

This document is an unofficial consolidation of all amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and its Companion Policy and applies from **January 1, 2011**. The document is for reference purposes only and the Instrument is not an official statement law. Footnote 1A in Form 1 of the Instrument is for explanatory purposes and is not part of the Instrument.

**NATIONAL INSTRUMENT 54-101  
COMMUNICATION WITH BENEFICIAL OWNERS  
OF SECURITIES OF A REPORTING ISSUER**

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**NATIONAL INSTRUMENT 54-101  
COMMUNICATION WITH BENEFICIAL OWNERS  
OF SECURITIES OF A REPORTING ISSUER**

**PART 1      DEFINITIONS AND INTERPRETATION**

**1.1            Definitions - In this Instrument**

“affairs” means the relationship among a reporting issuer, its affiliates, and their securityholders, partners, directors and officers, other than the business carried on by the reporting issuer;

“annual report” means an annual report of a reporting issuer that includes the audited annual financial statements of the reporting issuer, and any other document required by Canadian securities legislation to be included in or sent with an annual report;

“beneficial owner” means, for a security held by an intermediary in an account, the person or company that is identified as providing the instructions contained in a client response form or, if no instructions are provided, the person or company that has the authority to provide those instructions;

“beneficial ownership determination date” means, for a meeting,

- (a)    the record date for voting, or
- (b)    in the absence of a record date for voting, the record date for notice;

“business day” means a day other than a Saturday, Sunday or statutory holiday in the local jurisdiction;

“CDS” means the Canadian Depository for Securities Limited and any successor to its depository business;

“client” means a person or company on whose behalf an intermediary directly holds a security;

“client response form” means the form of response set out in Form 54-101F1;

“corporate law” means, for a reporting issuer, any legislation, constating instrument or agreement that governs the affairs of the reporting issuer;

“day” means a calendar day unless express reference is made to a business day;

“depository” means CDS and any other person or company recognized as a depository by the securities regulatory authority for the purpose of this Instrument;

“explanation to clients” means an explanation to clients set out in the form of Form 54-101F1;

“FINS” means Financial Institution Numbering System;

“intermediary” means, for a security, a person or company that, in connection with its business, holds the security on behalf of another person or company, and that is not

- (a) a person or company that holds the security only as a custodian, and is not the registered securityholder of the security nor holding the security as a participant in a depository,
- (b) a depository, or
- (c) a beneficial owner of the security;

“intermediary master list” means a list of intermediaries that a depository maintains under section 5.1;

“intermediary search request” means the request referred to in section 2.3;

“legal proxy” means a voting power of attorney, in the form of Form 54-101F8, granted to a beneficial owner or to a person designated by the beneficial owner, by either an intermediary or a reporting issuer under a written request of the beneficial owner;

“meeting” means a meeting of securityholders of a reporting issuer;

“NOBO” means a non-objecting beneficial owner;

“NOBO list” means a non-objecting beneficial owner list;

“nominee” means a person or company that acts as a passive title-holder to hold securities and does not carry on business in its own right;

“non-objecting beneficial owner” means a beneficial owner of securities that

- (a) has provided instructions to an intermediary holding the securities in an account on behalf of the beneficial owner that the beneficial owner does not object, for that account, to the intermediary disclosing ownership information about the beneficial owner under this Instrument, or
- (b) is a non-objecting beneficial owner under subparagraph (i) or (ii) of paragraph 3.3(b);

“non-objecting beneficial owner list” means, for an intermediary, a list that includes ownership information concerning NOBOs on whose behalf the intermediary, or another intermediary holding directly or indirectly through the intermediary, holds securities and information regarding instructions from those NOBOs concerning receipt of securityholder materials and

- (a) if prepared in non-electronic form, is in a clear and readable format and contains the information referred to in paragraph (b), or
- (b) if prepared in electronic form, is prepared in the form of, and contains the information prescribed in, Form 54-101F5;

“notification of meeting and record dates” means the notification referred to in section 2.2;

“NP41” means National Policy Statement No. 41;

“objecting beneficial owner” means a beneficial owner of securities that

- (a) has provided instructions to an intermediary holding the securities in an account on behalf of the beneficial owner that the beneficial owner objects, for that account, to the intermediary disclosing ownership information about the beneficial owner under this Instrument, or
- (b) is an objecting beneficial owner under subparagraph (iii) of paragraph 3.3(b);

“OBO” means an objecting beneficial owner;

“omnibus proxy” means, for a meeting,

- (a) for a depository, a proxy in the form of Form 54-101F3, and
- (b) for an intermediary, a proxy in the form of Form 54-101F4;

“ownership information” means, for a beneficial owner of securities that holds the securities through an intermediary in an account of the intermediary, the beneficial owner’s name, address, holdings of the securities in the account, preferred language of communication, if known, the electronic mail address of the beneficial owner, and whether the beneficial owner has given to the intermediary a currently valid consent to the electronic delivery of documents from the intermediary;

“participant in a depository” means a person or company for whom a depository maintains an account in which entries may be made to effect a transfer or pledge of a security;

“preferred language of communication” means either the English language or the French language;

“proximate intermediary” means, for a security,

- (a) a participant in a depository holding the security, or
- (b) an intermediary that is the registered holder of the security;

“proxy-related materials” means securityholder material relating to a meeting that the reporting issuer is required under corporate law or securities legislation to send to the registered holders of the securities;

“record date for notice” means, for a meeting, the date established in accordance with corporate law for the determination of the registered holders of securities that are entitled to receive notice of the meeting;

“record date for voting” means, for a meeting, the date, if any, established in accordance with corporate law for the determination of the registered holders of securities that are entitled to vote at the meeting;

“registered holder” means, for a security, the person or company shown as the holder of the security on the books or records of the reporting issuer;

“request for beneficial ownership information” means, for a security, a request for beneficial ownership information in the form of Form 54-101F2 sent by a reporting issuer to a proximate intermediary holding the security;

“request for voting instructions” means, for a security that carries the right to vote at a meeting,

- (a) if the request is made by the reporting issuer, a request for voting instructions from a beneficial owner of the security that is a NOBO, set out in the form of Form 54-101F6, and
- (b) if the request is made by an intermediary, a request for voting instructions from the beneficial owner of the security on whose behalf the intermediary holds the security set out in the form of Form 54-101F7;

“security” means a security of a reporting issuer;

“securityholder” means, for a security, the registered holder of the security, the beneficial owner of the security, or both, depending upon the context;

“securityholder materials” means, for a reporting issuer, materials that are sent to registered holders of securities of the reporting issuer;

“send” means to deliver, send or forward or arrange to deliver, send or forward in any manner, including by prepaid mail, courier or by electronic means; and

“special resolution” for a meeting,

- (a) has the same meaning given to the term “special resolution” under corporate law, or
- (b) if no such term exists under corporate law, means a resolution that is required to be passed by at least two-thirds of the votes cast;

“special meeting” means a meeting at which a special resolution is being submitted to the securityholders of a reporting issuer;

“transfer agent” means a person or company that carries on the business of a transfer agent.

**1.2 Holding of Security by Intermediary** - In this Instrument, an intermediary is considered to hold a security if the security is held

- (a) by the intermediary directly; or
- (b) by the intermediary indirectly through another person or company on behalf of the intermediary.

**1.3 Use of Required Forms**

- (1) A person or company required to send or use a required form under this Instrument may substitute another form or document or combine the required form with another form or document, so long as the form or document used requests or includes the same information contemplated by the required form.
- (2) Subsection (1) does not apply to a NOBO list in the form of Form 54-101F5 unless both the party requesting and the party providing the NOBO list agree to an alternative form.

**1.4 Fees** - A fee payable under this Instrument shall be, unless prescribed by the regulator or securities regulatory authority, a reasonable amount.

## **PART 2 REPORTING ISSUERS**

**2.1 Establishment of Meeting and Record Dates** - A reporting issuer that is required to give notice of a meeting to the registered holders of any of its securities shall fix

- (a) a date for the meeting;
- (b) a record date for notice of the meeting, which shall be no fewer than 30 and no more than 60 days before the meeting date; and
- (c) if required or permitted by corporate law, a record date for voting at the meeting.

**2.2 Notification of Meeting and Record Dates**

- (1) Subject to section 2.20, at least 25 days before the record date for notice of a meeting, the reporting issuer shall send a notification of meeting and record dates to
  - (a) all depositories;
  - (b) the securities regulatory authority; and
  - (c) each exchange in Canada on which securities of the reporting issuer are listed.
- (2) The notification of meeting and record dates referred to in subsection (1) shall specify
  - (a) the name of the reporting issuer;
  - (b) the date fixed for the meeting;
  - (c) the record date for notice;
  - (d) the record date for voting, if any;
  - (e) the beneficial ownership determination date;
  - (f) the classes or series of securities that entitle the holder to receive notice of the meeting;
  - (g) the classes or series of securities that entitle the holder to vote at the meeting; and
  - (h) whether the meeting is a special meeting.

**2.3 Intermediary Search Request - Request to Depository**

- (1) At the same time as a reporting issuer sends a notification of meeting and record dates for a meeting to a depository, the reporting issuer shall request the depository to send to the reporting issuer
  - (a) subject to section 2.4, a report that specifies the number of securities of the reporting issuer of each class or series that entitle the holder to receive notice of the meeting or to vote at the meeting that are currently registered in the name of the depository, the identity of any other person or company that holds securities of the reporting issuer of the series or class specified in the request on behalf of the depository and the number of those securities held by that other person or company;
  - (b) subject to section 2.4, a list of all intermediaries and their nominees shown on the intermediary master list;
  - (c) subject to section 2.4, a list setting out the names, addresses, telephone numbers, fax numbers, any electronic mail addresses and the respective holdings of participants in the depository of each class or series of securities that entitle the holder to receive notice of the meeting or to vote at the meeting; and
  - (d) the omnibus proxy required to be sent under subsection 5.4(1).
- (2) In addition to the request referred to in subsection (1), a reporting issuer may request, at any time, a depository to send any or all of the information referred to in subsection (1), other than paragraph (1)(d), for any class or series of securities of the reporting issuer, and as of a date, specified in the request.

**2.4 No Intermediary Search Request if Reporting Issuer has Electronic Access -** A reporting issuer shall not request from the depository information referred to in paragraph 2.3(1)(a), 2.3(1)(b) or 2.3(1)(c) if the information is included on a file maintained by the depository in electronic format and the reporting issuer has access to the file.

**2.5 Request for Beneficial Ownership Information**

- (1) Subject to section 2.20, at least 20 days before the record date for notice of a meeting, the reporting issuer, using information, including the intermediary master lists, provided by depositories under section 5.3 or referred to in section 2.4, shall complete Part 1 of a request for beneficial ownership information and send it to each proximate intermediary that is

- (a) identified by a depository as a participant in the depository holding securities that entitle the holder to receive notice of the meeting or to vote at the meeting; or
  - (b) listed as an intermediary on the intermediary master list provided by a depository where the intermediary, or a nominee of the intermediary that is identified on the intermediary master list, is a registered holder of securities that entitle the holder to receive notice of the meeting or to vote at the meeting.
- (2) In addition to making the request referred to in subsection (1) in connection with a meeting, a reporting issuer, using information, including the intermediary master lists, provided by depositories under section 5.3 or referred to in section 2.4, may make, for any class or series of securities of the reporting issuer, at any time, a request for beneficial ownership information by completing Part 1 of a request for beneficial ownership information and sending it to any proximate intermediary that is
- (a) identified by a depository as a participant in the depository holding the securities; or
  - (b) listed as an intermediary on the intermediary master list provided by a depository where the intermediary, or a nominee of the intermediary that is identified on the intermediary master list, is a registered holder of the securities.
- (3) A reporting issuer that makes a request for beneficial ownership information under either subsection (1) or subsection (2) that includes a request for NOBO lists shall provide a written undertaking to the proximate intermediary in the form of Form 54-101F9.
- (4) A reporting issuer that requests beneficial ownership information under this section shall do so through a transfer agent.

2.6 **No Depositories or Intermediaries are Registered Holders** - A reporting issuer is not subject to section 2.3 or 2.5 if, on the 25th day before the record date for notice of the meeting,

- (a) none of the registered holders of its securities is a depository, a nominee of a depository, or a person or company listed as an intermediary or the nominee of an intermediary on the intermediary master list of any depository; or
- (b) all of the information contemplated in Part 2 of the request for beneficial ownership information is known to the reporting issuer.

- 2.7 Sending Proxy-Related Materials to Beneficial Owners** - A reporting issuer that is required by Canadian securities legislation to send proxy-related materials to the registered holders of any class or series of its securities shall, subject to section 2.10 and subsection 2.12(3) send the proxy-related materials to beneficial owners of the securities, by either sending
- (a) directly to NOBOs, and indirectly under section 2.12 to OBOs; or
  - (b) indirectly under section 2.12 to beneficial owners.
- 2.8 Other Securityholder Materials** - A reporting issuer may, but is not required to, send securityholder materials other than proxy-related materials to beneficial owners of its securities, by either sending
- (a) directly to NOBOs, and indirectly under section 2.12 to OBOs; or
  - (b) indirectly under section 2.12 to beneficial owners.
- 2.9 Direct Sending of Proxy-Related Materials to NOBOs by Reporting Issuer** - A reporting issuer that has stated in its request for beneficial ownership information sent in connection with a meeting that it will send proxy-related materials to, and seek voting instructions from, NOBOs shall, subject to section 2.10 and subsection 2.12(3), send, at its expense, at least 21 days before the date fixed for the meeting, the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request.
- 2.10 Sending Securityholder Materials Against Instructions** - Except as required by securities legislation, no reporting issuer that uses a NOBO list to send securityholder materials directly to NOBOs on the NOBO list shall send the securityholder materials to NOBOs that are identified on the NOBO list as having declined to receive those materials unless the reporting issuer has specified in the request for beneficial ownership information sent under section 2.5 in connection with the sending of materials that the securityholder materials will be sent to all beneficial owners of securities.
- 2.11 Disclose How Information Obtained**
- (1) A reporting issuer that uses a NOBO list to send securityholder materials directly to NOBOs on the NOBO list shall include in the materials the following statement:

*These securityholder materials are being sent to both registered and non-registered owners of the securities. If you are a non-registered owner, and the issuer or its agent has sent these materials directly to you, your name and address and information about your holdings of securities, have been*

*obtained in accordance with applicable securities regulatory requirements from the intermediary holding on your behalf.*

- (2) A reporting issuer that uses a NOBO list to send proxy-related materials that solicit votes or voting instructions directly to a NOBO on the NOBO list shall include, after the text required by subsection (1), the following statement:

*By choosing to send these materials to you directly, the issuer (and not the intermediary holding on your behalf) has assumed responsibility for (i) delivering these materials to you, and (ii) executing your proper voting instructions. Please return your voting instructions as specified in the request for voting instructions.*

## **2.12 Indirect Sending of Securityholder Materials by Reporting Issuer**

- (1) A reporting issuer sending securityholder materials indirectly to beneficial owners shall send to each proximate intermediary that responded to the applicable request for beneficial ownership information the number of sets of those materials specified by that proximate intermediary
- (a) at least four business days before the twenty-first day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by prepaid mail other than first class mail;
  - (b) at least three business days before the twenty-first day before the date fixed for the meeting, in the case of all other proxy-related materials that are to be sent on by the proximate intermediary; or
  - (c) on the day specified in the request for beneficial ownership information, in the case of securityholder materials that are not proxy-related materials that are to be sent on by the proximate intermediary.
- (2) A reporting issuer may satisfy its obligation to send securityholder materials to an intermediary under this section by sending the securityholder materials to a person or company designated by the intermediary.
- (3) If a proximate intermediary in a foreign jurisdiction holds securities on behalf of NOBOs and
- (a) the law of the foreign jurisdiction prohibits the reporting issuer from sending securityholder materials directly to NOBOs; or

- (b) the proximate intermediary has stated in response to a request for beneficial ownership information that the law in the foreign jurisdiction requires the proximate intermediary to deliver securityholder materials to beneficial owners,

the reporting issuer shall not, in either case, send securityholder materials to those NOBOs and shall send to that proximate intermediary the number of sets of securityholder materials requested by the proximate intermediary in the response.

**2.13 Fee for Search** - A reporting issuer shall pay a fee to a proximate intermediary for furnishing the information requested in a request for beneficial ownership information made by the reporting issuer.

**2.14 Fee for Sending Materials Indirectly**

- (1) A reporting issuer that sends securityholder materials indirectly to NOBOs through a proximate intermediary shall pay to the proximate intermediary, upon receipt by the reporting issuer of a certificate of sending to NOBOs in accordance with the instructions specified by the reporting issuer in the request for beneficial ownership information
  - (a) a fee for sending the securityholder materials to the NOBOs;
  - (b) the actual cost of any postage incurred by the proximate intermediary in sending the securityholder materials to the NOBOs in accordance with any mailing instructions specified by the reporting issuer in the request for beneficial ownership information; and
  - (c) if the securityholder materials were sent by mail other than first class mail in accordance with the mailing instructions specified by the reporting issuer in the request for beneficial ownership information, the reasonable additional handling costs associated with the preparation by the proximate intermediary of the securityholder materials for mailing to NOBOs.
- (2) A reporting issuer that sends securityholder materials, indirectly through a proximate intermediary, to OBOs that have declined in accordance with this Instrument to receive those materials, shall pay to the proximate intermediary, upon receipt by the reporting issuer of a certificate of sending to OBOs in accordance with the instructions specified by the reporting issuer in the request for beneficial information
  - (a) a fee for sending the securityholder materials to the OBOs;

- (b) the actual cost of any postage incurred by the proximate intermediary in sending the securityholder materials to the OBOs in accordance with any mailing instructions specified by the reporting issuer in the request for beneficial ownership information; and
- (c) if the securityholder materials were sent by mail other than first class mail in accordance with the mailing instructions specified by the reporting issuer in the request for beneficial information, the reasonable additional handling costs associated with the preparation by the proximate intermediary of the securityholder materials for mailing to OBOs.

2.15 **Adjournment or Change in Meeting** - A reporting issuer that sends a notice of adjournment or other change for a meeting to registered holders of its securities shall concurrently send the notice, including any change in the beneficial ownership determination date,

- (a) to each of the persons or companies referred to in subsection 2.2(1);
- (b) to each proximate intermediary to which the reporting issuer sent a request for beneficial ownership information for the meeting under subsection 2.5(1);
- (c) directly, in accordance with section 2.9, other than the timing requirement of that section, to each of the NOBOs to which it previously directly sent proxy-related materials for the meeting under section 2.9; and
- (d) indirectly, in accordance with section 2.12, other than the timing requirement of that section, to each of the NOBOs and OBOs to which it previously indirectly sent proxy-related materials for the meeting under section 2.12.

2.16 **Explanation of Voting Rights** - Proxy-related materials for a meeting sent to a beneficial owner of securities shall explain, in plain language, how the beneficial owner may exercise voting rights attached to the securities, including the right of the beneficial owner to attend and vote the securities directly at the meeting.

2.17 **Request for Voting Instructions** - A reporting issuer that sends proxy-related materials that solicit votes or voting instructions directly to a NOBO shall prepare and include with the proxy-related materials, in substitution for the proxy otherwise contained in the proxy-related materials, a request for voting instructions for the matters to which the proxy-related materials relate for return to the reporting issuer.

2.18 **Request for Legal Proxy** - If a reporting issuer that has sent directly to a NOBO proxy-related materials for a meeting that solicit voting instructions receives a written request from the NOBO for a legal proxy for the meeting, the reporting issuer

shall arrange at no cost to the NOBO to deliver to the NOBO a legal proxy to the extent that the reporting issuer's management holds a proxy given directly by the registered holder or indirectly given by the registered holder through one or more other proxy holders in respect of the securities beneficially owned by the NOBO.

**2.19 Tabulation and Execution of Voting Instructions** - A reporting issuer shall

- (a) tabulate the voting instructions received from NOBOs in response to a request for voting instructions referred to in section 2.17; and
- (b) through the actions of management of the reporting issuer, execute the voting instructions as instructed by the NOBOs, to the extent that the management of the reporting issuer holds the corresponding proxy.

**2.20 Abridging Time** - A reporting issuer may abridge the time prescribed in subsections 2.1(b), 2.2(1) or 2.5(1) if the reporting issuer

- (a) arranges to have proxy-related materials for the meeting sent in compliance with this Instrument to all beneficial owners at least 21 days before the date fixed for the meeting;
- (b) arranges to have carried out all of the requirements of this Instrument in addition to those described in subparagraph (a); and
- (c) files at the time it files the proxy-related materials, a certificate of one of its officers reporting that it made the arrangements described in paragraphs (a) and (b) and that the reporting issuer is relying upon this section.

**PART 3 INTERMEDIARIES' OBLIGATIONS CONCERNING THE OBTAINING OF BENEFICIAL OWNER INSTRUCTIONS**

**3.1 Intermediary Information to Depository**

- (1) Before a person or company acts as an intermediary, the person or company shall send the following information to each depository:
  - (a) the intermediary's name and address;
  - (b) the name and address of each nominee of the intermediary in whose name the intermediary holds securities on behalf of beneficial owners; and
  - (c) the name, address, telephone number, fax number and any electronic mail address of a representative of the intermediary.

- (2) A person or company that is an intermediary on the date of the coming into force of this Instrument shall, on that date, send to each depository the information referred to in subsection (1), unless it has already done so.
- (3) An intermediary shall send notice to each depository of a change in the information contained in a notice given under this section within five business days after the change.

**3.2 Instructions from New Clients** - Subject to section 3.4, an intermediary that opens an account for a client shall,

- (a) as part of its procedures to open the account, send to the client an explanation to clients and a client response form; and
- (b) before the intermediary holds securities on behalf of the client in the account
  - (i) obtain instructions from the client on the matters to which the client response form pertains;
  - (ii) obtain the electronic mail address of the client, if available; and
  - (iii) if applicable, enquire whether the client wishes to consent and, if so, obtain the consent of the client, to electronic delivery of documents by the intermediary to the client.

**3.3 Transitional - Instructions from Existing Clients** - An intermediary that holds securities on behalf of a client in an account that was opened before the coming into force of this Instrument

- (a) may seek new instructions from its client in relation to the matters to which the client response form pertains; and
- (b) in the absence of new instructions from the client, shall rely on the instructions previously given or deemed to have been given by the client under NP41 in respect of that account, on the following basis:
  - (i) If the client chose to permit the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the client is a NOBO under this Instrument;
  - (ii) If the client was deemed to have permitted the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the intermediary may choose to treat the client as a NOBO under this Instrument;

- (iii) If the client chose not to permit the intermediary to disclose the client's name and security holdings to the issuer of the security or other sender of material, the client is an OBO under this Instrument;
- (iv) If the client chose not to receive material relating to annual or special meetings of securityholders or audited financial statements, the client is considered to have declined under this Instrument to receive:
  - (A) proxy-related materials that are sent in connection with a securityholder meeting;
  - (B) financial statements and annual reports that are not part of proxy-related materials; and
  - (C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders;
- (v) If the intermediary was permitted not to provide material relating to annual meetings of securityholders or audited financial statements, the client is considered to have declined under this Instrument to receive:
  - (A) proxy-related materials that are sent in connection with a securityholder meeting that is not a special meeting;
  - (B) financial statements and annual reports that are not part of proxy-related materials; and
  - (C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders;
- (vi) If the client chose to receive material relating to annual or special meetings of securityholders and audited financial statements, the client is considered to have chosen under this Instrument to receive all securityholder materials sent to beneficial owners of securities;
- (vii) The client is considered to have chosen under this Instrument as the client's preferred language of communication the language that has been customarily used by the intermediary to communicate with the client.

**3.4 Amending Client Instructions** - A client may at any time change the instructions it has given or is deemed to have given in connection with any of the choices provided

for in the client response form by advising the intermediary that holds securities on the client's behalf of the change.

- 3.5 Application of Instructions to Accounts** - The instructions given to an intermediary by a beneficial owner under this Part apply in respect of all securities held by the beneficial owner in the account of the intermediary identified in the client response form.

## **PART 4 INTERMEDIARIES' OTHER OBLIGATIONS**

### **4.1 Request for Beneficial Ownership Information - Response**

- (1) A proximate intermediary that receives a request for beneficial ownership information from a reporting issuer, that pertains to a meeting, shall send to the reporting issuer, through the transfer agent of the reporting issuer that sent the request
  - (a) within three business days of receiving the request, the information referred to in Part 2 of the request for beneficial ownership information other than Item 7;
  - (b) if the request contains a request for a NOBO list, within three business days after the beneficial ownership determination date for the meeting specified in the request, the NOBO list and other information required in accordance with Item 7 of Part 2 of the request for beneficial ownership information as at the beneficial ownership determination date of the meeting; and
  - (c) within three business days after the beneficial ownership determination date for the meeting specified in the request, if the request stated that the reporting issuer will send proxy-related materials to, and seek voting instructions from, NOBOs, a form of omnibus proxy that appoints management of the reporting issuer as the proximate intermediary's proxy holder for the securities held, as of the beneficial ownership determination date, on behalf of each NOBO identified on the NOBO list, in respect of which the proximate intermediary is either the registered holder or proxy holder.
- (2) A proximate intermediary that receives a request for beneficial ownership information from a reporting issuer that pertains to the sending of securityholder materials other than in connection with a meeting shall, within three business days of receiving the request, send to the reporting issuer, through the transfer agent of the reporting issuer that sent the

request, the NOBO lists if applicable and the other information referred to in Part 2 of the request for beneficial ownership information.

- (3) A proximate intermediary that receives a request for beneficial ownership information from a reporting issuer that contains a request for a NOBO list but does not pertain to a meeting or the sending of securityholder materials shall, within three business days of receiving the request, send to the reporting issuer, through the transfer agent of the reporting issuer that sent the request, the NOBO lists if applicable and the other information referred to in Part 2 of the request for beneficial ownership information.
- (4) The response of a proximate intermediary to a reporting issuer given under this section shall be a consolidated response relating to all beneficial owners of each class and series of securities, specified in the request for beneficial ownership information, that hold, directly or indirectly, through the proximate intermediary.
- (5) An intermediary holding securities, directly or indirectly, through a proximate intermediary, shall take all necessary steps to ensure that the proximate intermediary is provided with the information required to enable it to satisfy its obligations under this section within the times required by this section.
- (6) An intermediary is not required under this Instrument to provide ownership information concerning an OBO to any person or company.

#### **4.2 Sending of Securityholder Materials to Beneficial Owners by Intermediaries**

- (1) Subject to sections 4.3 and 4.7, a proximate intermediary that receives securityholder materials from a reporting issuer for sending to beneficial owners shall send
  - (a) one set of the materials to each OBO of the relevant securities that is a client of the proximate intermediary;
  - (b) one set of the materials to each NOBO of the relevant securities if the reporting issuer stated in the applicable request for beneficial ownership information, or otherwise advised the proximate intermediary, that the reporting issuer will send the materials to NOBOs indirectly through intermediaries; and
  - (c) appropriate quantities of materials to all intermediaries holding securities of the relevant class or series that are clients of the proximate intermediary, for sending by them under subsection (3).
- (2) A proximate intermediary shall comply with subsection (1)

- (a) within four business days after receipt in the case of securityholder materials to be sent by prepaid mail other than first class mail; and
  - (b) within three business days after receipt in the case of securityholder materials to be sent by any other means.
- (3) An intermediary that receives securityholder materials from another intermediary under this section shall send, within one business day of receipt
- (a) one set of the materials to each OBO that is a client of the intermediary; and
  - (b) appropriate quantities of the materials to all intermediaries holding securities of the relevant class or series that are clients of the intermediary for sending by them under this subsection.
- (4) The persons or companies to whom securityholder materials are sent under this section shall be determined
- (a) as at the beneficial ownership determination date, in the case of proxy-related materials; and
  - (b) as at the date specified in the relevant request for beneficial ownership information, in the case of securityholder materials not sent in connection with a meeting.
- (5) An intermediary may satisfy its obligation to send securityholder materials to another intermediary under this section by sending the securityholder materials to a person or company designated by the other intermediary.

**4.3 Sending Securityholder Materials Against Instructions** - An intermediary that receives securityholder materials that are to be sent to a beneficial owner of securities shall not send the securityholder materials to the beneficial owner if the beneficial owner has declined in accordance with this Instrument to receive those materials unless the reporting issuer has specified in the request for beneficial ownership information sent under section 2.5 in connection with the sending of the securityholder materials that the securityholder materials shall be sent to all beneficial owners of securities.

**4.4 Request for Voting Instructions** - An intermediary that receives proxy-related materials that solicit votes or voting instructions from securityholders, for sending by the intermediary to beneficial owners of the securities, shall prepare and include with the proxy-related materials that it sends to the beneficial owners, in substitution for the proxy otherwise contained in the proxy-related materials, a request for voting

instructions for the matters to which the proxy-related materials relate for return to the intermediary.

**4.5 Request for Legal Proxy** - An intermediary that receives a written request from a beneficial owner for a legal proxy for securities the intermediary holds on behalf of the beneficial owner as at the beneficial ownership determination date for a meeting shall send to the beneficial owner a legal proxy to the extent that the intermediary then holds a proxy directly given by the registered holder, or indirectly given by the registered holder through one or more other proxy holders, in connection with the securities held by the intermediary for the beneficial owner.

**4.6 Tabulation and Execution of Voting Instructions** - An intermediary shall

- (a) tabulate voting instructions received from beneficial owners of securities in response to a request for voting instructions sent by the intermediary under section 4.4; and
- (b) for each beneficial owner, execute the voting instructions received from the beneficial owner to the extent that the intermediary holds a proxy directly given by the registered holder, or indirectly given by the registered holder through one or more other proxy holders, in respect of the securities held by the intermediary for the beneficial owner.

**4.7 Securities Legislation** - Despite any other provision of this Part, nothing in this Part requires a person or company to send securityholder materials to a beneficial owner if securities legislation specifically permits the person or company to decline to send those materials to the beneficial owner.

**4.8 Fees from Persons or Companies other than Reporting Issuers** – A proximate intermediary that receives securityholder materials from a person or company that is not a reporting issuer for sending to beneficial owners is not required to send the securityholder materials to any beneficial owners or intermediaries that are clients of the proximate intermediary unless the proximate intermediary receives reasonable assurance of payment for the delivery of the securityholder materials.

## **PART 5 DEPOSITORIES**

**5.1 Intermediary Master List** - A depository shall maintain a current list of intermediaries containing the information received by the depository from intermediaries under section 3.1 and shall send a copy of that list to any new depository recognized under this Instrument.

**5.2 Index of Meeting and Record Dates**

- (1) A depository shall maintain an index of pending meetings containing the information that it receives from reporting issuers under section 2.2.
- (2) A depository shall arrange for the timely publication of the information it receives from a reporting issuer under section 2.2 in the national financial press and may charge the reporting issuer a publication fee in a reasonable amount for the publication.

**5.3 Depository Response to Intermediary Search Request by Reporting Issuer -**

Within two business days of its receipt of an intermediary search request from a reporting issuer, a depository shall send to the reporting issuer a report, containing information that is as current as possible, that

- (a) specifies the number of securities of the reporting issuer of the series or class specified in the request that are registered in the name of the depository, the identity of any other person or company that holds on behalf of the depository securities of the reporting issuer of the series or class specified in the request and the number of such securities held by that other person or company;
- (b) specifies the names, addresses, telephone numbers, fax numbers, any electronic mail addresses and respective holdings of participants in the depository of securities of the series or class specified in the request, on whose behalf the depository holds the securities; and
- (c) contains a copy of the intermediary master list.

**5.4 Depository to send Participant Omnibus Proxy to Reporting Issuer**

- (1) Within two business days after the beneficial ownership determination date specified in the notification of meeting and record dates referred to in section 2.2, the depository shall send to the reporting issuer an omnibus proxy, appointing each participant, on whose behalf, and to the extent that, the depository holds, as of the beneficial ownership determination date, securities that entitle the holder to vote at the meeting, as the depository's proxy holder in respect of the securities held by the depository on behalf of the participant.
- (2) The depository shall send to each of the participants named in an omnibus proxy referred to in subsection (1), at the same time as the depository sends the omnibus proxy to the reporting issuer, confirmation of the proxy given by the depository.

**PART 6 OTHER PERSONS OR COMPANIES**

## **6.1 Requests for NOBO Lists from a Reporting Issuer**

- (1) A person or company may request from a reporting issuer the most recently prepared NOBO list, for any proximate intermediary holding securities of the reporting issuer, that is in the reporting issuer's possession.
- (2) A request for a NOBO list under this section shall be accompanied by an undertaking in the form of Form 54-101F9 of the person or company making the request.
- (3) The person or company making a request under subsection (1) shall pay a fee to the reporting issuer for preparing the NOBO list for sending under this section.
- (4) A reporting issuer shall send any NOBO list requested under this section, within ten days of receipt of both the request and the fee for preparing the list for sending under this section.
- (5) A reporting issuer shall delete from any NOBO list sent under this section any reference to FINS numbers referred to in any form and any other information that would identify the intermediary through which a NOBO holds securities.

## **6.2 Other Rights and Obligations of Persons and Companies other than Reporting Issuers**

- (1) A person or company may take any action permitted under this Instrument to be taken by a reporting issuer and, in so doing, has all the rights, and is subject to all of the obligations, of a reporting issuer in connection with that action, unless this Instrument specifies a different right or obligation.
- (2) In connection with actions taken under subsection (1) by a person or company other than the reporting issuer, references in this Instrument to a "reporting issuer" shall be read as references to that person or company and all other persons and companies will have the same obligations under this Instrument to that person or company as they would have if the person or company were the reporting issuer.
- (3) Subsections (1) and (2) do not apply to sections 2.1, 2.2, subsections 2.3(1) and 2.5(1), paragraphs 2.12(1) (a) and (b), sections 2.14 and 2.18, paragraph 4.1(1)(c), section 5.4.
- (4) A person or company other than the reporting issuer to which the request relates that makes an intermediary search request under subsection 2.3(2) or a request for beneficial ownership information under subsection 2.5(2)

shall concurrently send a copy of that request to the reporting issuer of the securities to which the request relates.

- (5) A person or company other than the reporting issuer to which the request relates that makes an intermediary search request under subsection 2.3(2) or a request for beneficial ownership information under subsection 2.5(2) shall provide an undertaking in the form of Form 54-101F9.
- (6) A person or company, other than a reporting issuer to which the request relates, that sends materials indirectly to beneficial owners shall pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners.

## **PART 7 USE OF NOBO LIST AND INDIRECT SENDING OF MATERIALS**

**7.1 Use of NOBO List** – No reporting issuer or other person or company shall use a NOBO list or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument, except in connection with:

- (a) sending securityholder materials to NOBOs in accordance with this Instrument;
- (b) an effort to influence the voting of securityholders of the reporting issuer;
- (c) an offer to acquire securities of the reporting issuer; or
- (d) any other matter relating to the affairs of the reporting issuer.

**7.2 Indirect Sending of Materials** – No person or company other than the reporting issuer shall send any materials indirectly to beneficial owners of a reporting issuer under section 2.12 of this Instrument except in connection with:

- (a) an effort to influence the voting of securityholders of the reporting issuer;
- (b) an offer to acquire securities of the reporting issuer; or
- (c) any other matter relating to the affairs of the reporting issuer.

## **PART 8 MISCELLANEOUS**

**8.1 Default of Party in Communication Chain** - If a person or company fails to send information or materials in accordance with the requirements of this Instrument, the person or company whose required response or action under this Instrument is dependent upon receiving the information or materials shall use reasonable efforts to

obtain the information or materials from the other person or company, and in so doing is exempt from the timing provisions of this Instrument in connection with the response or action to the extent that the delay arose from the failure of the other person or company.

**8.2 Right to Proxy** - Nothing in this Instrument shall be interpreted to restrict in any way

- (a) a beneficial owner's right to demand and to receive from an intermediary holding securities on behalf of the beneficial owner a proxy enabling the beneficial owner to vote the securities; or
- (b) the right of a depository or intermediary to vary an omnibus proxy in respect of securities to properly reflect a change in the registered or beneficial ownership of the securities.

**PART 9 EXCEPTIONS AND EXEMPTIONS**

**9.1 Audited Annual Financial Statements or Annual Report** - The time periods applicable to sending of proxy-related materials prescribed in this Instrument do not apply to the sending of proxy-related materials that are annual financial statements or an annual report if the statements or report are sent directly or indirectly in accordance with the Instrument to beneficial owners of the securities within the time limitations established in applicable corporate law and securities legislation for the sending of the statements or report to registered holders of the securities.

**9.2 Exemptions**

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

**PART 10 EFFECTIVE DATES AND TRANSITION**

[Part 10 is not reproduced. It contained historical coming-into-force and transitional provisions.]

## FORM 54-101F1

### EXPLANATION TO CLIENTS AND CLIENT RESPONSE FORM

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101.

The use of this Form is referenced in sections 1.1, 3.2, 3.3, 3.4 and 3.5 of National Instrument 54-101.

#### EXPLANATION TO CLIENTS

##### [Letterhead of Intermediary]

Based on your instructions, the securities in your account with us are not registered in your name but in our name or the name of another person or company holding your securities on our behalf. The issuers of the securities in your account may not know the identity of the beneficial owner of these securities.

We are required under securities law to obtain your instructions concerning various matters relating to your holding of securities in your account.

##### **Disclosure of Beneficial Ownership Information**

Securities law permits reporting issuers and other persons and companies to send materials related to the affairs of the reporting issuer directly to beneficial owners of the reporting issuer's securities if the beneficial owner does not object to having information about it disclosed to the reporting issuer or other persons and companies. Part 1 of the client response form allows you to tell us if you **OBJECT** to the disclosure by us to the reporting issuer or other persons or companies of your beneficial ownership information, consisting of your name, address, electronic mail address, securities holdings and preferred language of communication. Securities legislation restricts the use of your beneficial ownership information to matters relating to the affairs of the reporting issuer.

If you **DO NOT OBJECT** to the disclosure of your beneficial ownership information, please mark the first box in Part 1 of the form. In those circumstances, you will not be charged with any costs associated with sending securityholder materials to you.

If you **OBJECT** to the disclosure of your beneficial ownership information by us, please mark the second box in Part 1 of the form. If you do this, all materials to be delivered to you as a beneficial owner of securities will be delivered by us. *[Instruction: Disclose particulars of any fees or charges that the intermediary may require an objecting beneficial owner to pay in connection with the sending of securityholder materials.]*

##### **Receiving Securityholder Materials**

For securities that you hold through your account, you have the right to receive proxy-related materials sent by reporting issuers to registered holders of their securities in connection with meetings of such securityholders. Among other things, this permits you to receive the necessary information to allow you to have your securities voted in accordance with your instructions at a securityholder meeting. *[Optional: Revise this paragraph, if appropriate, to state that objecting beneficial owners will not receive materials unless they or the relevant issuers bear the costs.]*

In addition, reporting issuers may choose to send other securityholder materials to beneficial owners, although they are not obliged to do so.

Securities law permits you to decline to receive securityholder materials. The three types of materials that you may decline to receive are:

- (a) proxy-related materials, including annual reports and financial statements, that are sent in connection with a securityholder meeting;
- (b) annual reports and financial statements that are not part of proxy-related materials; and

- (c) materials that a reporting issuer or other person or company sends to securityholders that are not required by corporate or securities law to be sent to registered holders.

Part 2 of the client response form allows you to receive all materials sent to beneficial owners of securities or to decline to receive the three types of materials referred to above.

If you want to receive **ALL** materials that are sent to beneficial owners of securities, please mark the first box on Part 2 of the enclosed client response form. If you want to **DECLINE** to receive the three types of materials referred to above, please mark the second box in Part 2 of the form.

*(Note: Even if you decline to receive the three types of materials referred to above, a reporting issuer or other person or company is entitled to deliver these materials to you, provided that the reporting issuer or other person or company pays all costs associated with the sending of these materials. These materials would be delivered to you through your intermediary if you have objected to the disclosure of your beneficial ownership information to reporting issuers.)*

### **Preferred Language of Communication**

Part 3 of the client response form allows you to tell us your preferred language of communication (English or French). You will receive materials in your preferred language of communication if the materials are available in that language.

### **Electronic Delivery of Documents**

Securities law permits us to deliver some documents by electronic means if the consent of the recipient to the means of delivery has been obtained. Please provide your electronic mail address if you have one.

*[Instruction: If applicable, either state (1) if the client wishes to receive documents by electronic delivery from the intermediary, the client should complete, sign and return an enclosed consent form with the client response form or (2) inform the client that electronic delivery of documents by the intermediary may be available upon his or her consent, and provide information as to how the client may provide that consent.]*

### **CONTACT**

If you have any questions or want to change your instructions in the future, please contact [name] at [phone number] or [address, fax number, electronic mail address and/or website].

**CLIENT RESPONSE FORM**

**TO:** [NAME OF INTERMEDIARY]

Account Number(s) \_\_\_\_\_

I have read and understand the explanation to clients that you have provided me in connection with this form and the choices indicated by me apply to all of the securities held in the above account(s).

**PART 1 - Disclosure of Beneficial Ownership Information**

*Please mark the corresponding box to show whether you **DO NOT OBJECT** or **OBJECT** to us disclosing your name, address, electronic mail address, securities holdings and preferred language of communication (English or French) to issuers of securities you hold with us and to other persons or companies in accordance with securities law. [Optional: For clients that **OBJECT**, disclose particulars of any fees or charges that the intermediary may require the client to pay in connection with the sending of securityholder materials.] [Note: The client response form may contain a place where an objecting beneficial owner can indicate its agreement to pay costs of delivery of securityholder materials that are not borne or required to be borne by another person or company.]*

**I DO NOT OBJECT to you disclosing the information described above.**

**I OBJECT to you disclosing the information described above.**

**PART 2 - Receiving Securityholder Materials**

*Please mark the corresponding box to show what materials you want to receive. Securityholder materials sent to beneficial owners of securities consist of the following materials: (a) proxy-related materials for annual and special meetings; (b) annual reports and financial statements that are not part of proxy-related materials; and (c) materials sent to securityholders that are not required by corporate or securities law to be sent.*

**I WANT to receive ALL securityholder materials sent to beneficial owners of securities.**

**I DECLINE to receive ALL securityholder materials sent to beneficial owners of securities. (Even if I decline to receive these types of materials, I understand that a reporting issuer or other person or company is entitled to send these materials to me at its expense.)**

**I WANT to receive ONLY proxy-related materials that are sent in connection with a special meeting.**

(Important note: These instructions do not apply to any specific request you give or may have given to a reporting issuer concerning the sending of interim financial reports<sup>1A</sup> of the reporting issuer. In addition, in some circumstances, the instructions you give in this client response form will not apply to annual reports or financial statements of an investment fund that are not part of proxy-related materials. An investment fund is also entitled to obtain specific instructions from you on whether you wish to receive its annual report or financial statements, and where you provide specific instructions, the instructions in this form with respect to financial statements will not apply.)

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<sup>1A</sup> For periods relating to financial years beginning before January 1, 2011, “interim financial reports” is read as “interim financial statements”.

**PART 3 - Preferred Language of Communication**

*Please mark the corresponding box to show your preferred language of communication.*

ENGLISH

FRENCH

I understand that the materials I receive will be in my preferred language of communication if the materials are available in that language.

## FORM 54-101F2

### REQUEST FOR BENEFICIAL OWNERSHIP INFORMATION

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101. The use of this Form is referenced in sections 1.1, 2.5, 2.6, 2.9, 2.10, 2.12, 2.13, 2.14 and 4.1, 4.2, 4.3 and 6.2 of National Instrument 54-101. References in this Form should be amended as appropriate to refer to any person or company using this Form in accordance with section 6.2 of National Instrument 54-101.

#### PART 1

##### REPORTING ISSUER INFORMATION

**Item 1 - Name and address of the reporting issuer.**

State the name and address of the reporting issuer.

**Item 2 - Contact person(s)**

State the name, address, telephone number, facsimile number and any electronic mail address or website of the contact person(s) of the reporting issuer, or of the reporting issuer's agent, if applicable, with whom the intermediary should deal.

State the billing address of the reporting issuer or of the reporting issuer's agent if different.

**Item 3 - Name and ISIN<sup>1</sup> number of each class or series of securities to be searched**

State the name and ISIN number of each class or series of securities of the reporting issuer for which information is requested.

**Item 4 - Purpose of the request for beneficial ownership information**

State whether the request is being made

- (a) in connection with neither a meeting nor the sending of securityholder materials;
- (b) for the purpose of obtaining a NOBO list, and in connection with sending securityholder materials, but not in connection with a meeting;
- (c) for the purpose of obtaining a NOBO list, and in connection with a meeting;
- (d) in connection with sending securityholder materials, not in connection with a meeting, and without a NOBO list being requested; or
- (e) in connection with a meeting, without a NOBO list being requested.

**Item 5 - Information to be Included or Requested if Item 4(a) is Applicable**

**5.1** If a NOBO list is desired, request a NOBO list without FINS number information.

**5.2** If desired, request information on the number of OBOs and NOBOs of the reporting issuer, indicating the number of each that have declined to accept materials to the extent applicable and the number of OBOs and NOBOs who have consented to electronic delivery of documents.

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<sup>1</sup> "ISIN" means International Stock Identification Number.

- 5.3 Specify the date as of which the NOBO list or the information referred to in item 5.2 is to be prepared.
- 5.4 If a NOBO list is requested, confirm that an undertaking of the reporting issuer in the form of Form 54-101F9 is enclosed or is being concurrently provided with the request for beneficial ownership information.

**Item 6 - Information to be Included or Requested if Item 4(b) is Applicable**

- 6.1 Request a NOBO list without FINS number information.
- 6.2 Provide an itemized list of the securityholder materials to be sent.
- 6.3 Indicate whether the securityholder materials are available in English or French only or in both English and French.
- 6.4 State whether the reporting issuer will send the materials directly to NOBOs or whether the reporting issuer will send the materials to the proximate intermediary for sending to NOBOs.
- 6.5 State the date as of which information provided in response to the request, including the NOBO lists, is to be provided.
- 6.6 State the date when the reporting issuer anticipates that proximate intermediaries will receive the materials referred to in item 6.2.
- 6.7 State whether the materials are to be sent by first class mail to the beneficial owners of securities and if not, state what method is to be used to send the materials, bearing in mind the different timing requirements in section 2.12 of the National Instrument. *[If materials are to be sent electronically, the sender should bear in mind the principles of National Policy 11-201 and, in Quebec, Staff Notice 11-201.]*
- 6.8 Confirm that an undertaking of the reporting issuer in the form of Form 54-101F9 is enclosed or is being concurrently provided with the request for beneficial ownership information.
- 6.9 If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state.

**Item 7 - Information to be Included or Requested if Item 4(c) is Applicable**

- 7.1 Request a NOBO list. If the reporting issuer will send proxy-related materials directly to NOBOs and seek voting instructions from NOBOs, specify that the NOBO list will include FINS number information. Otherwise, specify that the NOBO list will exclude FINS number information.
- 7.2 Provide an itemized list of the proxy-related materials to be sent.
- 7.3 Indicate whether the proxy-related materials are available in English or French only or in both English and French.
- 7.4 State whether the reporting issuer will send the materials directly to NOBOs or whether the reporting issuer will send the materials to the proximate intermediary for sending to NOBOs. If the reporting issuer will send materials directly to NOBOs, state whether the reporting issuer will be seeking voting instructions from NOBOs in connection with the meeting.
- 7.5 State:
- (a) the type of meeting (annual, special or annual and special);
  - (b) the beneficial ownership determination date of the meeting;
  - (c) the date, time and place of meeting; and

(d) the cut-off date and time for proxy receipt, if applicable.

7.6 State the name and ISIN number of each class or series of securities that carry the right to receive notice of the meeting or the right to vote at the meeting.

7.7 State that the information to be provided in response to the request, including the NOBO list, is to be provided as at the beneficial ownership determination date of the meeting.

7.8 State the date when the reporting issuer anticipates that proximate intermediaries will receive the materials referred to in item 7.2.

7.9 State whether the materials are to be sent by first class mail to the beneficial owners of securities and if not, state what method is to be used to send the materials, bearing in mind the different timing requirements in section 2.12 of the National Instrument. *[If materials are to be sent electronically, the sender should bear in mind the principles of National Policy 11-201 and, in Quebec, Staff Notice 11-201]*

7.10 Confirm that an undertaking of the reporting issuer in the form of Form 54-101F9 is enclosed or is being concurrently provided with the request for beneficial ownership information.

7.11 If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state.

**Item 8 - Information to be Included or Requested if Item 4(d) is Applicable**

8.1 Provide an itemized list of the securityholder materials to be sent.

8.2 Indicate whether the securityholder materials are available in English or French only or in both English and French.

8.3 State the date as at which information provided in response to the request is to be provided.

8.4 State the date when the reporting issuer anticipates that proximate intermediaries will receive the materials referred to in item 8.1.

8.5 State whether the materials are to be sent by first class mail to the beneficial owners of securities, and, if not, state what method is to be used to send the materials, bearing in mind the different timing requirements in section 2.12 of the National Instrument. *[If materials are to be sent electronically, the sender should bear in mind the principles of National Policy 11-201 and, in Quebec, Staff Notice 11-201.]*

8.6 If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state.

**Item 9 - Information to be Included or Requested if Item 4(e) is Applicable**

9.1 Provide an itemized list of the proxy-related materials to be sent.

9.2 Indicate whether the proxy-related materials are available in English or French only or in both English and French.

9.3 State:

(a) the type of meeting (annual, special or annual and special);

(b) the beneficial ownership determination date of the meeting;

(c) the date, time and place of meeting; and

- (d) the cut-off date and time for proxy receipt, if applicable.
- 9.4 State the name and ISIN number of each class or series of securities that carry the right to receive notice of the meeting or the right to vote at the meeting.
- 9.5 State that the information to be provided in response to the request is to be provided as at the beneficial ownership determination date of the meeting.
- 9.6 State the date when the reporting issuer anticipates that proximate intermediaries will receive the materials referred to in item 9.1.
- 9.7 State whether the materials are to be sent by first class mail to the beneficial owners of securities and, if not, state what method is to be used to send the materials, bearing in mind the different timing requirements in section 2.12 of the National Instrument. *[If materials are to be sent electronically, the sender should bear in mind the principles of National Policy 11-201 and, in Quebec, Staff Notice 11-201.]*
- 9.8 If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state.

**Item 10 - Payment of Costs of Sending to OBOs**

- 10.1 State whether the reporting issuer will pay the costs associated with the delivery of the securityholder materials to OBOs by intermediaries.

**Part 2**

**PROXIMATE INTERMEDIARY RESPONSE**

**Item 1 - Name and address of proximate intermediary**

State the name and address of the proximate intermediary.

**Item 2 - Contact person**

State the name, telephone number, fax number and any electronic mail address and website of the contact person(s) of the proximate intermediary, or of the proximate intermediary's agent, if applicable, with whom the reporting issuer should deal.

**Item 3 - Consolidation of replies**

- 3.1 If applicable, provide a list of
- (a) all nominees and depositories who hold securities on behalf of the proximate intermediary; and
  - (b) all nominees, depositories and other intermediaries for whom the proximate intermediary, directly or indirectly, holds securities.
- 3.2 Provide a list showing the number and class of securities held by each of the persons or companies referred to in Item 3.1.
- 3.3 Confirm that the information provided in the response includes securities held through those nominees, depositories and intermediaries holding, directly or indirectly, through the proximate intermediary.

**Item 4 - Address for receipt of materials**

If the request for beneficial ownership information was made either in connection with sending securityholder materials apart from a meeting, or in connection with a meeting, provide, if different from the information provided under Item 2, the name and municipal address to which the materials are to be sent for forwarding by the intermediary to beneficial owners or other intermediaries.

Also provide the name, telephone number, fax number and any electronic mail address and website of the contact person at that address if different from the information provided under item 2.

**Item 5 - Number of sets of materials required for forwarding by proximate intermediary to beneficial owners**

**5.1** Unless the request for beneficial ownership information was made only to obtain NOBO lists, state the number, including the number required in each case in English and French, of materials specified in Part 1 of this form required for forwarding by the proximate intermediary to beneficial owners. If the proximate intermediary is in a foreign jurisdiction and the law in that jurisdiction requires the proximate intermediary to send securityholder materials to beneficial owners including NOBOs, this fact may be stated and the number of sets of materials specified may include the number required for such NOBOs.

**5.2** If the reporting issuer has specified that it will send documents electronically, state the

(a) aggregate number of beneficial owners that hold securities, directly or indirectly, through the proximate intermediary; and

(b) the aggregate number of the beneficial owners referred to in paragraph (a) that have consented to electronic delivery of the documents by the intermediary through whom they hold the relevant securities.

**5.3** State the number of OBOs with addresses, as shown in the records of the intermediary through which the OBO holds securities, in each jurisdiction.

**Item 6 - Preliminary Search Information**

If the request for beneficial ownership information was made to receive information under item 5.2 of the request, provide information on the number of OBOs and NOBOs of the reporting issuer, indicating the number of each that have declined to receive materials in accordance with the Instrument.

**Item 7 - NOBO Lists**

If a NOBO list was requested and if the proximate intermediary is able to provide the list in electronic form in the form of Form 54-101F5, confirm that the proximate intermediary shall send it electronically in that form. If a NOBO list was requested and if the proximate intermediary is unable to provide the list electronically in the form of Form 54-101F5, enclose the list with the response. Unless the request for beneficial ownership information stated that the request was being made for the purpose of obtaining NOBO lists and in connection with a meeting where the reporting issuer would be sending materials to NOBOs and seeking voting instructions from NOBOs, exclude from the NOBO list the FINS number information.

**Item 8 - Confirmation of the search**

Confirm the completeness and accuracy of the foregoing information.

**Item 9 - Warning**

If NOBO lists were requested, the response shall contain the following statement:

WARNING: IT IS AN OFFENCE TO USE A NOBO LIST FOR PURPOSES OTHER THAN IN CONNECTION WITH:

- a. sending securityholder materials to NOBOs in accordance with National Instrument 54-101;
- b. an effort to influence the voting of securityholders of the reporting issuer;
- c. an offer to acquire securities of the reporting issuer; or
- d. any other matter relating to the affairs of the reporting issuer.

**Item 10 - Non-Delivery to OBOs**

- 10.1** State whether the proximate intermediary or any other intermediaries on whose behalf the proximate intermediary holds securities are entitled to decline to send, and will not send, securityholder materials to an OBO unless the OBO, or the relevant issuer, pays the costs of sending. *[This provision is not necessary if a reporting issuer has indicated in Form 54-102F2 that it will pay the costs of the intermediaries sending materials to OBOs.]*
- 10.2** Estimate the number of OBOs and their aggregate approximate holdings in securities of the reporting issuer that hold through the intermediaries referred to in item 10.1.

**FORM 54-101F3**

**OMNIBUS PROXY (DEPOSITORIES)**

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101.  
The use of this Form is referenced in sections 1.1, 2.3, 5.4 and 8.2 of National Instrument 54-101.

[Letterhead of Depository]

**OMNIBUS PROXY**

Subject to the paragraph that follows, [the undersigned], being a registered holder or proxy holder in respect of securities of the reporting issuer specified below, as at the beneficial ownership determination date, hereby appoints each of the persons or companies identified in the attached schedule, in respect of the corresponding securities referred to below, with power of substitution in each, to attend, vote and otherwise act for and on behalf of [the undersigned] to the extent of the number of securities specified, in respect of all matters that may come before the meeting of securityholders described below, and at any adjournment or continuance thereof.

The appointees shall not vote, or give a proxy requiring or authorizing another person or company to vote, the securities represented by this omnibus proxy except in accordance with voting instructions received from the beneficial owners whose securities are represented by this omnibus proxy or in accordance with other legal authority to vote the securities.

This instrument supersedes and revokes any prior appointment of proxy made by [the undersigned] with respect to the voting of the securities specified below at such meeting, or at any adjournment thereof.

Reporting issuer: \_\_\_\_\_

Class/Series of Security: \_\_\_\_\_

ISIN Number: \_\_\_\_\_

Number of Securities: \_\_\_\_\_

Date of Meeting: \_\_\_\_\_

Beneficial Ownership Determination Date: \_\_\_\_\_

*[Include date and signature]*

**Schedule to Form 54-101F3**

[Letterhead of Depository]

**SCHEDULE TO OMNIBUS PROXY**

Participant Security Positions

Reporting issuer: \_\_\_\_\_

ISIN Number: \_\_\_\_\_

Effective Date/Beneficial  
Ownership Determination Date: \_\_\_\_\_

\_\_\_\_\_

Participant Total Number of Securities of the relevant class or series

\_\_\_\_\_

[Name/address of participant] [position held by participant]

[Name/address of participant] [position held by participant]

[Name/address of participant] [position held by participant]

Total Number of Securities held by Participants for the relevant class or series [Total]

**FORM 54-101F4**

**OMNIBUS PROXY (PROXIMATE INTERMEDIARIES)**

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101. The use of this Form is referenced in sections 1.1, 4.1 and 8.2 of National Instrument 54-101.

[Letterhead of Proximate Intermediary]

**OMNIBUS PROXY**

Subject to the paragraph that follows, [the undersigned], being a registered holder or proxy holder in respect of securities of the reporting issuer specified below, as at the beneficial ownership determination date, hereby appoints [*insert names from reporting issuer's management proxy*], with power of substitution, to attend, vote and otherwise act for and on behalf of [the undersigned] to the extent of the number of securities specified, in respect of all matters that may come before the meeting of securityholders described below, and at any adjournment or continuance.

The appointees shall not vote, or give a proxy requiring or authorizing another person or company to vote, the securities represented by this omnibus proxy except in accordance with voting instructions received from the beneficial owners whose securities are represented by this omnibus proxy or in accordance with other legal authority to vote the securities.

This instrument supersedes and revokes any prior appointment of proxy made by [the undersigned] with respect to the voting of the securities specified below at such meeting, or at any adjournment thereof.

Reporting issuer: \_\_\_\_\_

Class/Series of Security: \_\_\_\_\_

ISIN Number: \_\_\_\_\_

Number of Securities: \_\_\_\_\_

Name of Registered Holder of Securities<sup>2</sup>: \_\_\_\_\_

Date of Meeting: \_\_\_\_\_

Beneficial Ownership Determination Date: \_\_\_\_\_

[Include date and signature]

<sup>2</sup> [Instruction: Specify if securities are held through more than one registered holder, and specify the number of securities held through each registered holder.]

**FORM 54-101F5**

**ELECTRONIC FORMAT FOR NOBO LIST**

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101. The use of this Form is referenced in sections 1.1, 1.3, 2.5, 2.9, 2.10, 2.11, 4.1, 6.1, 7.1 and 10.4 of National Instrument 54-101.

HEADER RECORD DESCRIPTION	TYPE	LENGTH	COMMENTS
RECORD TYPE	A	1	Header record = A
FINS NUMBER	A	4	Prefix T, M, V or C
ISIN <sup>3</sup>	A	12	
FILLER	X	3	Blank
SECURITY DESC.	A	32	Security Description
RECORD DATE	N	8	Format YYYYMMDD
CREATION DATE	N	8	Format YYYYMMDD
FILLER	X	250	Blank
DETAIL RECORD DESCRIPTION	TYPE	LENGTH	COMMENTS
RECORD TYPE	A	1	Detail Record = B
FINS NUMBER	A	4	Same as in Header record
ISIN <sup>1</sup>	A	12	
FILLER	X	3	Blank
FILLER	X	20	Blank
NAME	A	32	Holder Name
ADDRESS	A	32 x6	Occurs 6 times
FILLER	X	32	Blank
POSTAL CODE	A	9	
POSTAL REGION	A	1	C-Canada; U-USA; F-Foreign (other than USA); H-Hand Deliver
FILLER	X	2	Blank
E-MAIL ADDRESS	A	32	
LANGUAGE CODE	A	1	E-English; F-French
NUMBER OF SHARES	N	9	Shareholder Position
RECEIVE ALL MATERIAL	A	1	Y/N
AGREE TO ELECTRONIC DELIVERY BY INTERMEDIARY	A	1	Y/N
TRAILER RECORD DESCRIPTION	TYPE	LENGTH	COMMENTS
RECORD TYPE	A	1	Trailer record = C
FINS NUMBER	A	4	Same as in Header record
ISIN <sup>1</sup>	A	12	
FILLER	X	3	Blank
TOTAL SHAREHOLDERS	N	7	Number of "B" type records
TOTAL SHARES	N	11	Total shares on "B" records
FILLER	X	280	Blank

<sup>3</sup> "ISIN" means International Stock Identification Number.

WARNING: IT IS AN OFFENCE TO USE A NOBO LIST FOR PURPOSES OTHER THAN IN CONNECTION WITH:

- a. sending securityholder materials to NOBOs in accordance with National Instrument 54-101;
- b. an effort to influence the voting of securityholders of the reporting issuer;
- c. an offer to acquire securities of the reporting issuer; or
- d. any other matter relating to the affairs of the reporting issuer.

## FORM 54-101F6

### REQUEST FOR VOTING INSTRUCTIONS MADE BY REPORTING ISSUER

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101. The use of this Form is referenced in sections 1.1, 2.11, 2.17 and 2.19 of National Instrument 54-101. References in this Form should be amended as appropriate to refer to the person or company using this Form, in accordance with section 6.2 of National Instrument 54-101.

[Letterhead of Reporting issuer]

### REQUEST FOR VOTING INSTRUCTIONS

To our securityholders:

We are sending to you the enclosed proxy-related materials that relate to a meeting of the holders of the series or class of securities that are held on your behalf by the intermediary identified below. Unless you attend the meeting and vote in person, your securities can be voted only by management, as proxy holder of the registered holder, in accordance with your instructions.

*[Include instructions for appointing alternative proxy.]*

**We are prohibited from voting these securities on any of the matters to be acted upon at the meeting without your specific voting instructions.** In order for these securities to be voted at the meeting, **it will be necessary for us to have your specific voting instructions.** Please complete and return the information requested in this form to provide your voting instructions to us promptly.

*[Specify how and to whom the voting instructions may be returned.]*

Should you wish to attend the meeting and vote in person, please write your name in the place provided for that purpose in the voting instructions form provided to you and we will send to you a form of legal proxy which will grant you the right to attend the meeting and vote in person. If you require assistance in that regard, please contact [the undersigned].

*[Insert proximate intermediary name, code or identifier; name, address and respective holdings of securities of the relevant series or class held for the NOBO.]*

*[Insert description of proposals to be voted upon, other instructions or explanations, etc.]*

By providing voting instructions as requested, you are acknowledging that you are the beneficial owner of, and are entitled to instruct us with respect to the voting of, these securities.

(If these voting instructions are given on behalf of a body corporate set out the full legal name of the body corporate, the name and position of the person giving voting instructions on behalf of the body corporate and the address for service of the body corporate.)

## FORM 54-101F7

### REQUEST FOR VOTING INSTRUCTIONS MADE BY INTERMEDIARY

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101. The use of this Form is referenced in sections 1.1, 4.4 and 4.6 of National Instrument 54-101. References in this Form should be amended as appropriate to refer to the person or company using this Form, in accordance with section 6.2 of National Instrument 54-101.

[Letterhead of Intermediary]

### REQUEST FOR VOTING INSTRUCTIONS

To our clients:

We are sending to you the enclosed proxy-related materials that relate to a meeting of the holders of securities of the series or class held by us in your account but not registered in your name. Unless you attend the meeting and vote in person, your securities can be voted only by us, as registered holder or proxy holder of the registered holder, in accordance with your written instructions.

*[Include instructions for appointing alternative proxy.]*

**We are prohibited from voting these securities on any of the matters to be acted upon at the meeting without your specific voting instructions.** In order for these securities to be voted at the meeting, **it will be necessary for us to have your specific voting instructions.** Please complete and return the information requested in this form to provide your voting instructions to us promptly.

*[Specify how and to whom the voting instructions may be returned.]*

Should you wish to attend the meeting and vote in person, please write your name in the place provided for that purpose in the voting instructions form provided to you and we will send to you a form of legal proxy which will grant you the right to attend the meeting and vote in person. If you require assistance in that regard, please contact [the undersigned].

*[Insert intermediary name, code or identifier; name, address and respective holdings of securities of the relevant series or class held for the beneficial owner.]*

*[Insert description of proposals to be voted upon, other instructions or explanations, etc.]*

By providing voting instructions as requested, you are acknowledging that you are the beneficial owner of, and are entitled to instruct us with respect to the voting of, these securities.

(If these voting instructions are given on behalf of a body corporate set out the full legal name of the body corporate, the name and position of the person giving voting instructions on behalf of the body corporate and the address for service of the body corporate.)

**FORM 54-101F8**

**LEGAL PROXY**

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101. The use of this Form is referenced in sections 1.1, 2.18 and 4.5 of National Instrument 54-101.

**LEGAL PROXY**

Subject to the paragraph that follows, the undersigned, being a registered holder or proxy holder in respect of securities of the reporting issuer specified below, hereby appoints *[insert name(s) from beneficial owner request for a legal proxy]*, with power of substitution, to attend, vote and otherwise act for and on behalf of the undersigned to the extent of the number of securities specified, in respect of all matters that may come before the meeting of securityholders specified below, and at any adjournment or continuance.

This instrument supersedes and revokes any prior proxy made by the undersigned with respect to the voting of the securities specified below at such meeting, or at any adjournment thereof.

Issuer:

Class/Series of Security:

ISIN Number:

Number of Securities:

Name of Registered Holder of Securities and any Intermediaries through whom proxy is derived:

Date of Meeting:

Place of Meeting:

Beneficial Ownership Determination Date of Meeting:

By voting the securities represented by this legal proxy, you will be acknowledging that you are the beneficial owner of those securities or a person designated by the beneficial owner to vote those securities, and that you are entitled to vote those securities.

\_\_\_\_\_  
Registered Holder of Securities or Proxy holder

\_\_\_\_\_  
Signing Officer

\_\_\_\_\_  
Date

**FORM 54-101F9**  
**UNDERTAKING**

**Note:** Terms used in this Form have the meanings given to them in National Instrument 54-101. The use of this Form is referenced in sections 2.5, 6.1 and 6.2 of National Instrument 54-101.

I, \_\_\_\_\_,  
(Full Residence Address) \_\_\_\_\_

*(If this undertaking is made on behalf of a body corporate, set out the full legal name of the body corporate, position of person signing and address for service of the body corporate).*

SOLEMNLY DECLARE AND UNDERTAKE THAT:

1. I require a list in the required format of the non-objecting beneficial owners of securities of *[insert name of the reporting issuer]* on whose behalf intermediaries hold securities (a NOBO list), as shown on the records of the intermediaries.
2. I undertake that the information set out on the NOBO list will be used only for the purpose of
  - (a) sending securityholder materials to NOBOs in accordance with National Instrument 54-101;
  - (b) an effort to influence the voting of securityholders of the reporting issuer;
  - (c) an offer to acquire securities of the reporting issuer; or
  - (d) any other matter relating to the affairs of the reporting issuer.
3. I undertake that, except as permitted under National Instrument 54-101, the NOBO list will not be used to send securityholder materials to those NOBOs that are identified on the NOBO list as having chosen not to receive the materials, and that the materials sent shall include the following statement:

“These securityholder materials are being sent to both registered and non-registered owners of the securities. If you are a non-registered owner, and the issuer or its agent has sent these materials directly to you, your name and address and information about your holdings of securities, have been obtained in accordance with applicable securities regulatory requirements from the intermediary holding on your behalf.”
4. I acknowledge that I am aware that it is an offence to use a NOBO list for purposes other than in connection with:
  - (a) sending securityholder materials to NOBOs in accordance with National Instrument 54-101;
  - (b) an effort to influence the voting of securityholders of the reporting issuer;
  - (c) an offer to acquire securities of the reporting issuer; or
  - (d) any other matter relating to the affairs of the reporting issuer.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of person signing

\_\_\_\_\_  
Date

**COMPANION POLICY 54-101CP  
TO NATIONAL INSTRUMENT 54-101  
COMMUNICATION WITH BENEFICIAL OWNERS  
OF SECURITIES OF A REPORTING ISSUER**

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**COMPANION POLICY 54-101CP  
TO NATIONAL INSTRUMENT 54-101  
COMMUNICATION WITH BENEFICIAL OWNERS  
OF SECURITIES OF A REPORTING ISSUER**

**PART 1 BACKGROUND**

**1.1 History**

- (1) Obligations imposed on reporting issuers under corporate law and securities legislation to communicate with securityholders are typically cast as obligations in respect of registered holders and not in respect of beneficial owners. For purposes of market efficiency, securities are increasingly not registered in the names of the beneficial owners but rather in the names of depositories, or their nominees, who hold on behalf of intermediaries, such as dealers, trust companies or banks, who, in turn, hold on behalf of the beneficial owners. Securities may also be registered directly in the names of intermediaries who hold on behalf of the beneficial owners.
- (2) Corporate law and securities legislation require reporting issuers to send to their registered holders information and materials that enable such holders to exercise their right to vote. To address concerns that beneficial owners who hold their securities through intermediaries or their nominees may not receive the information and materials, in 1987, the CSA approved National Policy Statement No. 41 (“NP41”), which has since been replaced by National Instrument 54-101 (the “Instrument”).
- (3) The purpose of this Policy is to state the views of the Canadian securities regulatory authorities on various matters relating to the Instrument in order to provide guidance and interpretation to market participants in the practical application of the Instrument.

**1.2 Fundamental Principles** - The following fundamental principles have guided the preparation of the Instrument:

- (a) all securityholders of a reporting issuer, whether registered holders or beneficial owners, should have the opportunity to be treated alike as far as is practicable;
- (b) efficiency should be encouraged; and
- (c) the obligations of each party in the securityholder communication process should be equitable and clearly defined.

## **PART 2      GENERAL**

### **2.1      Application of Instrument**

- (1)      The securityholder communication procedures contemplated by the Instrument are applicable to all securityholder materials sent by a reporting issuer to holders of securities of the reporting issuer under Canadian securities legislation including, but not limited to, proxy-related materials. Securityholder materials include materials required by securities legislation or applicable corporate law to be sent to registered holders of securities of a reporting issuer, such as interim financial statements and issuer bid and directors circulars. Securityholder materials can also include materials sent to registered holders absent any legal requirement to do so.
  
- (2)      As provided in section 2.7 of the Instrument, compliance with the procedures set out in the Instrument is mandatory for reporting issuers when sending proxy-related materials to beneficial owners, and, under section 2.8 of the Instrument, is optional for the sending of other materials. Once a reporting issuer, or another person or company pursuant to Part 6 of the Instrument, chooses to use the communications procedures specified in the Instrument for a reporting issuer, depositories, intermediaries and other persons or companies must comply with their corresponding obligations under the Instrument.

### **2.2      Application to Foreign Securityholders and U.S. Issuers**

- (1)      As provided in subsection 2.12(3) of the Instrument, a reporting issuer that is precluded from sending securityholder materials directly to NOBOs because of conflicting legal requirements in the United States or elsewhere outside of Canada shall send the materials indirectly, i.e., by forwarding the materials to NOBOs through proximate intermediaries for those securities. Subsection 2.12(3) does not require a reporting issuer to send proxy-related materials to all beneficial owners outside Canada. A reporting issuer need only send proxy-related materials to beneficial owners who hold through proximate intermediaries that are either participants in a recognized depository, or intermediaries on the depository's intermediary master list.
  
- (2)      National Instrument 71-101 *The Multijurisdictional Disclosure System* provides, in Part 18, that a "U.S. issuer", as defined in that Instrument, is considered to satisfy the requirements of National Instrument 54-101, other than in respect of fees, if the issuer complies with the requirements of Rule 14a-13 under the 1934 Act for any Canadian clearing agency and

any intermediary whose last address as shown on the books of the issuer is in the local jurisdiction. Those requirements are designed to achieve the same purpose as the requirements of the Instrument.

- (3) A Canadian reporting issuer may be exempt from complying with U.S. requirements under a reciprocal provision in the U.S. Multijurisdictional Disclosure regime.

**2.3 Interim Financial Statements** - Interim financial statements sent to beneficial owners in accordance with National Instrument 54-102 *Interim Financial Statement and Report Exemption* are “securityholder materials” under the Instrument. However, financial statements sent under National Instrument 54-102 need not be sent using the mechanisms of National Instrument 54-101 as the reporting issuer will send them directly to persons on a supplemental list.

**2.4 “Client” and “Intermediary” to be Distinguished From “Beneficial Owner”**

- (1) Section 1.1 of the Instrument distinguishes between “client” and “beneficial owner”. The two definitions recognize that, for many reporting issuers, there may be layers of intermediaries between the registered holder of a security and the ultimate beneficial owner. For example, a dealer could hold a security on behalf of another dealer that in turn holds the security for the beneficial owner.
- (2) For the purposes of the Instrument, if an intermediary that holds securities has discretionary voting authority over the securities, it will be the beneficial owner of those securities for purposes of providing instructions in a client response form, and would not also be an “intermediary” with respect to those securities.
- (3) The term “client” refers to the person or company for whom an intermediary directly holds securities, regardless of whether the client is a beneficial owner. For example, if a dealer holds securities on behalf of a bank that in turn holds the securities on behalf of the beneficial owner, the bank is a client of the dealer, and the beneficial owner is a client of the bank. The beneficial owner is not a client of the dealer. Section 1.2 of the Instrument recognizes that, under the Instrument, an intermediary may “hold” securities for a client, even if another person or company is shown on the books or records of the reporting issuer or the records of another intermediary or depository as the holder of the securities.

**2.5 Definition of “Corporate Law”** - Section 1.1 of the Instrument defines “corporate law” as any legislation, constating instrument or agreement that governs the affairs of a reporting issuer. The term “corporate law” therefore encompasses Canadian and foreign laws, a declaration or deed of trust in the case of a trust, and the partnership agreement in the case of a partnership.

**2.6** **Fees** - Section 1.4 provides that fees payable under the Instrument, unless prescribed by the regulator or securities regulatory authority, shall be a reasonable amount. Section 2.13 provides that a reporting issuer shall pay a fee to a proximate intermediary for furnishing the information requested in a request for beneficial ownership information (which would be used by reporting issuer to request a NOBO list) made by the reporting issuer. Paragraph 2.14(1)(a) provides that a reporting issuer that sends securityholder materials indirectly to NOBOs through a proximate intermediary shall pay to the proximate intermediary, upon receipt by the reporting issuer of a certificate of sending to NOBOs in accordance with the instructions specified by the reporting issuer and the request for beneficial ownership information, a fee for sending the securityholder materials to the NOBOs. In determining what is a reasonable amount the Canadian securities regulatory authorities expect that market participants will be guided by fees previously prescribed by Canadian securities regulatory authorities and by the fees payable for comparable services in other jurisdictions such as the United States, as well as by technological developments. In the case of fees for sending securityholder materials to NOBOs, referred to in paragraph 2.14(1)(a), the CSA would regard as currently reasonable an amount not exceeding \$1 (being the amount previously specified in NP41).

**2.7** **Agent** - A depository, intermediary or reporting issuer that uses an agent to comply with the requirements of the Instrument is reminded that it remains fully responsible for such compliance.

## **PART 3 REPORTING ISSUERS**

### **3.1 Timing for Notice of Meeting and Record Dates and Intermediary Searches**

- (1) Subject to section 2.20, section 2.2 of the Instrument requires that, 25 days before the record date for notice of a meeting, a reporting issuer send to the entities named in that section a notification of meeting and record dates, and section 2.5 of the Instrument requires that 20 days before the record date for notice, a reporting issuer send a request for beneficial ownership information to proximate intermediaries. Section 2.20 allows these timing requirements to be abridged upon filing of an officer's certificate containing the information specified in section 2.20. Nevertheless, reporting issuers should commence the notice and searches referred to in sections 2.2, 2.3 and 2.5 at an early date and in sufficient time to allow the completion of all steps and actions required before the sending of materials, including allowing for the response time permitted for intermediaries in section 4.1 and depositories in section 5.3, so that the materials may be sent within the times contemplated by sections 2.9 and 2.12 of the Instrument.

- (2) The time frames stipulated by sections 2.9 and 2.12 of the Instrument are minimum requirements. For a meeting that will deal with contentious matters, the CSA expect that good corporate practice will often require that materials be sent earlier than the minimum required dates to ensure that securityholders have a full opportunity to understand and react to the matters raised.
- (3) It remains the reporting issuer's responsibility when planning a meeting timetable to factor in all timing considerations, including deadlines external to the Instrument. For example, reporting issuers that have obligations under corporate law to advertise in advance of a record date for notice, or satisfy other publication obligations, would need to comply with those obligations. Reporting issuers that intend to satisfy their advance publication obligation by relying upon publication by CDS of meeting and record dates under subsection 5.2(2) of the Instrument would need to factor in the timing of publication by CDS and the advance notice required by CDS, as described in section 3.4 of this Policy, in order to permit inclusion of meeting and record date information in the publication. Reporting issuers will also need to factor in the time needed to produce and assemble the relevant securityholder materials after quantities have been determined.
- (4) Proximate intermediaries are required under section 4.1 of the Instrument to furnish the information requested in a request for beneficial ownership information, in certain circumstances, within three business days of receipt. It should be noted that this timing refers to receipt of the request by the proximate intermediary, which may not be the same date as the request was sent by the reporting issuer. The time necessary for a request for beneficial ownership information to be received by a proximate intermediary should be factored into a reporting issuer's planning.

### **3.2 Adjournment or Change in Meeting**

- (1) Under section 2.15, a reporting issuer that sends a notice of adjournment or other change for a meeting to registered holders of its securities shall concurrently send the notice, including any change in the beneficial ownership determination date, to the persons and companies listed in section 2.15. Issuers are reminded of a number of other potential implications associated with an adjournment or other change, including those set out below.
- (2) If additional proxy-related materials are sent in connection with the meeting after proxy-related materials have previously been sent, a new intermediary search may be required if the beneficial ownership determination date for the meeting is changed.

- (3) New intermediary searches may have to be conducted if the nature of the business to be transacted at the meeting is materially changed. If the nature of the business is changed to add business that results in the meeting becoming a special meeting, it may be necessary to conduct new intermediary searches in order to ensure that beneficial owners that had elected to receive only proxy-related materials that are sent in connection with a special meeting receive proxy-related materials for the meeting.
- (4) If an adjournment or other change to the business of the meeting requires that new proxy-related materials be sent to securityholders, the meeting date or the date of the adjourned meeting may have to be delayed to satisfy the time periods specified in the Instrument, unless an exemption from the time periods of the Instrument is obtained. If the change in the business of the meeting is significant, such as a change from only routine business to special business, Canadian securities regulatory authorities will not generally grant exemptions from timing requirements for sending proxy-related materials in the absence of exceptional circumstances.

### **3.3 Request for Beneficial Ownership Information**

- (1) A request for beneficial ownership information made under subsection 2.5(2) of the National Instrument may be for any class or series of securities and is not restricted to only those securities carrying the right to receive notice of, or to vote at, a meeting, as is the case with a request under subsection 2.5(1). A request under subsection 2.5(2) need not necessarily be addressed to all proximate intermediaries holding the class or series of securities.
- (2) If it is able to do so, a proximate intermediary is required to respond to a request for a NOBO list by providing the NOBO list in electronic format. All requests for beneficial ownership information including NOBO lists are required to be made through a transfer agent. A reporting issuer that wishes to receive a NOBO list in non-electronic format may make arrangements with its transfer agent to have the electronic format received by the transfer agent converted to a paper copy.

**3.4 Depository's Index of Meetings** - CDS advises that the index referred to in section 5.2 of the Instrument is currently published in the Monday edition of *The Globe and Mail Report on Business* and in the Tuesday edition of *La Presse*. CDS advises that notices of meetings received by CDS by noon on Wednesday are usually published in *The Globe and Mail* on the following Monday and in *La Presse* on the following Tuesday. A reporting issuer should contact CDS for current forms and fee schedules of CDS.

**3.5 Voting Instructions** - Voting instructions that the reporting issuer requests directly from NOBOs will be returned directly to the reporting issuer.

Management of the reporting issuer will then vote the securities beneficially owned by NOBOs in accordance with the instructions received from NOBOs to the extent that management has the corresponding proxy. That proxy is given to management by the proximate intermediary that provides the NOBO list under subsection 4.1(1) of the Instrument.

## **PART 4 INTERMEDIARIES**

**4.1 Client Response Form** - By completing a client response form as provided in Part 3 of the Instrument, a beneficial owner gives notice of its choices concerning the receipt of materials and the disclosure of ownership information concerning it. Pursuant to section 3.4 of the Instrument, a beneficial owner may, by notice to the intermediary through which it holds, change any prior instructions given in a client response form. Proximate intermediaries should alert their clients to the costs and other consequences of the options in the client response form.

Section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* requires reporting issuers to send annually a request form to the registered holders and beneficial holders of its securities that the holders may use to request a copy of the reporting issuer's financial statements and MD&A. Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under this Instrument in respect of the financial statements.

**4.2 Separate Accounts** - A client that wishes to make different choices concerning receipt of securityholder materials or disclosure of ownership information with respect to some of the securities beneficially owned by it should hold those securities in separate accounts.

### **4.3 Reconciliation of Positions**

- (1) The records of an intermediary must show which of its clients are NOBOs, OBOs or other intermediaries, and specify the holdings of each of those clients.
- (2) In order that the Instrument work properly, it is important that the records of an intermediary be accurate. Its records must reconcile accurately with the records of the person or company through whom the intermediary itself holds the securities, which could either be another intermediary or a depository, or the security register of the relevant issuer, if the intermediary is a registered securityholder. This reconciliation must include securities held both directly and through nominees.
- (3) A proximate intermediary should provide accurate responses to requests for beneficial ownership information. Information about the holdings of

NOBOs, when added to the holdings of OBOs, the holdings of other intermediaries holding through the proximate intermediary and the holdings that the proximate intermediary holds as principal, must not exceed the total security holdings of the proximate intermediary, including its nominees, as shown on the register of the issuer or in the records of the depository.

- (4) It is important as well that the total number of votes cast at a meeting by an intermediary or persons or companies holding through an intermediary not exceed the number of votes for which the intermediary itself is a proxyholder.

#### **4.4 Identification of Intermediary**

- (1) A NOBO list with FINS numbers will only be provided where the list is sought by a reporting issuer in conjunction with a meeting of its securityholders in circumstances in which the issuer is sending proxy-related materials under paragraph 4.1(1)(c) of the Instrument. The FINS number should not be required in circumstances where it is not necessary to reconcile voting instructions and/or proxies.
- (2) Identification of the intermediary and the holdings specified in the corresponding NOBO list on requests for voting instructions as required in Form 54-101F6 is necessary for the reporting issuer to be able to reconcile voting instructions received from a NOBO to the corresponding position registered in the name of the intermediary or its nominee or in respect of which the intermediary holds a proxy. In addition, should a NOBO wish to change its voting instructions, before or at a meeting of securityholders, knowledge of the corresponding intermediary and the NOBO's holdings is necessary.

**4.5 Changes to Intermediary Master List** - It is the obligation of intermediaries under section 3.1 of the Instrument to notify each depository of any changes in the information required to be provided under that section within five business days after the change. The five business days is a maximum requirement and it is expected that intermediaries will provide notice of such changes as soon as possible and, if possible in advance, in order that their clients not be prejudiced.

**4.6 Incomplete or Late Deliveries** - If sets of securityholder materials of a reporting issuer are incomplete or received after the prescribed time limits, the intermediary should advise the reporting issuer and request instructions.

**4.7 Other Obligations of Intermediaries** - The Instrument addresses the obligations of intermediaries in connection with the forwarding of securityholder materials. It is noted that intermediaries will have other obligations to the beneficial owners holding through them that arise from the nature of the relationship between the

intermediary and the beneficial owners. These obligations will likely include advising the beneficial owners of the commencement of take-over bids, issuer bids, rights offerings and other events, and advising as to how the beneficial owners can obtain the relevant materials.

- 4.8 Instructions from Existing Clients** – A client deemed to be a NOBO under NP41 can continue to be treated as a NOBO under paragraph 3.3(b)(ii) of this Instrument. However, intermediaries are responsible for ensuring that they comply with their obligations under privacy legislation with respect to their clients’ personal information. Intermediaries may find that, notwithstanding paragraph 3.3(b)(ii), privacy legislation requires that they take measures to obtain their clients’ consent before they disclose their clients’ names and security holdings to a reporting issuer or other sender of material.

## **PART 5 MEANS OF SENDING**

- 5.1 General** - All parties should use the most efficient means of sending information or securityholder material, including, if practicable, sending materials in bulk.
- 5.2 Materials in Bulk for Sending to Beneficial Owners** - Securityholder materials sent to intermediaries for sending to beneficial owners by mail should be in uncollated bulk form. All materials forming part of a set to be delivered to securityholders should be delivered together. The intermediary will collate the materials; if the materials are proxy-related materials the intermediary will substitute for any issuer proxy contained in the materials a request for voting instructions for matters to which the proxy-related materials relate.
- 5.3 Number of Sets of Materials** - A proximate intermediary should not request sets of securityholder materials for NOBOs if the reporting issuer will be sending the materials directly to those NOBOs.
- 5.4 Electronic Communication**
- (1) It is expected that most communication for the purposes of the Instrument between or among depositories, reporting issuers and intermediaries will, as far as practicable, be by electronic means, including fax, electronic mail or data transfer. The Instrument is intended by the CSA to promote and facilitate the use of electronic communication, within the limits imposed by corporate law and securities legislation.
  - (2) The Instrument does not require manual signatures to the forms referred to in the Instrument. While manual signatures are permitted and may be included, the CSA are of the view that if the Instrument is to promote and facilitate the use of electronic communication, the obligation to include manual signatures would impede the promotion of this technology.

Accordingly, the Instrument does not require authentication by manual signature, and persons or companies should satisfy themselves as to the authenticity of instructions or other communications received in electronic form.

- (3) In Quebec, Staff Notice 11-201, and, in the rest of Canada, National Policy 11-201 Delivery of Documents by Electronic Means (the “11-201 Documents”) discuss the sending of materials by electronic means. The guidelines set out in the 11-201 Documents, particularly the suggestion that consent be obtained to an electronic transmission of a document, are applicable to documents sent under the Instrument. Under the 11-201 Documents, securityholder materials could be sent to beneficial owners by electronic means in satisfaction of the requirements of the Instrument if the beneficial owner has consented to receive them in that form.
- (4) Section 3.2 of the Instrument requires intermediaries that hold securities on behalf of a client in an account to obtain the electronic mail address of the client, if available, and if applicable, to enquire whether the client wishes to consent to electronic delivery of documents by the intermediary to the client. The client’s electronic mail address and whether they have consented to electronic delivery by the intermediary forms part of the “ownership information” associated with a beneficial owner that will be contained in NOBO lists. The electronic form of NOBO list has a field for this information. Because the consent identified in the NOBO list relates to electronic delivery by the intermediary only, the reporting issuer cannot rely on the consent for its electronic delivery. However, the field in the NOBO list for this consent may be of interest to a reporting issuer. It may assist the reporting issuer in ascertaining whether the intermediary will forward electronically the securityholder materials that the reporting issuer elects to send indirectly through the intermediary. It may also assist the reporting issuer to determine the feasibility of sending materials directly to NOBOs and whether to use electronic delivery itself. Where the reporting issuer chooses to obtain consent for the purposes of satisfying the provisions of the 11-201 Documents, the Canadian securities regulatory authorities anticipate that the reporting issuer will use the electronic mail address contained in the NOBO list.

**5.5 Multiple Deliveries to One Person or Company** - It is noted that sometimes a single investor holds securities of the same class in two or more accounts with the same address. The Canadian securities regulatory authorities note that the delivery of a single set of securityholder materials to that person or company would satisfy the delivery requirements under the Instrument. The sending of a single document in those circumstances is encouraged in order to reduce the costs of securityholder communications.

## **PART 6 USE OF NOBO LIST**

- 6.1 Use of NOBO List** - Market participants are reminded that the trafficking of a NOBO list, contrary to Part 7 of the Instrument, will constitute a breach of the Instrument and securities legislation, and that the penalty provisions of securities legislation may be applied.

## **PART 7 EXEMPTIONS**

- 7.1 Materials Sent Less Than 21 Days Before Meeting** - In the absence of extraordinary circumstances, the Canadian securities regulatory authorities will generally not consider shortening the 21-day period for the sending of proxy-related materials to beneficial owners of securities referred to in sections 2.9 and 2.12 of the Instrument.
- 7.2 Delay of Audited Annual Financial Statements or Annual Report** - Section 9.1 of the Instrument recognizes that corporate law or securities legislation may permit a reporting issuer to send its audited annual financial statements or annual report to registered holders of its securities later than other proxy-related materials. The Instrument provides that the time periods applicable to sending proxy-related materials prescribed in the Instrument do not apply to the sending of proxy-related materials that are annual financial statements or an annual report if the statements or report are sent by the reporting issuer to beneficial owners of the securities within the time limitations established in applicable corporate law and securities legislation for the sending of the statements or report to registered holders of the securities. Reporting issuers are nonetheless encouraged to send their audited annual financial statements or annual report at the same time as other proxy-related materials.
- 7.3 Additional Costs If Time Limitations Shortened** - Section 4.2 of the Instrument allows a proximate intermediary three business days to prepare the securityholder materials for forwarding to beneficial owners after its receipt of the materials from the reporting issuer (four business days if the material is to be sent by mail other than first-class mail). Reporting issuers making arrangements with intermediaries to comply with the procedures in the Instrument within shorter time limits may wish to provide for recovery by the intermediary of reasonable costs attributable to the shorter time limits that it would not otherwise incur (for example, courier, long distance telephone and overtime costs) to ensure forwarding of the materials to OBOs.
- 7.4 Applications** - Applicants should be aware that major exemptions from the requirements of the Instrument will probably be granted infrequently. Exemptions to the predecessor policy statement to the Instrument that were granted typically involved reporting issuers that were incorporated or organized outside of Canada, that had only an insignificant connection to Canada in terms of

the percentage of its securityholders that were resident in Canada and the percentage of its securities that were held by those securityholders, and in circumstances in which the reporting issuer was also subject to requirements imposed by securities or corporate legislation outside of Canada that served to ensure that beneficial owners would receive a comparable level of communication from the issuer.

## **PART 8      APPENDIX A**

**8.1**      **Appendix A** - This Companion Policy contains, as Appendix A, a flow chart outlining the processes prescribed by the Instrument for the sending of proxy-related materials.

## Appendix A Proxy Solicitation under NI 54-101

