Securities Transfer Association of Canada

Lara Donaldson
President

Via e-mail

July 28, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Dear Sirs:

RE: CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

This letter represents the comments of the Securities Transfer Association of Canada (STAC) in response to CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (51-404). 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 provide membership to firms engaged as transfer agents or registrars in the field of the issuance, transfer and registration of securities and associated functions;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To assist members with problems of a technical or operational nature;
- 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; and
- To provide members and others with information and comments of an educational and technical nature relating to the securities transfer and corporate trust industry.

STAC appreciates the opportunity to provide our insight on this important initiative. We will be focusing our comments on the areas where transfer agents are directly involved, specifically electronic delivery and notice-and-access. For ease of reference, we have included the text of the original consultation question, where applicable.

Section 2.5 Enhancing electronic delivery of documents

Consultation Question 31: *Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?*

There are certain processes in NP 11-201 which result in inefficiencies in the market, and security holder confusion.

The current processes contemplated under NP 11-201 allow issuers to deliver documents electronically only to those registered security holders that consent to receive electronic delivery of material specifically from that issuer. Therefore, issuers using the same transfer agent are not permitted to make use of security holder consents previously obtained by other issuers. This includes situations where a new company is created through a spin-off mechanism, which results in an initial share register for the spin-off company that is an exact duplicate. The consents cannot be transferred to the new company so new consents must be re-solicited from each security holder prior to electronic delivery being used. This results in dissatisfaction for security holders, as well as additional costs to issuers. The Legislative Assembly of Ontario, through Bill 218, *Burden Reduction Act, 2016*, has proposed an amendment to subsection 141(1) of the Ontario Business Corporations Act (OBCA) that would require the securities register to include "…an e-mail address if one is provided."[1] There is no indication of how or when this e-mail address can be used. We recommend that a regime of implied consent be implemented, so that if a transfer agent has received an email address from a security holder, and they have proper processes in place to manage rejected or returned electronic delivery items, they should be authorized to use it for delivery of material unless specifically instructed otherwise by a security holder.

There is also a disconnect in the process used by issuers under National Instrument 54-101-*Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) when they choose

[1] Legislative Assembly of Ontario, Bill 218, Burden Reduction Act, 2016, Schedule 12, paragraph 10

to mail meeting material directly to their Non-Objecting Beneficial Owners (NOBOs). Under NI 54-101, the consent for electronic delivery is provided by the NOBO to the intermediary who holds their account. A single form is completed that applies to all securities held in that account, which streamlines the process for the intermediary. When NOBO information is provided to a transfer agent for mailing, the consent for electronic delivery is not included, as it cannot be passed through to a third party due to the consent provided by the beneficial shareholder being limited only to "…electronic delivery from the intermediary."[2] STAC believes that the consent should be available to any mailing provider. The inability of an issuer's transfer agent to use the e-mail address provided results in a breakdown in the communication process, frustration for security holders who have indicated that they want to receive their material electronically, and additional printing and mailing costs for the issuer. The end result is a disincentive for issuers to mail material directly to their NOBOs, and we therefore believe that amendments should be made to NI 54-101 so that a consent received will also be applicable to material delivered by issuers.

Consultation Question 32: *The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:*

(a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements, and MD&A?

There are various areas that cause operational disconnects or inefficiencies:

- The inability of issuers incorporated in certain jurisdictions, such as those incorporated under the Canada Business Corporations Act (CBCA) or Alberta Business Corporations Act (ABCA), to take advantage of the notice-and-access regime in Canada because a proxy circular is required to be delivered if a proxy is being solicited.

- The disconnect between the requirement for some issuers, such as those incorporated under the CBCA or ABCA, to mail an Annual Financial Statement (AFS) to all registered shareholders, except those who have indicated in writing that they do not wish to receive the information, and the processes that are available under notice-and-access. This "opt-out" process required in the CBCA and ABCA results in issuers being required to mail a printed AFS to the majority of their registered shareholders, thereby negating much of the cost-savings that should be available to them. This is in conflict with the processes currently set out in National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102) requiring holders to annually request to receive a printed copy of the AFS.

The Minister of Innovation, Science, and Economic Development, through the introduction of Bill C-25 *An Act to amend the Canada Business Corporation Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act* in September of 2016 has started the process of

[2] National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer,* Form 54-101F1 – *Explanation to Clients and Client Response Form*

modernizing the CBCA. There are still other Canadian jurisdictions, however, which also need to undertake similar reviews and proposals for modernization.

(b) *Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?*

STAC has no opinion on whether or not it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making the documents publicly available electronically without prior notice or consent. We do have concerns, however, in connection with the impact this would have on the operational processes surrounding security holder validation and voting. The complete elimination of a notification process for security holders, whether registered or beneficial, would cause a breakdown in these processes. Currently, security holders receive either a paper proxy or voting instruction form, or an e-mail advising them of the availability of proxy material. In both of these instances, unique codes are included that allow the holder to access a website that validates their identity, allows for electronic voting, tracks the vote, and ensures that a position is not voted more than once. If there was no notification process, holders would not be able to access the electronic voting site. Voting could possibly be forced to return to a paper process where a physical proxy with a signature would be submitted, and the tabulator would be required to interpret the signature in order to accept the vote. In our view, this would not be a favourable outcome.

(c) *Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?*

Further to our response to (b) above, STAC has grave concerns that this change would have a negative impact on the shareholders' right to vote. Although paper copies of material may be made available, that would not correct the breakdown in the voting process.

(d) *Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?*

Although notice-and-access has been available in Canada since 2013, there are still many issuers who have not adopted the process. Although we have not conducted a survey of issuers, we have received anecdotal evidence of some concerns that issuers have, such as:

- Upon analysis of the costs connected with notice-and-access and the size of the security holder base, there are insufficient cost savings incentives.

- The requirements under the issuer's specific act of incorporation do not allow for notice-and-access to be used.

- The extended time line requirements for the record and mailing dates cannot be managed. The increase of the record date from 30 to 40 days before the meeting date and the mailing to 30 days before the meeting date can result in the scheduling being squeezed to the point that there is no cushion for unforeseen contingencies.

Consultation Question 33: *Are there other ways electronic delivery of documents could be further enhanced through securities legislation?*

Acceptance of electronic forms of delivery of documents increases every year. If an e-mail address is provided by a security holder, we believe that consent for delivery of material should not be required, but an "opt-out" process should be used whereby a holder would need to advise a record keeper if they did not wish to receive material electronically, in effect providing standing instructions for paper material akin to the notice-and-access regime.

We also note that continuing technological innovations are likely to result in new forms of electronic communication in the near to medium term, for example through the implementation of new developments such as distributed ledger technology. We would therefore recommend that any legislative provisions be facilitative and 'technology neutral' to allow market stakeholders to continue to explore and utilise new technologies, subject of course to appropriate controls for integrity, data protection and investor protection.

We would like to again extend our appreciation for the opportunity to provide comments. We would be pleased to discuss the contents of our letter, or provide any further feedback as the CSA continues their efforts on this important initiative.

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