



Securities Transfer Association of Canada

William J. Speirs
President

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

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

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

Dear Sir/Madam

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

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

President: William Speirs, Canadian Stock Transfer Company Inc, 320 Bay Street, P.O. Box 1, Toronto, Ontario M5H 4A6

Phone: (416) 643-5305 Fax: (416)643-5530

Secretary/Treasurer: Terry Martinuk, Equity Financial Trust Company, 200 University Avenue, Suite 400, Toronto, Ont. M5H 4H1

Phone: (416) 361-0930 ext. 333 Fax: (416) 361-0470

Instructions to receive paper copies

In proposed section 2.7.6, an intermediary may obtain standing instructions from a beneficial owner that a paper copy of the information circular be sent in all cases where a reporting issuer uses notice-and-access.

In proposed subsection 2.7.6(2)(a), where a reporting issuer is sending proxy-related materials directly to the NOBOs, the intermediary is required to provide the reporting issuer with the names of those NOBOs who have provided standing instructions "... at the same time as the intermediary provides the reporting issuer with the NOBO list."

By separating this from the NOBO file, the reporting issuer or their agent could face logistical issues in reconciling the two lists prior to generating the requisite mailing files. These two lists could be presented in different formats (i.e. an electronic NOBO file and a paper standing instructions list) and may not contain the same account identifiers, creating a reconciliation issue.

Amending the format of the NOBO file to include an identifier for this standing instruction would permit the reporting issuer or their agent to split the file based upon this identifier and ensure that the NOBOs that have provided their intermediary with their request for the information circular would receive one and the NOBOs that haven't receive the notice-and-access package.

Notice-and-Access

In proposed subsection 2.7.1 (1)(a)(ii)C, a specific date and time by which a request for the paper materials should be requested is to be identified by the reporting issuer. This may be problematic given that there are a number of variables in the process of sending paper materials beyond the Issuer's control, such as the distance the materials must travel in the postal system and the number of postal services that must handle the package. A holder may comply with the timing identified and still not receive the paper materials in time. This may lead reporting issuers to identify a date that is sufficiently in advance to cover any potential delays, which could defeat the purpose of this requirement. A generic reminder to ensure that the holder allow adequate time for their request to be processed might be a better approach.

In proposed subsection 2.7.1(1)(a)(i) and (ii), it appears that there are 2 documents required to be included – and both of these documents would require customization. STAC suggests that the notice document described in (i) could easily contain all of the custom information about the specific meeting details, and document (ii) could be a generic form with information explaining Notice and Access, thereby easing the process for additional document customization and subsequent approvals for the reporting issuer. These comments would also apply to the proposed changes as set out in National Instrument 51-102.

Appointing beneficial owner as proxy holder

In proposed section 2.18, a reporting issuer who has obtained a NOBO file and omnibus proxy from the intermediary, must arrange to appoint the NOBO or a nominee of the NOBO as a proxy holder "... if the NOBO has instructed the reporting issuer to do so ..." This approach requires the NOBO to initiate the process of exercising their right to attend, vote and otherwise act in respect of all matters that may come before the meeting.

This is both inefficient and confusing to many beneficial owners. As management of the reporting issuer already holds a proxy in respect of the securities beneficially owned by the NOBOs prior to sending the proxy-related materials to the NOBOs, STAC has long maintained that management of the reporting issuer should be able to use the power of substitution in the proxy they hold to generate proxies instead of VIFs to the NOBOs. This approach is more efficient and ensures that the NOBOs do not get disenfranchised by a regulatory structure that they may not understand.

Furthermore, in subsection 2.18(4) and (5), intermediaries may ask for confirmations regarding proxy appointments made on behalf of their beneficial owners. STAC notes that the majority of appointments are received in the last few days leading up to the proxy cut-off. This will create logistical issues in complying with these requirements, especially on meetings for large reporting issuers during the height of meeting season. It is entirely possible that, due to volume, such confirmations will not be created and sent in time for the intermediary or their client to react prior to the proxy cut-off rendering this confirmation moot.

Use of Alternate Forms

Section 1.3 contemplates participants in the process using different forms from those prescribed and we believe this should be expanded to a more general provision that allows participants to use forms and documents that are acceptable for the purposes of the corporate statutes and for achieving the purpose of NI 54-101. Tabulators are dealing with new participants in the proxy process who are using their own forms which are acceptable in other jurisdictions. In addition, forms are being created, e.g. to permit a tabulator to count votes coming through Broadridge against positions outside the depositories. Lastly as indicated above, where an issuer is doing the mailing to NOBOs, it should be acceptable for management to use the power of substitution received from the intermediary to simply appoint NOBOs to vote their own shares and receive a regular proxy to record their vote and appoint someone to vote their shares. The objective here is to prevent technical non-compliance with the Instrument from being a factor in the validity of the voting process for the meeting under corporate statutes if acceptable documentation exists to allow non-registered holders to exercise their rights to vote.

Reconciliation of Positions

The only place where this key issue is addressed is in section 4.3 of the Companion Policy. STAC feels that any discussion of improvement in the effectiveness of the proxy system must start with more accountability for the reconciliation of all voting rights prior to the submission of files for mailing. The transfer agent is charged with ensuring that the shareholder register is in balance with the issuer's issued and outstanding capital. The transfer agent balances the depository position on the register daily with the depositories to ensure that those positions equal the depository's ledger position. Unless each intermediary's ledger positions are reconciled to the beneficial ownership data prior to mailing files being created, the integrity of any issuer vote is brought into question.

Unless the language of NI 54-101 is strengthened to make intermediaries more accountable for fulfilling their obligations, there is no way to ensure that each beneficial owner receives their proper voting entitlement and that their vote will be fully reflected in the tabulation – permitting the end-to-end vote audit trail that institutional investors are now demanding. Intermediaries must be held accountable for:

- a. Reconciling the files of beneficial ownership data with their registered, depository and nominee positions;
- b. Giving clear direction to the tabulator through which depository, nominee or intermediary securities being voted are held;
- c. Ensuring that any omnibus proxy required from an intermediary or depository through whom they hold shares is being filed; and
- d. Ensuring that a restricted proxy is not issued by the intermediary without verifying that a position has not been voted.

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

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

Yours truly,



William J. Speirs
President
Phone: 416-643-5305
Fax: 416-643-5530
Email: bill_speirs@cibcmellon.com