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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 other instruments.

This letter represents the comments of Broadridge Investor Communications Corporation ("Broadridge") in response to the publication of 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*. Broadridge supports the CSA in its goal to improve the investor communications process in Canada. We look forward to working with all concerned parties to ensure that the objectives of the Instrument are achieved and all investors are treated equitably in exercising their rights as securityholders to receive materials, to vote and to attend securityholder meetings.

Broadridge is an industry leader in the Canadian financial marketplace, facilitating the delivery of proxy communications since 1987. Our services include delivery of securityholder communications and other documents on behalf of corporate issuers, mutual funds and banks, brokers and trust companies, in compliance with industry regulations. We currently support 70 proximate intermediaries representing 230 financial institutions and approximately 3,600 public issuers in Canada, as well as custodians and

institutional investors. Broadridge's global reach also provides U.S. and other foreign investors the opportunity to receive materials from and participate in the voting process for Canadian reporting issuers. Unique to Broadridge is our combined industry, regulatory and information technology expertise. Our clients rely on us to help them efficiently and cost-effectively comply with industry laws and regulations.

We endorse the fundamental objectives that underlie the CSA's initiatives on securityholder communication:

- All securityholders of a reporting issuer should be treated alike.
- Efficiency should be encouraged.
- The obligations of each party in the communication process should be equitable and clearly defined.

Broadridge believes that practices that facilitate all beneficial owners fully exercising their voting rights in the issuers in which they have invested should be supported. However, these practices should be consistent with, and support the fulfilment of, the fundamental objectives of the Instrument.

- They should be equitable, in that they should not apply arbitrarily based on whether particular beneficial owners have consented to the disclosure of their names, or on which party mailed the proxy-related materials.
- They should not impede the ability of other participants in the securityholder communication process to meet their legal obligations under the Instrument or relevant legislation.
- They should not arbitrarily transfer costs to other participants in the communication chain.

Practices that do not meet these objectives may reduce efficiency, negatively affect the integrity of the voting process and/or impair investor confidence.

Responses to Specific CSA Questions

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?

Distinguishing between meeting type will limit the economic benefit to the market and result in increased confusion for investors.

The use of the N&A option for annual meetings only will significantly limit its utility.

If notice-and-access ("N&A") may only be used for annual meetings, the utility of the option would be limited as fewer issuers would be eligible to participate. In the 2010 proxy season in Canada, a significant majority of shareholder meetings had matters on the agenda that went beyond the routine consideration of financial statements, election of directors and reappointment of auditors. In the last proxy season, 38% of meetings were annual meetings only. Further, many of the annual meetings had non-routine items on the agenda that were not subject to a special resolution, but that were put to a shareholder vote, such as shareholder proposals.

A properly designed and executed electronic delivery system can provide information to shareholders equivalent to that provided by paper and thus may be used for any type of meeting. If there are concerns about sufficiency of the information or reliability of delivery, then these are issues regardless of the type of meeting.

Differentiating between meeting types will add complexity for all participants.

Differentiating between meeting types for use of an N&A delivery system will make it more complex and thus even harder for an investor to understand. Not many investors are going to understand why they are receiving paper packages for one meeting of an issuer, but only a notice for the rest of the securities they own, and then for the next meeting of the issuer that sent paper last time, they receive only the notice. This could result in lower rates of investor participation and effective access to information.

Infrastructure and systems development should be efficient and cost-effective.

It will be much simpler and more cost effective to build a system that applies to all meetings from the start, rather than build one that distinguishes between the two types of meetings and then have to modify it later. This would also eliminate the time, effort and uncertainty that would be introduced by the CSA having to take the proposal back out for public comment. Further, it adds an extra level of compliance costs on all parties to ensure that only annual meetings are using N&A. The fact that the NI 54-101 definition of special meeting is different from the corporate law usage is only going to make the exercise more difficult.

If N&A is only available for annual meetings, and given the concerns about the number of issuers that might not be able to use the system for any type of meeting under corporate law, the cost of making the service available to the market will be higher.

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?

Using N&A for some but, not all beneficial owners, creates the potential for inequitable treatment of certain groups of shareholders.

There is no restriction on what basis the selections may be made or the number of alternatives that can be used at once. If the issuer is choosing to use N&A, it should use N&A for all beneficial holders. If the issuer is using stratification as part of N&A, Non-Objecting Beneficial Owners (NOBOs) and Objecting Beneficial Owners (OBOs) status should not be used as stratification criteria. Nothing in the Instrument as drafted requires the issuer to choose to send materials on a basis for which data is readily available (e.g. to investors who said they did not want materials at all). If the issuer chooses a group for which data/identifiers are not already in the system, the Instrument should clearly state that the issuer bears the additional costs of the work required. Even if the issuer is prepared to bear the costs, the tight timeframe for proxy communication may not allow for implementation of the selection, as it may require manual

processing and/or significant programming changes. Additional choices will also create more confusion for investors.[1]

Disclosure in the information circular should be required in all cases where the issuer has decided to use N&A selectively, with no relief for those who purportedly have not decided at the time the circular is finalized, as this may be too easily abused. Notice also should be given to the intermediaries, either via notice on Form 54-101F2 or by some other specified means, such as by requiring issuers to notify CDS so that this information may be posted on the CDS Notice of Meeting screen, which would alert CDS participants.

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?

The U.S. experience has provided insight that may allow the CSA to mitigate the potential for declines in voter participation.

Educating investors will help mitigate declines in vote participation.

A key issue identified in the U.S. in connection with the implementation of N&A was the lack of investor education on how the new system worked, what the investors should expect and what they have to do to exercise their votes. In the U.S., the original rules prescribed the form of notice and did not permit the issuers to include any other materials with the notice – which made it more difficult and expensive to send out educational information to the shareholders. The SEC changed its position and permitted issuers to include educational material in notice packages during the 2010 proxy season. While the CSA proposal does not include a similar prohibition, it does not put any positive obligation on the issuer to provide anything to its investors to explain the system. As a result, Canadian investors may not get any more information than that provided in the U.S. and declines in voter participation could occur.

The SEC established an investor education web site in early 2010 (www.investor.gov) and that site contains extensive information about N&A and other proxy related matters. The CSA might consider doing the same. In addition, the CSA might consider encouraging or requiring issuers to include educational materials on N&A on the websites they use to post the proxy related materials. The voting website operated by Broadridge in the U.S. has contained an educational component since 2009.

The system must facilitate the participation of OBOs.

The percentage of retail investors who have opted for OBO status is substantial and growing. During the period from the introduction of NI 54-101 in 2002 to 2010, the percentage of beneficial owners that have opted for OBO status has increased from 20% to 51%. The proposed rule changes do not address these investors who may wish to vote as the Instrument is still silent on who is to pay for delivery of their materials and their intermediaries may not volunteer to absorb the costs. The N&A model should be used to facilitate proxy delivery and vote participation for both institutional and retail securityholders. The obligations to pay for delivery to OBOs should be consistent. Under the current Instrument, issuers must pay for delivery to OBOs who have indicated they do not want the materials if the issuer is requiring the

[1] See the discussion of the permutations and combinations of delivery obligations under the shareholder communication rules set out under Q. 4.

materials to go to all beneficial owners. The proposed changes to NI 54-101 require issuers to pay for delivery of paper copies to all requesting OBOs when N&A is used. It is inconsistent to continue to permit issuers to decline to pay for delivery of materials to OBOs who have indicated they wish to receive shareholder materials.

The N&A system must encourage informed voting.

The proposed CSA system allows for the delivery of a votable notice, while the current U.S. system requires investors to access the Internet site on which the proxy circular is posted before they are permitted to vote. The Canadian model means it will require less effort for investors to vote as they will not be required to access the proxy materials, which may result in less of a decline in vote returns. Existing technology may be used to encourage investors to access the detailed materials prior to voting if the regulators have concerns about investors acting on the minimal information provided in the notice.

Standing instructions to receive full package by consent.

The experience in the U.S. indicates that the voting participation rate for retail investors, outside the N&A system, was 19% in the 2010 proxy season. This rate drops to 4.5% (down 76%) when the investor receives a Notice Card only. In comparison, an investor who either requests a full set of material for a particular meeting or who has standing instructions for delivery of a full package has a much higher rate of returning votes (73% and 63.5% respectively). Where the issuer on its own initiative sends full sets of material to its securityholders, the vote participation increased to 22% over the non-N&A system figures.

2010 U.S. Retail Investor Notice & Access Vote Participation	**Votes Returned**
Receiving notice card only	**4.5%**
Investor requested full package	**73%**
Investor prior consent for full package	**63.5%**
Issuer-initiated full package	**22%**
U.S. Retail Investor Vote Participation (no N&A)	**19%**

The CSA proposal does not include provisions whereby investors could lodge standing instructions that they wish to be sent paper copies of proxy related materials automatically, without requiring the investor to contact each issuer for each meeting to ask that these materials be sent. Giving the investors the option to provide standing instructions would enhance the efficiency of the overall system, be consistent with the approach taken for investors to give instructions under Form 54-101F1 and under NI 81-106 *Investment Funds Continuous Disclosure* and enhance investor vote participation.

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?

On a proportional basis, the opportunity for significant cost savings for issuers in Canada from the introduction of N&A is likely to be less than that seen in the U.S.

The incremental savings that Canadian issuers will gain with N&A are principally from reduced costs of postage and for printing of information circulars. The reason for the difference between Canadian and U.S. markets is that Canadian regulators have been making changes to issuer delivery obligations since 2004[2], and have introduced new rules governing delivery obligations such as NI 51-102. Issuers in Canada have already received significant cost savings from these changes. For example, the typical opt-in rate by securityholders for delivery of annual financial statements under NI 51-102 is currently 1.7%, resulting in significant cost reductions for issuers in printing and mailing these documents. The incremental savings from N&A, particularly if it is only available for annual meetings, is unlikely to be material.

It remains to be determined whether the implementation of the current N&A proposal is economically viable.

Broadridge has completed a preliminary analysis of the size of the Canadian market for N&A for beneficial holders. It is not currently clear how many corporate laws will permit the use of N&A in practice. In our discussions with the issuer and intermediary communities, we have been advised that it is doubtful that the N&A system will work for CBCA corporations, as N&A does not meet the electronic delivery requirements in that Act. Similarly, federal financial institutions are unlikely to be able to use it as the legislation in force does not permit electronic delivery at all and the draft regulations that would permit e-delivery mirror those from the CBCA. We have also been advised that N&A may not be available for companies incorporated under ABCA or for those listed on the TSX Venture Exchange. This will require additional assessment in order to determine the number of eligible issuers in order to size the market accurately. When applying the eligibility criteria for use of N&A as set out in the current draft of NI 54-101 and considering the possible restriction identified in corporate and provincial law and the TSX Venture Exchange rules, the number of securityholders eligible to receive an N&A package as well as the number of issuers who can use the delivery service is severely impacted. Using the 2010 proxy season for illustration, only 19% of Canadian issuers could choose the N&A model with 15.3% of investors receiving N&A packages. As the number of corporations that may use the system decreases, the cost of building and maintaining the system increases when compared to any potential reduction in other costs.

[2] These changes include implementation of Phase II of NI 54-101 in September 2004, further amendments to NI 54-101 in February, 2005, the availability of individual consolidation and e-delivery, and the implementation of NI 51-102 in March 2005.

Providing multiple options for issuers for proxy distribution, including N&A, will increase costs and complexity for participants.

We understand the attractiveness of providing multiple options for issuers that the CSA is proposing to include in the shareholder communication system. However, the costs to issuers and intermediaries of ensuring compliance with regulatory requirements increases, as do the investor/client relations costs of responding to the resulting investor confusion and complaints.

Each iteration of the CSA rules governing shareholder communication has provided more options for both issuers and investors, resulting in many more permutations and combinations of delivery options that have to be fulfilled. Under the original National Policy Statement 41 *Shareholder Communication* there were 48 possible combinations of meeting types, shareholder selection, NOBO/OBO status, and language of communication. NI 54-101 increased this to 2,592 alternatives.[3] The additional choices proposed in this version of NI 54-101 at minimum would increase the alternatives to more than 10,000, not including all possible different selections for use of N&A.

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 fosters efficiency for market participants and improves investors' understanding.

If the goals of introducing the N&A process are to enhance efficiency, lower costs and ensure the integrity of the voting process, then the form of the voting instruction to be returned to the issuer or intermediary must be standardized and it must be as close to that used with traditional paper mailings as possible. The current voting instruction form used in Canada is a standardized format that is machine readable, which allows both efficient and accurate tabulation of votes received. Standardizing the notice requirements would further enhance processing efficiencies, as participants would only have to build one system to support the notice/voting response.

From a purely practical perspective, it may be operationally impossible to compose a fully customized form for each issuer in the timeframe available for a proxy mailing. If the issuer chooses to create its own form, then any additional costs of mailing and processing should be clearly attributable to the issuer.

Further, the experience in the U.S. indicates that the new system is going to be confusing for investors. The confusion is likely to result in fewer investors exercising their votes and more questions for issuers and intermediaries. Introducing a new format will be confusing without each form of notice having the potential to be significantly different. Greater standardization in the information received will ensure a consistent investor experience and will reduce confusion for investors.

[3] This reflects the addition of choices regarding who is/is not paying for delivery, electronic delivery options, use of NOBO list, etc.

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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?

Unless the materials that are included with the notice are limited, the overall savings will be lost.

We note that the language in proposed section 5.4(2) of the Companion Policy 54-101CP says "A reporting issuer may choose to send additional materials on N&A with this notice." This restriction on additional materials should be included in the Instrument itself, rather than only appear in the Policy.

For issuers to benefit from the least expensive First Class mailing rate – approximately 6 sheets of "8 ½ by 11" paper may be included in an envelope; fewer if a return envelope is included. If more paper is included, any significant postage savings will be eliminated.

N&A allows issuers to reduce print and postage costs of the meeting circular. As such, that trade off requires that issuers embrace cost savings by limiting the material sent by mail and utilizing the Internet to disseminate their meeting material. Issuers wishing to take advantage of the ability to include "other material" (excluding N&A education and NI 51-102 annual request form) should have to opt for traditional paper mailings and include that other material with the information circular.

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?

Additional guidance regarding the interaction of NI 54-101 and NI 51-102 would be appreciated.

The integration of the two rules will not be helped by the fact that the proposed changes to NI 54-101 and NI 51-102 include slightly different definitions of proxy related materials and special resolution.

The use of N&A is going to make the system more complicated and the integration of the two instruments will become less clear.

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?

The shareholder communication process should treat all shareholders alike and facilitate all registered and beneficial owners fully exercising their voting rights in the issuers in which they have invested.

One of the stated aims of NI 54-101 is that all shareholders of a reporting issuer should be treated alike. Both the current rule and proposed amendments are silent regarding payment of delivery of proxy materials to OBOs and some issuers have disenfranchised a segment of their shareholders (over 50% of shareholders are OBOs). There is no effective mechanism for OBOs that do not receive the proxy material to regain the opportunity to participate in the proxy process. In the 2010 proxy season for all meeting types, 37% of issuers chose not to pay for delivery to their OBOs and this number increased to 49% when an issuer mailed directly to NOBOs. These decisions affected nearly half a million OBO accounts at proximate intermediaries, representing more than 20 billion shares. Failure by the issuer to pay for delivery of proxy materials to all beneficial holders resulted in retail OBOs being disenfranchised. This unintended consequence compromises good corporate governance.

Rules adopted by the CSA must support and encourage good corporate governance practices.

The proposed disclosure may provide a governance discipline on the issuer's decision, particularly if the information is taken into account in the governance scoring systems applied by business publications, governance organizations such as Canadian Coalition for Good Governance and proxy voting advisors, or is otherwise disclosed to the marketplace as a whole.

In the interest of providing full information to investors, the issuer should not just be required to state it is not paying, but explain why it is not paying to communicate with a known percentage of their investors – in the same way that they are going to be required to explain why they are using N&A for some shareholders and not others. The language of section 3.4.1 of the Companion Policy 54-101CP suggests the reasons for the non-payment decision should be included, but neither the language of section 2.16(2) of the Instrument, nor that required by new item 4.4 of Form NI 51-102F5 *Information Circular* goes that far.

The information proposed to be included in the information circular regarding the OBO needing to make alternative arrangements to get proxy material is not going to be of any use to retail OBOs. They will not see the warning, because they will not receive the circular. If it is going to be of more practical use, then the disclosure is going to have to be made in a way that has a greater likelihood of reaching the attention of OBO investors and/or the public more generally. One way might be to require the disclosure to be made via news release, analogous to the disclosure that is required for selective use of N&A. (See comments on this point under Q.2 above.)

We would ask how compliance with the disclosure requirement is going to be monitored and enforced by the CSA. While the information circular, and presumably the press release would be filed on SEDAR, the regulators will not be privy to whether a given issuer actually paid or did not pay for delivery to its OBOs as that information is not filed with the regulators. That information would only be available from the intermediaries.

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

Accuracy, reliability, transparency and impartiality are fundamental to the integrity of the proxy infrastructure and, for that matter, to the participation of securityholders in the voting process. It is important that securityholders understand the process is impartial.

The importance of corporate governance to our capital markets also demands reliability and efficiency in proxy distribution and voting. As investors become more involved in the oversight of the companies in which they invest, the process of voting their shares must operate seamlessly to communicate their decisions. In this regard, there are significant benefits from a voting process that is operated by reliable third parties, independent of both companies and securityholders.

We are confident that the beneficial proxy process works reliably, efficiently and with integrity. However, we recognize that there are two areas where, in certain circumstances, improvement can be made. These improvements are with respect to vote tabulation of NOBO positions where the issuer has mailed proxy materials directly, and the delivery of proxy materials to OBOs. We have been both initiators and supporters of various proposals to enhance the voting process for securityholders, such as the introduction of Internet and telephone voting. As stated above, Broadridge believes that the shareholder communication process should facilitate all registered and beneficial owners fully exercising their voting rights. Enhancing the equal treatment of all investors by ensuring OBOs receive proxy material at the same cost as registered shareholders and NOBOs would improve the overall system.

We would note that any proposal to revise the proxy process must keep in mind that the securityholder communications and voting system in place today is shaped by the structure of the equity market clearance and settlement system. This system was built over decades to create a fast, reliable and efficient mechanism for clearing enormous volumes of trades, and has been successful in achieving that objective. Any proposal to change the proxy voting process must take into account the need to maintain the speed and efficiency of the clearing system.

Equitable principles for vote tabulation.

The Instrument contains no general principles that would govern how votes are to be tabulated when there may be discrepancies between the votes cast and the records of the depository, intermediaries and transfer agent. We believe that the achievement of the objectives of the Instrument would be better supported by the addition of guidance in the Companion Policy 54-101CP requiring the fair allocation of votes received across all beneficial owner positions at a particular intermediary.

It has become accepted practice by some tabulating agents, in the instance where the issuer or agent has distributed to NOBOs directly, to give preference to those NOBO positions, when voted, over OBO positions, when voted, particularly if the total voted share amount exceeds the total intermediary share position.[4]

The possibility that more votes would be received from an intermediary's clients than the intermediary holds at the depository as of the record date is generally assumed to result from securities lending, which may involve lending by both institutional and retail investors. Retail margin account agreements generally give the intermediary the right to lend securities from the account to cover the margin loan value. Early identification of discrepancies between the votes received by the tabulators and the intermediary's aggregate positions and prompt reconciliation actions substantially reduce the risk that in fact more shares will be voted than there are shares outstanding. There is no established connection between NOBO/OBO status and participation in securities lending or actual overvoting of securities that would justify the process applied by some tabulating agents.

While there is nothing in the Instrument governing how unreconciled positions are to be treated, equity would demand all beneficial owner votes be treated alike, regardless of who mailed the information to beneficial owners. Additional language to this effect in the Companion Policy 54-101CP would be helpful, as would additional disclosure by intermediaries to their margin account clients regarding the possibility that their voting rights may be reduced for positions held in margin accounts.

Operational risk concerns.

If the regulators have concerns that errors are being made and parties in the process are not fulfilling their duties under the Instrument, the CSA should consider requiring major participants such as transfer agents, service providers acting for intermediaries and others involved in proxy solicitation and voting advisory businesses to have annual independent audits of processes related to shareholder communications, such as a CICA Section 5970 assurance report or similar audit on performance.[5] Broadridge completes a Type II SAS 70[6] audit of its proxy processes annually and has engaged Deloitte & Touche to audit and test the accuracy of its processing of voting and reporting of votes cast.

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4 Process outlined in STAC Proxy Protocol, May 2007, Part 7 – Reconciliation of Intermediary Positions.

5 A Section 5970 report covers the fairness of the presentation of the service organization's description of controls that had been placed in operation, the suitability of the design of the controls to achieve the specified control objectives and the auditor's opinion on whether the specific controls were operating effectively during the period under review.

6 The SAS 70 report is the U.S. audit standards equivalent of the Section 5970 report.

Other Comments on the Proposed Amendments

Obligation to pay for delivery of proxy related information to intermediaries for onward delivery to OBOs.

Corporate and/or securities law in many provinces obliges issuers to deliver proxy related materials to intermediaries when requested for onward delivery to beneficial owners (e.g. section 49(3) of Securities Act (Ontario) or section 153(3) of the Business Corporations Act (Alberta)). These obligations continue, regardless of the decision of the issuer to decline to pay for delivery to its OBO securityholders. It has been our experience that issuers who are not paying for delivery to OBOs increasingly are refusing to deliver materials to intermediaries for forwarding to these investors.

The issuer's obligations to pay for delivery of materials to intermediaries in all cases for forwarding to their clients should be reinforced by the addition of a reminder of the obligation in the Companion Policy 54-101CP or, preferably, by including a statement in the Instrument itself – e.g. by adding language to section 2.12.

Obligation to pay for delivery of proxy related information to intermediaries for onward delivery to foreign beneficial owners.

Foreign law may oblige intermediaries that hold securities of reporting issuers to deliver proxy related materials to all beneficial owners in that country. It has been our experience that some issuers are refusing to deliver materials to intermediaries for forwarding to these foreign investors. During the 2010 proxy season, over 270,000 investors did not receive material because Canadian issuers felt they were not obliged to deliver to the investors holding through U.S. intermediaries.

Proposed section 2.12(7) states the issuer is not being permitted to send materials directly to NOBOs who hold through foreign proximate intermediaries where the foreign law does not permit direct communication between the issuer and the NOBO. However, the provision does not state unambiguously the obligation to send the materials indirectly via these intermediaries.

The issuer's obligations to pay for delivery of materials to intermediaries for forwarding to their foreign clients should be reinforced by the addition of a reminder of the obligation in the Companion Policy 54-101CP or, preferably, by including a statement in the Instrument itself – e.g. by adding language to section 2.12.

Channel for requesting NOBO lists.

The existing Instrument says all requests for NOBO lists – whether from issuers or third parties – must be submitted by or through a transfer agent. The original reason for this limitation was a practical one. The range of parties from whom requests could come and to whom the lists would have to be delivered was limited so intermediaries did not have to build multiple gateways or provide information to those not technologically capable of accepting the lists. The CSA is now proposing to extend this to permit requests to come through proxy solicitation firms.

Technology has progressed since this limitation was included in the original release of the Instrument. Information can be delivered using removable media (CDs, DVDs, etc.) and by direct electronic exchange with a much wider array of parties than was anticipated when the original provision was drafted. From a practical perspective, there is no real need to prevent issuers or third parties from coming to intermediaries (or to Broadridge as the intermediaries' agent) directly. Permitting direct requests would be more efficient, faster, involve fewer steps and parties, eliminate the possibility of additional operational errors and ultimately result in lower costs for all market participants. We would suggest that the CSA eliminate section 2.5(4) completely.

If this restriction is not completely deleted, there is an issue with the test for the entities that are eligible to act as channels for requesting NOBO lists. Proposed section 2.5(4)(b) says that the request may come through a person or company other than a transfer agent "if the reporting issuer has reasonable grounds to believe that the person or company has the technological capacity to receive the beneficial ownership information." However, the issuer is not in a position to make that determination. Further, since the issuer is not necessarily a party to the request for the list and is not otherwise required to consent to the release of the list, it should not be responsible for making this decision. If there is a question of technological capacity, that matter should be decided by the party providing the information - the intermediary (or its agent). The test in section 5(4)(b) should be amended to permit direct requests from anyone that the intermediary judges technologically capable of receiving the data.

U.S. vs. Canadian rules for SEC issuers.

Proposed Section 2.7.2 says SEC issuers do not have to follow the N&A provisions of NI 54-101 if they follow the U.S. N&A system and they obtain confirmation from intermediaries holding the issuer's securities that those intermediaries will comply with the requirements on intermediaries under the relevant SEC rules. It is not clear how these two sets of rules will work together in practice:

- What form of confirmation does the CSA anticipate will be required and from which intermediaries? Many of the Canadian intermediaries that would hold SEC issuers' securities for their clients are not U.S. licensed broker-dealers or U.S. stock exchange members, so the application of U.S. rules to these firms is not clear.
- Must the confirmations be obtained by each issuer individually from each intermediary for each separate meeting? When would these confirmations have to be obtained? What happens if one or more intermediaries decline to provide confirmation? The timing of sending notice under the U.S. rules and the obligations on intermediaries are different from the proposed CSA regime. What rules would apply in the case of incomplete confirmations?
- What are the remaining obligations of intermediaries under the rest of NI 54-101 when an SEC issuer uses the U.S. system? At the very least, the Instrument should contain an express exemption from the relevant NI 54-101 obligations of intermediaries where the issuer has elected to follow the SEC requirements.

Use of postal method other than First Class mail.

We note that Sections 2.12(2) and 4.2 are to be amended to eliminate extra time to process mail that is to be sent other than via First Class mail. We would like to bring to your attention that bulk mailing and other methods take a great deal more pre-processing than First Class mail. Additional time is needed to carry this out, making the requirement of a three-day mailing deadline more difficult to meet in practice, or achievable only at increased costs which will be borne by the issuer. Since the additional processing costs are required to be paid by issuers under 2.14, the elimination of the extra time that the current 2.12(2) allows for pre-processing means issuers that opt for ostensibly less expensive mailing options are likely to incur greater costs overall.

Further, some of the Canada Post Corporation (CPC) mailing options, such as bulk mail, have much longer service delivery times than First Class mail. Service standards for CPC vary depending on the product or service used. First Class mail carries a general standard of delivery ranging from as little as two business days if mailed to a local destination from the mailing point, to as much as four business days, if the mail is being sent across the country. Where an alternative CPC delivery method is used, such as Addressed Admail with a First Class insert (also known as Hybrid mail), delivery standards increase to three business days if mailed to a local destination, and are as many as 13 business days if sent across the country. These longer delivery times may result in materials not reaching the investors until after the meeting is held.

Finally, we note that under proposed section 2.7.1(1)(g), the issuer is required to fulfill requests for paper copies of proxy related materials within three days of receipt of the request by sending materials by "prepaid mail, courier or the equivalent". The CSA does not specify the use of First Class mail. Given CPC's service delivery standards, in order for the materials to be delivered to beneficial owners in time for review prior to the meeting, we are of the view that the reference to “prepaid mail” be restricted to First Class mail.

Recordkeeping requirements.

It is difficult to comment on the adequacy of the proposed recordkeeping requirements under the Instrument, as the purpose sought to be achieved is not evident. As there are costs associated with keeping records, the requirements should be tied closely to the purposes for which the records may be used.

The records specified in sections 2.17(2) and 4.4(2) are going to be of limited use in reconciling votes or doing an audit of the voting process. If the aim is to be able to generate an audit trail for voting instructions, then the recordkeeping requirements should go further to mandate keeping the date(s) the materials were sent to investors, full details of the instructions received and the date(s), time(s) and details of tabulated votes that were sent by an intermediary to the issuer.

If the longer term aim is to be able to have a system that can confirm voting instructions and that proxies were executed as securityholders intended, then it would be less expensive and more efficient to require full records be kept now, rather than introduce additional requirements over time, necessitating multiple systems changes.

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Further, we would ask that the CSA give guidance to the industry on how long these records must be retained. Currently, there is no definitive comment from the CSA or SROs on how long proxy material, voting instructions (paper) or proxy communication data should be held. In the U.S., the New York Stock Exchange (NYSE) has established a three-year retention requirement as set out in NYSE Rule 452[7] however, nothing similar exists in Canada. A similar approach to NYSE Rule 452 would simplify compliance processes for firms subject to both U.S. and Canadian requirements.

'Other delivery methods' – contemplated by section 2.7(2)(c) and 4.2(2)(c).

It is not clear what other sorts of delivery methods are sought to be permitted here and how such other delivery methods would be integrated into the proxy communication process. Are these assumed to be standing arrangements between beneficial owners and either their intermediaries or specific issuers? It is likely that any general agreement on alternative delivery methods with a beneficial owner is likely to be with that securityholder's intermediary, not with the issuer, which raises a number of practical issues:

- The issuer is unlikely to have notice of these arrangements.
- These agreements are unlikely to be standardized across intermediaries and would include a number of one-off arrangements, making issuer compliance with each impracticable.
- The consent to e-delivery would be given from the client to its intermediary and the issuer cannot rely on that consent as it was not provided to it. The chart in Table A of the Companion Policy says: "Reporting issuers are expected to work with proximate intermediaries to obtain consent" – but there is nothing in the Instrument that sets out any related obligations on either party to achieve that result.
- Further, given the tight timeframe surrounding the proxy process, the extra steps required for the issuer to obtain beneficial owner consent to use e-delivery in respect of a specific meeting means this is unlikely to be completed in time for a given meeting.

Finally, in proposed section 2.9(4) and 4.4(2)(c), the Instrument says that the materials may be sent using a delivery method other than paper mailing or N&A not less than 21 days before the meeting or on any other day or days consented to by the beneficial owner. If the arrangement in question requires a notice period of greater than 30 days, is the issuer obliged to send the materials to this investor earlier than to everyone else?

Amendments to Form 54-101F2 Request for Beneficial Ownership Information.

The Form and the information generated by the Form have various uses for both issuers and intermediaries, in particular for resource planning purposes during the very busy and compressed proxy season between March and June of each year. It would be very helpful for planning purposes if the Form was amended to require the issuer to indicate which method(s) of delivery were going to be used; direct delivery to NOBOs, indirect delivery to both types of beneficial owners, selective/complete use of N&A, etc.

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[7] In the supplementary material to NYSE Rule 452.2, provides: "Retention of records.- All proxy solicitation records, originals of all communications received and copies of all communications sent relating to such solicitation, shall be retained for a period of not less than three years, the first two years in an easily accessible place."

Further, from time to time Broadridge has found that an issuer is not aware of what information has been requested on Form 54-101F2. This raises issues regarding the making of proper disclosure in the information circular as required if selective use of N&A has been chosen or the Form indicates the issuer is not paying for delivery to OBOs. Issuers should be required to certify these Forms prior to delivery to the intermediaries.

Standing instructions to receive full package by consent.

The consent system built into the original NI 54-101 established a simple system for beneficial owners to indicate their preferences for receiving shareholder communication materials at an intermediary account level.

Has the CSA considered how the system would work for investors who indicate that they would always want paper copies of the proxy related materials for the issuers in which they hold shares whenever those issuers elect to use N&A? The SEC regime permits investors to give standing instructions and those investors who give these instructions tend to vote more often than the average retail investor. (See the statistics set out under Q.3.)

As currently proposed, in order to receive paper copies, a Canadian investor would have to respond to each individual N&A notice every time one is received. This is not the most efficient process and is likely to put some investors off after a while, further reducing shareholder involvement in the proxy process.

Investors should be able to give instructions to their intermediaries or the issuer that they want paper in every case, in the same way they consent to e-delivery, ask for materials for all meetings under NI 54-101 or indicate that they want financial information from their investment funds under NI 81-106 *Investment Funds Continuous Disclosure*. The issuer or intermediary should be required to keep that information on file and fulfill the request without further action by the investor when N&A is being used. If the intermediary has instructions from the investor in advance of the mailing, the issuer should be obliged to deliver the material to the intermediary to mail with the voting instruction form as a full set package.

If an intermediary has a number of clients with standing instructions for paper material, Companion Policy 54-101CP 5.4(6) says "A beneficial owner client may ask its intermediary to request a paper copy of the information on its behalf." However, it is not clear how that would work in practice under section 2.7.1 of the Instrument. Would the intermediary have to forward the clients' names and addresses individually and rely on the issuer to forward the materials individually, or would the intermediary be permitted to ask for a specified number of packages for forwarding? If the latter, who pays for the delivery to the client?

Support for NOBOs when issuer mails.

The additions to section 3.5 of the Companion Policy 54-101CP regarding the obligations of the issuer to NOBOs when the issuer mails directly to these investors will be of great benefit to investors. It is important that investors have the same level of support to solve their problems with the proxy process, regardless of who sends them the materials. This support is going to be particularly important in the first few years of the use of the N&A process where even sophisticated investors are likely to be confused by the changes.

Reasonable assurance of payment to intermediaries before mailing materials.

The language in NI 54-101 regarding the parties' obligation to deliver lists of NOBOs and the related payment obligation differs depending on who is requesting the list. An issuer is not required to deliver a NOBO list to a third party until it receives payment for the list. An intermediary does not have to deliver a NOBO list to a third party unless it has received reasonable assurance of payment. However, the obligation of an intermediary to provide information to an issuer under the Instrument is not subject to a payment qualification. This may result in an unfair transfer of costs from issuers to intermediaries and interferes with the operation of normal market forces regarding the securityholder communication process.

Fairness would suggest that, at a minimum, the language in Part 4 of the Instrument relating to the intermediary's obligations to deliver NOBO lists to issuers and proxy materials to securityholders on behalf of issuers be amended to make the obligations contingent on the receipt of include the "reasonable assurance of payment" condition. The addition of the reasonable assurance of payment term would allow normal commercial practices to apply so that if an issuer had proved to be an unreasonable credit risk, the intermediary could give notice that further deliveries were not going to be made unless the issuer made satisfactory arrangements to ensure payment would be made in a timely manner. This would make the provisions symmetric. It is our understanding that transfer agents as well as other industry participants require assurance of payment before they will perform investor communications services, including obtaining NOBO lists for issuers. It would be far more efficient to let normal commercial practices operate to apply the necessary disciplines to the system.

Period of time to request paper copies.

As for financial statements under NI 51-102, the issuer should be required to fulfill requests for paper copies for a period of time after the meeting is over. Under NI 51-102, an issuer currently must provide financials up to two years after they were filed with the regulators.

Broadridge suggests that the requirements under NI 51-102 and NI 54-101 should be synchronized to reflect consistent language and time periods for fulfilling later requests for both proxy and financial statement materials. Further, Broadridge would also recommend that the delivery requirement for paper copies be set at one year, and the necessary amendments be made to NI 51-102 to reflect this shorter period.

Facilitation of in-person attendance by beneficial owners at securityholder meetings.

We welcome the proposed changes to the Instrument in sections 2.18 and 4.5 that replace the existing provisions dealing with delivery of a legal proxy. We believe this will enhance the ability of beneficial owners to attend shareholder meetings and participate on an equal basis with registered shareholders.

We do however have a question regarding how the obligations on issuers under section 2.18(2) and intermediaries under section 4.5(2) work in practice when beneficial owners return their voting instructions close to the time of the meeting. As written, the obligation on the issuer or intermediary to deposit the proxies prior to the specified cut off time for such deposits is unconditional and would apply regardless of when the instructions were received from the investor. Broadridge would recommend that this obligation only apply where the appropriate instructions were received at least one full business day prior to the proxy cut-off time.

Posting of materials other than on SEDAR.

Broadridge endorses the proposal to require issuers using N&A to post proxy related materials on a website other than SEDAR. It is our view that allowing issuers to use SEDAR as the site through which investors are to access proxy materials would not be appropriate and would result in reduced voter participation.

Requirement to send voting instruction forms to beneficial owners.

Broadridge endorses the proposed language in sections 2.17 and 4.4 of the Instrument that clarifies the obligation of issuers and intermediaries to send similar voting instruction forms to NOBOs. This should help to ensure that all NOBOs are treated alike, regardless of whether the proxy related materials are being sent directly or indirectly.

Conclusion

Broadridge supports the CSA and its goal to improve the securityholder communication process. We believe that the current system for proxy communications can be made more efficient and effective, while at the same time enhancing the protection of investors and their ability to participate fully in the governance of the companies in which they have invested.

In making changes to the existing system, we believe that the CSA should keep at the forefront the fundamental objectives that underlie the CSA's initiatives on securityholder communication:

- All securityholders of a reporting issuer should be treated alike.
- Efficiency should be encouraged.
- The obligations of each party in the communication process should be equitable and clearly defined.

In our view, a properly designed and executed electronic delivery system can provide information to shareholders equivalent to that provided by paper and thus may be used for any type of meeting. If N&A is to be of maximum benefit to the Canadian market, it needs to be widely available, both in terms of the type of meetings for which it may be used and the issuers who may use it. Wider applicability also would allow the costs of implementing the system to be spread more evenly across the marketplace, thereby sharing both the costs and benefits fairly.

The benefits of flexibility in the securityholder communication and proxy process system must be weighed against the possible costs imposed. The greater the number of options introduced into the system, the more complex and expensive it will be. Standardization of forms, notices and processes would enhance efficiency and may reduce investor confusion, both of which are to the benefit of the market.

The system used to communicate with registered and beneficial owners of securities should provide equivalent opportunity for all securityholders to exercise their voting rights. The system also should ensure the integrity of the proxy solicitation and voting processes. Where different groups of securityholders are being treated differently by an issuer, there should be meaningful and effective disclosure provided by the issuer regarding the reasons and effects of such different treatment.

We thank you for this opportunity to present our comments and we look forward to continuing to work with the CSA and the various constituent groups involved in the securityholder communication process to refine and evolve a model that better serves all Canadian investors in the 21st century.

Yours very truly,

Patricia Rosch
President