason why the type of meeting should make a difference to its use. Concerns about whether notice and access gives sufficient information to investors or affords reliable delivery would be issues regardless of the type of meeting. I do note that the U.S. Securities and Exchange Commission (SEC), with its well known focus on investor protection and high corporate governance expectations for public companies, permits the U.S. notice and access regime to be used for all types of meetings.

Limiting notice and access should not be used to test out the concept. Using the limitation to test out how notice and access works in practice would be a very expensive way to experiment with the shareholder communication process. Building the infrastructure to support the notice and access system and educating all parties on how it works will be expensive. Expanding its application to other types of meetings in a few years would add significant costs. I would think that the U.S. experience can be looked to as the test case for this process, thereby minimizing implementation costs in the Canadian market.

The definition of special meeting does not necessarily capture all meetings where important business takes place. If the CSA is convinced that there is a need to distinguish between important and routine meetings, then in my view the distinction proposed in the Instrument may not be sufficiently sensitive. While important matters may trigger the corporate law requirement for a special resolution and thus be a special meeting under the NI 54-101 definition, it does not automatically follow that only these special meetings entail matters of great concern to shareholders. If the aim is to distinguish between 'important' vs. 'not important' I would suggest that the distinction would better be made on the basis of whether there is only routine business on the agenda, which term was defined in NI 54-101 when it was introduced in 2002. However, even the decisions made at ordinary annual meetings, such as the election of directors, have taken on greater importance from a governance perspective. Increasingly, 'routine' matters like the election of directors may be contested. This means that even the routine vs. non-routine distinction may not be granular enough.

When reaching a decision on the application of notice and access, the CSA should keep in mind that the fewer the meetings at which the notice and access system may be used, the greater the cost of implementing the system will be for the benefits received.

Further, has the CSA considered how the shareholder communication process is going to work if and when a meeting that is not a special meeting (as defined in the Instrument) becomes contentious – such as a proxy battle over the election of directors or some non-routine business that is on the agenda? This situation may pose real problems, particularly when notice and access was used selectively for the original mailing.

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CSA Q.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?

The reasons for differential treatment should be explained both by the CSA and by issuers using the option. In permitting selective use of notice and access, the CSA is introducing a new way for issuers to treat groups of securityholders differently, without providing a clear public policy justification for the change. Further, no guidance is given regarding what the CSA would view as an appropriate reason for differential treatment.

The statistics from the first couple of years after the implementation of the notice and access system in the U.S. show that materially fewer investors who receive only a notice vote than those who receive traditional paper proxy materials. It would be reasonable to expect similar results in Canada. This raises a governance issue in my mind as it suggests selective use of notice and access may permit the issuer to manage vote returns by deciding who gets a full package of proxy materials and who gets just a notice. The Instrument already gives the issuer too much opportunity to selectively disenfranchise investors by opting not to pay for delivery to OBOs, something that is not permitted in the U.S., and the CSA should not compound this risk.

If selective use of notice and access is to be permitted, then there should be meaningful and informative public disclosure of the issuer's rationale for its decision in all cases. The proposed exemption of section 2.16(3) is not appropriate. The decision to use notice and access, selectively or otherwise, should have been made by the time the information circular is finalized. Also, the CSA should ensure investors are getting the appropriate information by adding a review of this disclosure requirement to the continuous disclosure review program. CSA guidance to issuers on selective use of notice and access might usefully be added either to Companion Policy 54-101CP or Companion Policy 51-102CP (or both) to foster disclosure best practices.

On a related drafting note, I would suggest that the language regarding this disclosure in the proposed changes to both NI 51-102 and NI 54-102 be conformed to that used in the proposed changes to Form NI 51-102F5 *Information Circular*. The Form says the circular must contain the requisite information if the issuer is making selective use of notice and access for registered holders or beneficial owners [emphasis added]. The news release requirements of new section 9.1.1(1)(d) of NI 51-102[1] say the news release has to include information about selective use of notice and access if the issuer has decided to use the system 'only in respect of some registered holders'. The situation where the issuer has decided on selective use for beneficial owners is not addressed. New section 2.7.1(1)(d) of the Instrument and the related language in 5.4(4) of NI 54-101CP says the release must include information about selective use if the issuer has decided to use the system only for some beneficial owners, without referencing registered holders. I realize that Part 9 of NI 51-102 addresses proxy requirements for registered shareholders, while NI 54-101 deals with communication with beneficial owners, but the two instruments are two halves of the same communication regime intended to meet the same policy objectives. It would be far less confusing and reduce the possibility of issuers overlooking their obligations if all of the relevant disclosure sections referred to selective use of notice and access for registered holders or beneficial owners.

The costs imposed by flexibility should be justified by clear benefits in improved efficiency or greater investor protection. The CSA does not propose to restrict the basis on which the selections may be made or the number of alternatives that can be used at once. This optionality is going to add cost, complexity and confusion to the system for investors and the other parties in the communication process, without adding any clear advantages. What is the benefit that the CSA is seeking to achieve by providing this flexibility? What happens if the issuer chooses to differentiate its investor base in a way that raises

[1] The language in Companion Policy 51-102CP section 10.2(3)(d) also refers only to registered holders.

policy concerns? For example, will the CSA be content if an issuer decides to send paper to the shareholders located in its home province, but to use notice and access for all other investors?

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CSA Q.3 ***The U.S. 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 U.S. 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?***

Investor education efforts should be encouraged. As I understand the U.S. experience, the decrease in retail participation can be traced to at least two main causes:

- the lack of investor education on how the new system works, what the investors should expect and what they have to do to exercise their votes; and
- the requirement that the investors access the material on line before voting.

The original SEC rules prescribed the form of notice and did not permit issuers to include any other materials with that notice. This made it more difficult and expensive to send out information to the shareholders to explain how notice and access worked. (This information is now permitted to be included.) Confused investors did not vote. The CSA proposals are less prescriptive, so issuers are free to include material to explain the system to their shareholders. However, as the Instrument does not require issuers to provide educational material, the net result in Canada may be much the same as that experienced in the U.S. In order to avoid this result, the CSA might consider encouraging or requiring issuers to include educational materials on notice and access with their mailings, on their own corporate websites and/or on any third party sites where they post proxy related materials for the first years after the system is implemented.

Solutions to encourage ease of voting should not lose sight of the need for informed voting. It is axiomatic that the harder you make doing something, the fewer people who will bother to expend the effort. The SEC system does not allow a votable notice to be sent. The investor must go to the website where the issuer has posted its proxy related materials in order to vote. From a policy point of view, informed voting is to be encouraged and the U.S. structure increases the likelihood that the investor will vote after having looked at the proxy information. However, because more steps are required, fewer investors, other than highly motivated ones, will bother.

The use of the votable notice under the CSA system means retail investors may vote more easily; they are not required to access the detailed proxy materials. Therefore, voting participation should be less likely to decline. However, the votable notice also makes it easier for investors to vote 'blind', which does not enhance the quality of the decision making or the effectiveness of the corporate governance discipline provided by active investor participation in the voting process. The CSA should explore the possibility that a carefully designed electronic shareholder communication system may encourage informed voting.

Allowing investors to give standing instructions that they want paper packages of proxy related materials and requiring issuers and intermediaries to honour those instructions might help support continued retail participation in the voting process. It would avoid an interested investor getting put off participating by having to repeatedly contact each issuer to get materials for each meeting. As an investor, I may give standing instructions to my intermediary under Form 54-101F1 on what shareholder communication materials I want to receive. I may give standing instructions under NI 81-106 *Investment Funds Continuous Disclosure* for delivery of financial statements from those issuers. I should not have to make a separate call to each issuer for each meeting to get paper proxy packages.

The silence in the Instrument on payment for OBO delivery has a significant effect on retail shareholders' access to their voting rights. The largest gap in the overall shareholder communication system that affects retail shareholders has not been addressed in the present proposals. The percentage of retail investors who have opted for OBO status is substantial and growing. The Instrument is still silent on who is to pay for delivery of materials to these investors. If the issuer chooses not to pay, retail investors in particular may be disenfranchised. This gap should be filled. All voting securityholders should be treated alike, regardless of how their securities are held, and should receive proxy related materials at the same cost as registered holders. It should not matter whether electronic or paper delivery methods are used.

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CSA Q.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 costs savings from notice and access may not be significant. The proposal, as drafted, may not produce meaningful cost savings for the market as a whole when all costs are taken into account. The structure proposed allows issuers a great deal of flexibility in how they communicate with their investors, but that comes at a substantial cost in building and maintaining the infrastructure, in lost economies of scale in printing and mailing materials and in transfers of costs to investors to access and print materials. Further, I understand that certain corporate law requirements may mean many companies will not be able to use notice and access as it does not meet the electronic delivery requirements of the statutes or electronic delivery is not permitted at all. If this system is only available for use only for annual meetings, the cost per meeting will be prohibitively high. Ultimately, these costs will be borne by the investors.

There was a material reduction in investor voting participation in the U.S. associated with the introduction of notice and access. Even with the differences proposed for the Canadian system, it would be reasonable to expect some fall in vote returns here. While it is not possible to put a dollar figure on the 'cost' of this decline in investor participation, its effect on shareholder engagement and governance discipline should not be ignored.

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CSA Q.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?

Standardization of the information received would enhance efficiency and reduce confusion. The goals of any shareholder communication process should be providing all investors with sufficient information to make informed decisions as efficiently as possible while ensuring the integrity of the voting process. These goals would suggest to me that there should be at least some required standardization of the materials delivered to investors under notice and access. In particular, the voting instruction form (which at present is prepared in a machine-readable format) must continue to be standardized. Keeping the forms used by shareholders as similar as possible between the notice and access system and traditional paper mailings would allow continued processing of voting instructions using automated systems, thereby maintaining the efficiency and accuracy of the tabulation process.

Beneficial owners are familiar with the voting instruction form currently in use as it has been standardized for many years. Introducing a new system under which each issuer is permitted to send completely different forms is just going to exacerbate the confusion that will be an inherent by-product of the implementation of notice and access. Confusion will result in fewer investors exercising their votes and more questions for issuers and intermediaries. Providing investors with forms and instructions that largely are familiar may avoid or reduce some of this investor confusion.

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CSA Q.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?***

Additional information should be limited to materials related to the meeting or the issuer's other continuous disclosure obligations. Any documents that go with the notice should be limited to materials directly related to notice and access as set out in proposed section 5.4(2) of the Companion Policy.[2] This restriction on additional materials should be moved from the Companion Policy to the Instrument itself. The only other material that might be permitted would be the NI 51-102 annual request form regarding delivery of the issuer's financial statements. The more unrelated materials are included, the higher the risk that the shareholders will not sift through to find the key notice and access documents, but will toss out the package as junk mail.

Additional meeting information should meet appropriate disclosure standards. I support the policy objective of fully informed voting decision-making. However, I do have a concern about issuers creating something that starts to look like a short-form information circular and sending this to investors. Each of these is likely to contain different information which is only going to add to investor confusion. Also, there is a danger that the accompanying material will not meet proper disclosure standards and that securityholders would be voting based on such deficient documents. How would these documents fit into the corporate and securities law requirements relating to soliciting proxies? What liabilities would attach for incomplete disclosure? Will these documents be required to be filed on SEDAR?

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CSA Q.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?***

The market would benefit from additional guidance from the CSA on the integration of the shareholder communication processes in these two rules. The 'fit' between these two rules has never been particularly clear. Adding notice and access to the mix will only make the integration more complicated. Guidance from the CSA would be helpful to all market participants. For example, the CSA might address the respective obligations of the intermediary and issuer when the investor has given its intermediary standing instructions under NI 54-101 that the investor wants all materials sent to securityholders, but has not responded to an issuer's NI 51-102 request form or lodged a specific request with an issuer for paper proxy materials under the notice and access system.

The integration of the two instruments would be improved if the changes to NI 54-101 and NI 51-102 incorporated identical definitions of proxy related materials and special resolution, rather than the slightly different versions proposed.

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[2] The subsection reads: "A reporting issuer may choose to send additional materials on N&A with this notice." [emphasis added]

CSA Q.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?

Payment for OBOs is a substantive matter, not merely a disclosure issue. The choice whether or not to pay for delivery of materials to OBOs has significant corporate governance implications. It is not merely a disclosure issue. In my experience, some issuers do not understand that if they choose not to pay for delivery to OBOs, these investors may not get materials at all and may be disenfranchised. As noted above, it is also possible that some issuers make this decision in the expectation of influencing the results of the meeting. Neither of these situations supports good corporate governance in the marketplace. In my view, the obligation to pay for delivery of proxy related materials to all beneficial owners should be stated unambiguously in the Instrument.

Disclosure must reach the OBOs for it to be useful. If the aim is to alert OBOs to the fact that a decision of the issuer may well disenfranchise these investors and that they will have to take further action to make sure they retain their right to vote their shares, then the disclosure has to be made in a way that the information has a reasonable chance of reaching the OBOs. Little is accomplished by putting the information in a document that the OBO will not receive. It might be more effective to require the disclosure to be made via news release, in the same way that disclosure is required for selective use of notice and access. Even then, it seems unfair that investors who have already indicated they want shareholder communication material have to monitor the financial press more closely than any other investors in order to participate in shareholder meetings and exercise their right to vote.

Issuers should be required to disclose both the fact that they are not paying for delivery to their OBOs and the reason for that decision. In my view, the proposed disclosure requirements are insufficient, regardless of where that information is provided. The issuer should be required to explain its reasons for not paying to communicate with these shareholders. This obligation would be consistent with the disclosure requirements for selective use of notice and access. If the issuer must say why it is sending paper materials to one group of shareholders and only notices to another, it should be required to explain why it is choosing not to pay to communicate at all with certain investors. Proposed section 3.4.1 of the Companion Policy to the Instrument can be read to require the issuer's reasons for its decision to be included. However, the wording of section 2.16(2) of the Instrument and that set out in new item 4.4 of Form NI 51-12 *F5 Information Circular* does not clearly impose that obligation.

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CSA Q.: 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***

The proxy process must be fair and not amenable to improper influence. As noted above, I have concerns regarding the possibility that the integrity of the system may be put at risk by management of the proxy process for improper purposes. Selective use of notice and access or selective payment for delivery to OBOs may permit the issuer to manage the vote returns by deciding who gets full materials and who

gets just a notice. Any changes to the proxy system should be designed to enhance the fairness and integrity of the process for all shareholders.

Investors should not have to compromise their privacy rights to be active participants in shareholder voting. I continue to be troubled that retail beneficial owners often have to choose between two rights – the right to privacy regarding their financial affairs and their right to receive materials and exercise the same voting rights as other shareholders in the issuers in which they have invested on the same basis as other investors.

The proxy system cannot be examined in isolation. Any proposal to change the proxy voting process must also take into account the other systems that are linked to that process. For example, the proxy voting system is tied into the securities clearance and settlement system at the Canadian Depository for Securities (CDS). CDS's system has been developed over many years to clear and settle huge volumes of trades quickly and accurately. Changes to the proxy process likely would require alterations to CDS's systems and changing those processes would be expensive.

Issues relating to improving the proxy process would best be undertaken by combined action by corporate and securities authorities, with input from all market participants. The complexity in the system is increased by the disparate treatment given beneficial owners and registered holders under corporate and securities laws and the differences in delivery requirements (electronic or otherwise) across 14 corporate statutes and 13 sets of securities legislation. It would be of immeasurable benefit to all the participants in the market if the CSA would sit down with their colleagues in the corporations branches across the country and develop a common framework in these areas – particularly with respect to the ability of registered holders to opt out of receiving materials and on the requirements applicable to electronic delivery. Like the initiative that resulted in the new securities transfer legislation in many provinces, a coordinated effort lead by the CSA is far more likely to produce a common approach than individual discussions with the corporate authorities jurisdiction by jurisdiction.

Caution. I have read many of the materials underlying the discussions in the U.S. regarding reform of the proxy system. I have participated (for several decades) in similar discussions in Canada in various capacities, including that of regulator, lawyer, employee of an issuer and consultant. I would advise the CSA to approach many of these issues with a great deal of caution. As with many complex areas that impose costs on participants, many people have 'concerns' about how the system works but cannot articulate precisely what those concerns are, the proposed solutions have nothing to do with the underlying problem, or the cost of the fix far outweighs the problem identified. Anecdotal information abounds, but hard facts and cases are far more difficult to find. For example, I have been privy to discussions regarding over-voting of share positions caused by securities lending since the late 1980s, but have seen very few concrete examples where this has taken place in fact.

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OTHER COMMENTS ON THE PROPOSED AMENDMENTS

Access to NOBO lists. The CSA proposes to place further restrictions on the permitted uses of NOBO lists by parties other than issuers to "prevent misuse of NOBO information and the indirect sending procedures", while at the same time removing most of the restrictive language on the use of NOBO lists by the issuer. However, the CSA does not provide details of what misuses have been seen, if any, or any other policy reason sought to be addressed by these changes.

The restrictions that are presently in the Instrument (and its predecessor, National Policy Statement 41 *Shareholder Communication*) were drafted to mirror the language from corporate law for permitted uses of the list of registered shareholders. Presumably these restrictions were considered by the CSA to reflect an appropriate balance among the interests of issuers, investors and intermediaries on access to and use of investor information. I do not understand from a policy perspective what has changed in this equation to necessitate a different standard apply or why the uses of NOBO lists by third parties should be narrower than those applicable to registered lists. The wholesale elimination of restrictions on the use of the lists

by the reporting issuers is also problematic, particularly when an issuer may be a competitor of the intermediaries whose clients are set out on a NOBO list.

There already are too many differences between the treatment of registered holders vs. beneficial owners. The CSA should not be adding to these differences without some compelling and disclosed policy reason for the change.

Elimination of additional processing time for materials. Sections 2.12 (2) and 4.2 Of NI 54-101 presently give intermediaries one more day to process mail that is to be sent other than by first class mail. The CSA proposes to eliminate this extra day. From a practical point of view, I am not sure why this is the case, as I understand the less expensive types of mailing services offered by Canada Post require intermediaries to do more work to prepare the mailing packages prior to their delivery to Canada Post. As the additional processing costs are required to be paid by issuers under 2.14, the elimination of the extra time in section 2.12(2) means issuers that opt for what they think is a lower cost delivery method may incur significantly greater costs.

On a related drafting note, the CSA has not proposed any amendments to Form 54-101F2 *Request for Beneficial Ownership Information*. However, that form refers to the additional time provisions of the current section 2.12 (see items 6.7, 8.5 and 9.7). If the Instrument is amended as proposed, the cross references should be removed from the Form.

Selective use of the word 'must'. The proposed amendments to NI 54-101 and NI 51-102 generally impose obligations on participants by saying something 'must' be done. The rest of the existing obligations in these two rules continue to use the word 'shall'. I am aware that the change in usage reflects a more modern drafting style. However, in my understanding, the principles of statutory interpretation also apply to the interpretation of rules. These principles say that the use of a different word implies a different meaning is intended. If the CSA is going to modernize the language of a rule in this manner, it would be best if all the references to 'shall' were replaced at the same time. This would eliminate any ambiguity that otherwise might arise.

Defined meaning of proxy related material and special resolution. The language used for these defined terms is slightly different in NI 51-102 and NI 54-101. The wording of the two rules should be conformed.

Section 2.7.1(1)(vi) of NI 54-101. The proposed notice and access provision requires the notice to include an explanation of how the NOBO is to execute and return any Form 54-101F6 that has been sent, including any deadline for its return. However, as the notice and access system may be used to communicate with all beneficial owners, whether NOBOs or OBOs, the same information will be going to all investors. The notice can be used by issuers sending materials to NOBOs directly or to all beneficial owners using the indirect delivery method. Under these circumstances, it would be more useful to all investors if the notice were required to indicate how the voting instruction form sent with the notice (whether Form 54-101F6 or Form 54-101F7) should be executed and returned, along with any relevant deadline. Alternately, the requirement to provide that information might be included on Form 54-101F6 and Form 54-101F7, rather than in the notice.

Section 2.12(3) Delivery of notice and access materials to intermediaries. The time periods for delivery of traditional paper proxy materials are specified in section 2.12. The equivalent requirement where notice and access is to be used says –

> the reporting issuer must provide the information set out in paragraph 2.7.1(1)(a) to the intermediary in sufficient time for the intermediary to send a document containing that information to the beneficial owner at least 30 days before the date fixed for the meeting.

Who determines what is sufficient time under this provision? The sending of materials to investors must be coordinated so that the requirements of section 2.9(5) and/or section 2.12(5) can be met. This suggests that the timing of delivery of materials for notice and access should be specified in the rule after appropriate consultation with the issuer and intermediary community.

Further, the language in section 2.12(3) noted above differs materially from that used in the equivalent provision of section 2.9(3) that reads –

> A reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access must send the material required by paragraphs 2.7.1(1)(a) and (b) at least 30 days before the date fixed for the meeting.

The differences in language can be read to mean that where the issuer is using notice and access and sending materials indirectly through the intermediary, it does not have to supply copies of the notice to the intermediary, but just provide the information to the intermediary who then has the responsibility to turn it into a paper document for delivery to beneficial owners. However, no specific duties are imposed on intermediaries to carry out those new tasks.[3]

If the intent is for the process to mirror that for delivery of paper proxy materials, then the issuer should be delivering copies of the notice to the intermediary and the intermediary should be sending that notice along with the relevant voting instruction form (Form 54-101 F7) to the beneficial owners. The language of section 2.12(3) therefore should be conformed to that of section 2.9(3). If the intent is to impose new obligations on the intermediary to produce paper copies of the notice based on the information provided by reporting issuers, then several new provisions are needed to achieve that result.

In any event, clarification of the intent and the language of these two provisions would be appreciated.

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I support the CSA in its efforts to improve the securityholder communication process. The current system set out in NI 54-101 can be improved to make it efficient and to enhance the protection of investors and their ability to participate actively in the proxy process at reporting issuers. I thank you for the opportunity to present my comments.

Regards

(signed]

Tanis MacLaren
Managing Director

[3] In contrast, the equivalent SEC provisions (Rules 14b-1(d) and 14b-2(d)) impose specific obligations on brokers and banks regarding preparation of a Notice of Internet Availability of Proxy Materials if the issuer has elected to use notice and access under Rule 14a-16(d).