

Chapter 6

Request for Comments

6.1 Request for Comments

6.1.1 NI 54-101 and Related Instruments - Communication with Beneficial Owners of Securities of a Reporting Issuer

**NOTICE OF PROPOSED CHANGES
TO PROPOSED NATIONAL INSTRUMENT 54-101
FORMS 54-101F1, 54-101F2, 54-101F3, 54-101F4,
54-101F5, 54-101F6, 54-101F7, 54-101F8 AND 54-101F9
AND COMPANION POLICY 54-101CP
AND RESCISSION OF NATIONAL POLICY STATEMENT
NO. 41
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER**

Introduction

On February 27, 1998, the Canadian Securities Administrators (the "CSA") published for comment proposed National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer (the "National Instrument"), the related forms (the "Forms"), consisting of Forms 54-101F1, 54-101F2, 54-101F3, 54-101F4, 54-101F5, 54-101F6, 54-101F7 and 54-101F8, the proposed Companion Policy 54-101CP (the "Companion Policy") and, in Ontario, the proposed Implementing Rule 54-801.¹

Following a review of the comments received, the CSA published on July 17, 1998 a second draft of the proposed National Instrument, proposed Forms and proposed Companion Policy.² The comment period for this second draft expired on September 15, 1998.

In this Notice, the versions of these materials published in February are called the "February Draft National Instrument", the "February Draft Forms" and the "February Draft Companion Policy" respectively. The versions of these materials published in July are referred to in this notice as the "July Draft National Instrument", the "July Draft Forms" and the "July Draft Companion Policy" respectively.

During the comment period on the July Drafts, the CSA received submissions from a broad range of commenters. The list of commenters is contained in Appendix A of this Notice, and the summary of their comments, together with the CSA responses to those comments, are contained in Appendix B of this Notice. As the result of consideration of the comments,

the CSA are proposing a number of amendments to the materials published in July, and are therefore republishing for a third comment period the proposed National Instrument, the Forms and the Companion Policy.

Through these proposed instruments, the CSA seek to continue, with some changes, the regulatory regime concerning communication with beneficial owners of securities of a reporting issuer currently embodied in National Policy Statement No. 41 ("NP41"), which the instruments will replace.

Proposed Implementing Rule 54-801 was proposed in Ontario for the purpose of prescribing the forms to be used in connection with the proposed National Instrument. The CSA have elected to include the form requirements in the proposed National Instrument, so that there will be no need for Implementing Rule 54-801; that proposed rule will not be proceeded with.

The CSA are not publishing with this Notice, proposed National Instrument 54-102 Supplemental Mailing List and Interim Financial Statement Exemption, which replaces the provisions of NP41 and associated rules and blanket orders pertaining to supplemental mailing lists. That instrument was published for comment in February with the proposed National Instrument, but will not be republished for comment. National Instrument 54-102 is expected to be adopted by the CSA at the same time as the proposed National Instrument, without material changes from the version that was published on February 27, 1998.

The proposed National Instrument and Companion Policy are initiatives of the CSA, and the proposed National Instrument is expected to be adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario and Nova Scotia, as a Commission regulation in Saskatchewan, and as a policy in all other jurisdictions represented by the CSA. The proposed Forms will be adopted as rules in Ontario. The proposed Companion Policy is expected to be implemented as a policy in all of the jurisdictions of the CSA.

Substance and Purpose of the Proposed National Instrument, Forms and Companion Policy

The substance and purpose of the proposed National Instrument, Forms and Companion Policy are to establish an obligation on reporting issuers to send proxy-related materials to the beneficial owners of its securities who are not registered holders of its securities, to provide a procedure for the sending of proxy-related materials and other securityholder material to beneficial owners, and, to impose obligations on various parties in the securityholder communication process.

For additional information concerning the background of the proposed National Instrument, Forms and Companion Policy, reference should be made to the notice (the "February Notice") that accompanied the publication of the February Draft

¹ In Ontario, at (1998), 21 OSCB 1388.

² In Ontario, at (1998), 21 OSCB 4491.

National Instrument, February Draft Forms and February Draft Companion Policy and to the Notice (the "July Notice") that accompanied the publication of the July Draft National Instrument, the July Draft Forms and the July Draft Companion Policy.

Summary of Changes to the Proposed National Instrument from the July Draft National Instrument

This section describes the substantive changes made in the proposed National Instrument from the July Draft National Instrument. Minor changes made for drafting or technical reasons are generally not described in this summary. For a detailed summary of the contents of the July Draft National Instrument, reference should be made to the July Notice.

Definitions

Changes from the July Draft National Instrument

The definition of "*client response card*" in the July Draft has been replaced by a definition of "*client response form*". This change reflects the recognition that the response provided by clients may be provided by electronic means as an alternative to a paper response. Conforming changes have been made throughout the proposed National Instrument.

The definition "*beneficial owner determination date*" has been changed to "*beneficial ownership determination date*" to reflect the fact that this date is used to determine not just the relevant beneficial owners, but also their ownership positions.

The definition of "*intermediary*" has been amended to clarify that the exclusion from the definition of a person or company that holds the security only as a custodian is limited to circumstances where that person or company is not the registered securityholder nor holding as a participant in a depository.

A definition of "*legal proxy*" has been added in conjunction with changes to section 4.5 of the proposed National Instrument. The proposed National Instrument clarifies that beneficial owners that receive proxy-related material may either provide voting instructions or acquire a legal proxy and attend the meeting to vote. The legal proxy ensures that such persons who attend a meeting have legal authority to vote the securities that they beneficially own. Legal proxy is defined as a voting power of attorney in the required form granted by an intermediary or reporting issuer to a beneficial owner. The form of the legal proxy is set out in Form 54-101F8.

The definition of a "*non-objecting beneficial owner*" has been amended to delete the reference to persons who fail to provide instructions. This change has been made in conjunction with the deletion of section 3.6 of the July Draft National Instrument which provided that in the absence of instructions, a beneficial owner was deemed to be a non-objecting beneficial owner. In light of the obligation in section 3.2 to obtain instructions from all new clients and the changes to section 3.3 with respect to transitional provisions concerning previously obtained instructions from existing clients, such default provisions are considered unnecessary. The definition, like the definition of "*objecting beneficial owner*" has also been amended to clarify that instructions by beneficial owners are given on an account-by-account basis.

The definition of "*non-objecting beneficial owner list*" has been amended to clarify that a list prepared in non-electronic form is to contain the same information as is required by the form prescribed for a list in electronic form (Form 54-101F5).

The definition of "*ownership information*" has been amended to include the electronic mail address of the beneficial owner, if known. This change has been made in conjunction with changes to section 3.2, which now requires an intermediary to obtain the electronic address, if available, from new clients, as well as enquire whether the client wishes to consent and if so obtain the consent of the client to electronic delivery of documents. The change is also made in conjunction with changes to a Request for Beneficial Ownership Information (Form 54-101F2) which provide for the request and receipt of information with respect to the aggregate number of beneficial owners that have consented to the electronic delivery of documents through the intermediary, and, the information prescribed for a NOBO list in Form 54-101F5, which now provides for an identification of e-mail addresses, where available, for each NOBO and whether the NOBO has consented to electronic delivery of securityholder materials by the intermediary.

The definition of "*participant list*" has been deleted as that term does not appear in either the July Draft National Instrument or in the proposed draft National Instrument.

The definition of "*send*" has been revised to delete an express requirement for consent of the recipient to electronic form of delivery. This is consistent with the principles set out in National Policy 11-201, which suggests, but does not require, that consent be obtained in order to satisfy the principles. The CSA do, however, request specific comment on whether, in the case of this Instrument, there should be a requirement for specific consent³.

A definition of "*transfer agent*" has been added in conjunction with the addition of the new requirement in subsection 2.5(4), that requires those seeking beneficial ownership information to do so through a transfer agent. The term "*transfer agent*" is defined as a person or company that carries on the business of a transfer agent.

Section 1.4

Changes from the July Draft National Instrument

Subsection 1.4(2) has been amended from the July Draft National Instrument to permit an alternative form of electronic NOBO list to be used where both the party requesting and the party receiving the list agree. This will allow parties who mutually agree, to adopt a form that takes advantage of improvements in technology without awaiting an amendment to the proposed National Instrument.

Section 1.5

Section 1.5 provides that fees payable under the proposed

³ As is the case with proposed section 252.3(2) to the *Canada Business Corporations Act* as set out in Bill S-19, 2000 *An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence*.

National Instrument shall be the amounts prescribed by the applicable regulator or securities regulatory authority or, where no amount is prescribed, a reasonable amount.

Changes from the July Draft National Instrument

Section 1.5 has been amended and the appendix referred to in section 1.5 of the July Draft National Instrument has been eliminated. As a result of these changes, the proposed National Instrument does not make reference to specific fees, nor does the proposed Companion Policy. The proposed National Instrument now permits fees to be prescribed, if desired and permitted, by individual jurisdictions. It continues to require fees to be reasonable in jurisdictions where no fees have been prescribed. The proposed Companion Policy no longer references any specific fee amounts the CSA consider to be reasonable.

Section 2.1

Changes from the July Draft National Instrument

Section 2.1 has been amended to reduce to 30 days the minimum time between the record date for notice of a meeting and the meeting date from the 35 days provided for in the July Draft National Instrument. This reflects the shorter time period for mailing now contained in sections 2.9 and 2.12 as compared to NP41. The change has been made to facilitate the calling of meetings on a more expedited basis than under NP41 and to conform more closely to timing requirements for mailings to registered holders under corporate law.

Section 2.2

Changes from the July Draft National Instrument

Section 2.2 has been amended to specify that, subject to section 2.20, notification of a meeting must be given at least 25 days before the record date for notice. The July Draft National Instrument was silent with respect to this timing issue. This is a return to the requirement contained in NP41.

This change was made in conjunction with the addition of section 2.20, which provides a mechanism for the shortening of this time period if other requirements of the proposed National Instrument are satisfied in the shorter time period.

This change is proposed to respond to comments that expressed concern that the omission of the time periods now contained in subsections 2.2(1) and 2.5(1) would lead to reporting issuers not allowing sufficient time to ensure that all the requirements of the proposed National Instrument would be satisfied before a meeting date. The proposed National Instrument reinstates the time periods contained in NP41, but allows for the abridgement of them if the reporting issuer complies with section 2.20.

Section 2.3

Section 2.3 requires a reporting issuer to make an intermediary search request when it sends a notification of meeting and record date and specifies the content of an intermediary search request.

Changes from the July Draft National Instrument

Subsection 2.3(1) has been amended to conform with section 5.3 by adding paragraph (a) to specify that the intermediary search request shall include a request for the identity of each entity that holds the specified securities on behalf of the depository and the respective holdings of each such entity. Conforming changes have been made to subsection 2.3(2) and section 2.4.

Paragraph 2.3(1)(b) has been amended to clarify that, like paragraph 2.3(1)(c), it is subject to the provisions of section 2.4.

Subsection 2.5(1)

Changes from the July Draft National Instrument

Section 2.5(1) has been amended from the July Draft National Instrument to specify that reporting issuers are required to send requests for beneficial ownership information to proximate intermediaries at least 20 days before the record date for notice of a meeting. The July Draft National Instrument was silent with respect to this timing issue. This is a return to the corresponding requirement contained in NP41 and is made in conjunction with the addition of section 2.20, which provides a mechanism for the shortening of this requirement if arrangements are made for other requirements of the proposed National Instrument to be satisfied in the shorter time period.

This change is proposed to respond to comments that expressed concern that the omission of the time periods now contained in subsections 2.2(1) and 2.5(1) would lead to reporting issuers not allowing sufficient time to ensure that all the requirements of the proposed National Instrument would be satisfied before a meeting date. The proposed National Instrument reinstates the time periods contained in NP41, but allows for the abridgement of them if the reporting issuer complies with section 2.20.

Subsection 2.5(2)

Changes from the July Draft National Instrument

Subsection 2.5(2) has been amended from the July Draft National Instrument to clarify that a Request for Beneficial Ownership Information that is not in connection with a meeting may be for any class or series of securities (not just those with a right to receive notice of a meeting or to vote) and need not necessarily be addressed to all proximate intermediaries holding that class or series of securities.

Subsection 2.5(3)

Changes from the July Draft National Instrument

Subsection 2.5(3) has been amended to require that an undertaking confirming obligations with respect to beneficial owner lists be given with a Request for Beneficial Ownership Information that includes a request for a NOBO list rather than a statutory declaration as was provided for in the July Draft National Instrument. This is a return to the proposal in the February Draft National Instrument. This change recognizes that a statutory declaration is not the most appropriate means of addressing promises with respect to future conduct as distinct from statements of past conduct.

Subsection 2.5(4)

Subsection 2.5(4) requires that requests for beneficial ownership information be made through a transfer agent.

Changes from the July Draft National Instrument

Subsection 2.5(4) is new. It has been added to ensure that proximate intermediaries need deal with only a limited number of entities with respect to requests for beneficial ownership information. By limiting the number of parties requesting and receiving this information from proximate intermediaries, greater efficiencies and economies of scale may be realized.

Section 2.6

Changes from the July Draft National Instrument

Section 2.6 has been amended from the July Draft National Instrument to excuse reporting issuers from having to make intermediary search requests and requests for beneficial ownership information where they already have all of the information which would be provided in response to a Request for Beneficial Ownership Information. This amendment will, for example, excuse mutual fund issuers that maintain such information from complying with sections 2.3 and 2.5. The previous reference in the section excusing compliance with section 2.7 has been deleted.

Section 2.12

Changes from the July Draft National Instrument

Subsection 2.12(1) has been amended from the July Draft National Instrument to require a reporting issuer that wishes to indirectly send proxy-related material by prepaid mail other than first-class mail to send the material to the proximate intermediary one day earlier than would be the case if the material is to be sent by other means. This change is intended to provide proximate intermediaries one extra day to complete the extra steps required when securityholder materials are to be sent by mail and the mail is other than first-class mail.

This amendment has been made in response to a comment received. A corresponding change has been made to section 4.2.

Subsection 2.12(3) has been amended since the July Draft National Instrument to indicate that it applies not only where the law of a foreign jurisdiction prohibits the reporting issuer from sending securityholder material directly to NOBOs but also where the proximate intermediary has stated in response to the Request for Beneficial Ownership Information that the law in the foreign jurisdiction requires the proximate intermediary to deliver securityholder materials to beneficial owners. The subsection also has been amended to clarify that if the conditions in the subsection apply, the reporting issuer shall not send securityholder materials to the NOBOs.

Section 2.14

Section 2.14 provides for the sending of securityholder materials indirectly through a proximate intermediary to beneficial owners.

Changes from the July Draft National Instrument

References to a "certificate of mailing" or "other satisfactory proof of sending" have been simplified to refer to a "certificate of sending".

Section 2.16

Section 2.16 requires that proxy-related material sent to a beneficial owner of securities explain, in plain language, how the beneficial owner may exercise voting rights attached to the securities.

Changes from the July Draft National Instrument

Section 2.16 has been amended since the July Draft National Instrument to specifically provide that the explanation provided with proxy-related materials sent to beneficial owners must include an explanation of the right of the beneficial owner to attend and vote the securities directly at a meeting and a description of how those rights may be exercised.

Section 2.18

Section 2.18 provides that if a reporting issuer that has sent proxy-related materials directly to NOBOs receives a written request from a NOBO for a legal proxy, the reporting issuer will arrange at no cost to the NOBO to deliver a legal proxy to the NOBO.

Changes from the July Draft National Instrument

Section 2.18 is a new section. It confirms that a NOBO that receives proxy-related material for a meeting directly from a reporting issuer may request and receive a legal proxy and exercise its right to vote at the meeting. The legal proxy ensures that such persons who attend a meeting have legal authority to vote the securities that they beneficially own and to change any voting instructions previously given. This provision implements, in relation to reporting issuers that deal directly with NOBOs for a meeting, an obligation analogous to that imposed on registrants or custodians by Canadian securities legislation of some jurisdictions (including subsection 49(5) of the *Securities Act* (Ontario)).

Section 2.20

Section 2.20 provides that an issuer may abridge the time for providing notification under subsection 2.2(1), or requesting beneficial ownership information under subsection 2.5(1), by filing with the regulator at the time it files its proxy-related material a certificate of one of its officers, reporting that it is relying upon section 2.20 and that it has arranged to have proxy-related materials for the meeting sent in compliance with the Instrument to all beneficial owners at least 21 days before the date fixed for the meeting, and to have carried out all of the other requirements of the proposed National Instrument.

Changes from the July Draft National Instrument

Section 2.20 is new. It has been added in connection with the amendments made to sections 2.2(1) and 2.5(1) wherein specific time frames were reinstated for providing notification of a meeting and requesting beneficial ownership information.

Section 2.20 allows the time frames prescribed in section 2.2(1) and 2.5(1) to be abridged by filing the required officer's certificate.

Section 3.2

Section 3.2 establishes obligations on intermediaries that open an account for a client to send to the client an explanation to clients and a client response form and obtain instructions from the client on the matters to which the response form pertains, before the intermediary holds securities on behalf of the client in the account.

Changes from the July Draft National Instrument

Section 3.2 has been revised to also include a requirement that the intermediary obtain the electronic mail address of the client, if available, and, enquire whether the client wishes to consent, and if so, obtain consent of the client, to electronic delivery of documents.

Section 3.3

Changes from the July Draft National Instrument

Section 3.3 has been amended since the July 1998 Draft National Instrument. The July 1998 Draft National Instrument contemplated that a proximate intermediary that wished to seek new instructions from existing clients would do so using Form 54-101F1. This section has been changed to delete the requirement that Form 54-101F1 be used when new instructions are sought so as to allow proximate intermediaries greater flexibility in seeking new instructions from existing clients. This is in conformity with the new provisions in section 3.4 that address the ability of a client to change at any time the choices it made, or was deemed to have made, in the client response form. An existing client that does not respond to a new request for instructions will continue to be governed by the instructions previously given or deemed to have been given under NP41. This is a change from the July 1998 Draft National Instrument in which a failure to respond to a new request for instructions would have resulted in the client having been deemed to have made the default elections set out in section 3.6 of the July 1998 Draft National Instrument. This section has also been amended from the July 1998 Draft National Instrument to clarify that a securityholder that is deemed to have elected not to receive all securityholder materials pursuant to NP41 will not receive annual reports or financial statements that are part of proxy-related materials for meetings at which only routine business is to be conducted.

This section has also been changed to provide that a beneficial owner that is deemed to be a NOBO under subparagraph 2 of paragraph 3.3(b) (i.e. the beneficial owner did not respond to a client response card provided under NP41) will be deemed to be a NOBO for three years after the proposed National Instrument comes into force. Paragraph 3.3(c) provides that the intermediary shall seek new instructions from that client before the expiry of the three year period. This change has been made to ensure that the proposed National Instrument conforms with the spirit of the *Personal Information Protection and Electronic Documents Act* (Canada) by placing limits on the extent to which personal information may be provided without explicit instructions from the relevant beneficial owner.

The CSA note that intermediaries that seek instructions from clients under NP41 should advise the clients of the implications under the proposed National Instrument of the choices they make under NP41.

Section 3.4

Section 3.4 provides that a client may at any time change the choices it made concerning disclosure of ownership information and receipt of securityholder materials by advising the intermediary that holds securities on the client's behalf.

Changes from the July Draft National Instrument

Section 3.4 is new. It makes explicit the ability of a client to change the choices it has previously made or is deemed to have made with respect to the matters addressed in the client response form.

Deletions from Part 3

Section 3.5 of the July Draft National Instrument provided that a client that is itself an intermediary is not required to return any client response [form] received by it in connection with securities of which it is an intermediary. This provision has been deleted to reflect the fact that the Instrument itself does not require that a client return the client response form.

Section 3.6 of the July Draft National Instrument, which prescribed the default consequences if a beneficial owner failed to provide instructions in the matters addressed in the client response form, has been deleted. In light of the obligation in section 3.2 to obtain instructions from all new clients and the changes to section 3.3 with respect to transitional provisions concerning previously obtained instructions from existing clients, such default provisions are considered unnecessary.

Section 3.7 of the July Draft National Instrument, which provided that OBOs bore the costs of confidentiality in connection with the sending of securityholder materials to them, has also been deleted. The CSA have resolved to be silent on that issue and permit the market to determine how the costs of delivery to OBOs will be borne where the matter is not addressed by local rule.

Section 4.1

Changes from the July Draft National Instrument

Subsections 4.1(1) and 4.1(2) have been reordered. Paragraphs 4.1(1)(b) and (c) have been revised to provide that the reference date used for calculating the three business days for response should be the "beneficial ownership determination date", and not the "record date for notice", to account for the fact that the information is to be prepared "as at the beneficial ownership determination date".

Subsection 4.1(3) has been amended to clarify that it pertains to requests for beneficial ownership information that relate to neither a meeting nor the sending of securityholder materials. The July Draft National Instrument indicated the subsection only applied to requests that did not relate to a meeting.

Section 4.1 has also been amended to delete the requirement

that a NOBO list requested in connection with a meeting be provided in electronic format. Amendments to the Request for Beneficial Ownership Information form, however, specify that if a proximate intermediary is able to do so, it must respond to requests for a NOBO list by providing the list in electronic format.

Section 4.2

Changes from the July Draft National Instrument

A new subsection (2) has been added since the July National Instrument. This subsection has been added in conjunction with the amendment of section 2.12. The change extends from three business days to four business days the time within which a proximate intermediary must send securityholder materials where the materials are being sent by prepaid mail other than first class mail. This change is intended to provide proximate intermediaries one extra day to complete the extra steps required when securityholder materials are to be sent by mail and the mail is not first class mail.

Section 4.3

Changes from the July Draft National Instrument

The introductory phrase, "Except as required by securities legislation", that appeared in the July Draft National Instrument has been deleted. This condition is no longer considered necessary.

Section 4.5

Section 4.5 requires an intermediary that receives a written request from a beneficial owner for a legal proxy to provide a legal proxy in the prescribed form at no cost to the beneficial owner.

Changes from the July Draft National Instrument

Section 4.5 is new. It is designed to ensure that beneficial owners that receive proxy-related material may, as an alternative to providing voting instructions, request a legal proxy and exercise their right to vote at the meeting. The legal proxy ensures that such persons who attend a meeting have legal authority to vote the securities that they beneficially own, and to change any voting instructions previously given.

Section 4.7

Section 4.7 clarifies that nothing in Part 4 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 do so.

Changes from the July Draft National Instrument

Section 4.7 is new, and recognizes that the provisions of the securities legislation of some jurisdictions specifically permit intermediaries to decline to forward securityholder materials to beneficial owners unless arrangements have been made for the payment to the intermediary for so doing. The CSA do not intend to override these provisions in this Instrument. This change is made in conjunction with the deletion of section 3.7 of the July Draft National Instrument, which provided that

OBOs were required to bear the costs of confidentiality. The CSA have resolved to be silent on that issue and permit the market to determine how the costs of delivery to OBOs will be borne where the matter is not addressed by local rule.

Section 5.3

Changes from the July Draft National Instrument

Section 5.3 has been amended since the July Draft to clarify that the response to an intermediary search request must identify each entity that holds the specified securities on behalf of the depository and must identify the respective holdings of each such entity.

Part 6

Changes from the July Draft National Instrument

Subsection 6.1(1) has been amended to address the circumstance where a person or company does not require all of the NOBO lists in the reporting issuer's possession to provide for specific NOBO list requests. This change is consistent with the ability of a reporting issuer to make specific NOBO list requests under subsection 2.5(2) of the Instrument.

Subsection 6.1(2) has been amended. It now requires that a request for a NOBO list be accompanied by an undertaking in the form of Form 54-101F9 confirming the obligations with respect to a NOBO list. This replaces the requirement in the July Draft National Instrument for a statutory declaration in the required form. As noted above, this is a return to the proposal in the February Draft National Instrument and recognizes that a statutory declaration is not the most appropriate means of addressing promises with respect to future conduct as distinct from statements of existing fact. A similar change has been made to subsection 6.2(5). Subsection 6.1(3) has been added to specifically provide for the fee to be paid to reporting issuers that provide NOBO lists; this fee was already referred to in subsection 6.1(4). The time for a reporting issuer to respond to a requirement for existing NOBO lists has been extended from three business days to ten days, which is consistent with the time prescribed by the *Canada Business Corporations Act* for responding to requests for a securityholder list.

Part 9

Section 9.1

Section 9.1 of the July Draft National Instrument provided that the time periods applicable to send the proxy-related materials prescribed in the Instrument do not apply to the sending of annual financial statements or annual reports if the statement or report is sent by the reporting issuer to beneficial owners of the securities within the time limitations established within applicable corporate law and securities legislation for sending to registered holders of the securities.

Changes from the July Draft National Instrument

Section 9.1 has been amended to clarify that the reference to sending, including the applicable time limitations, means direct or indirect sending in accordance with the Instrument.

Part 10

Part 10 has been amended to provide updated transitional provisions. The CSA are proposing that the proposed National Instrument come into force on July 1, 2001 but will apply to the sending of proxy-related materials only for meetings held on or after January 1, 2002. It is proposed that the proposed National Instrument apply to the sending of securityholder materials other than proxy-related materials occurring on or after July 1, 2001. The sending of proxy-related materials for meetings held between July 1, 2001 and January 1, 2002 are exempt from the proposed National Instrument so long as they are sent in accordance with NP41.

In addition, no person or company shall be obliged to furnish a NOBO list under the proposed Instrument before September 1, 2001.

These changes are designed to permit participants in the securityholders materials distribution process adequate time to make necessary systems and operational changes.

Summary of Changes to the Proposed Forms

A number of changes were made to the proposed Forms in order to conform the Forms to amendments made to the proposed National Instrument.

The Client Response Form (Form 54-101F1) has been amended to remove all references to default elections in the event the form is not completed. In light of the obligation on intermediaries to obtain the instructions referred to in the form, the default provisions prescribed in the July Draft National Instrument were considered unnecessary and have been deleted. Conforming changes to the Client Response Form have also been made to clarify that a beneficial owner that declines to receive all securityholder materials will not receive annual reports and financial statements that are part of proxy-related materials for meetings at which only routine business is to be conducted, unless the reporting issuer elects, at its expense, and otherwise in accordance with the Instrument, to send these materials to all beneficial owners. This form has also been revised to provide for disclosure of any fees or charges the intermediary may require a client that is an OBO to pay in connection with the sending of security holder material. The definition of routine business in this form has been revised to restate the definition in the proposed National Instrument.

Provision has also been made in Form 54-101F1 for the intermediary, at its option, to advise OBOs that it may elect not to forward securityholder materials unless the beneficial owner or the relevant issuer pays the costs of delivery.

Provision has been made in Form 54-101F1 for the intermediary to obtain the electronic mail address of its client if the client has one.

Provision has also been made in the form to permit a consent to electronic delivery of documents to be obtained in the manner contemplated by National Policy 11-201 Delivery of Documents by Electronic Means.

References on the Client Response Form to an OBO being required to pay for the costs of delivery of securityholder

materials have been deleted. The client response form may contain a place where an OBO 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.

The Request for Beneficial Ownership Information (Form 54-101F2) has been amended to make some provisions more clear and to conform with changes in the proposed National Instrument. The form now requires enclosure of an undertaking, rather than a statutory declaration, relating to use of any NOBO list provided in response to the request. The form has also been amended to remove the ability of a party requesting a NOBO list to indicate whether or not it wishes the list to be in electronic or non-electronic format. The response has been amended to require that if a proximate intermediary is able to do so, it must respond to a request for a NOBO list by providing it in electronic format.

The Request for Beneficial Ownership Information requires the reporting issuer to state whether the reporting issuer will pay the costs associated with the delivery of the securityholder materials to OBOs by intermediaries.

The Request for Beneficial Ownership Information has been revised to more specifically address the sending of materials other than by mail. It has also been revised to facilitate the request of information from intermediaries on the number of OBOs and NOBOs that have declined to receive the materials to the extent applicable, and on the aggregate number of beneficial owners who have consented to electronic delivery of documents by the intermediary to the beneficial owner. The form has also been revised to require the intermediary to state the number of OBOs with addresses, as shown in the records of the intermediary through which the OBO holds securities, in each jurisdiction, so as to facilitate the potential allocation of the costs of sending securityholder materials which may be dependant upon the jurisdiction in which the OBO is resident.

The Proximate Intermediary Response (also part of Form 54-101F2) has also been amended to require a warning on the response to the effect that it is an offence to use a NOBO list for purposes other than those provided for in the proposed National Instrument. A similar warning has been added to the Electronic Format for NOBO List (Form 54-101F5).

The Proximate Intermediary Response now also specifies that if a proximate intermediary is in a foreign jurisdiction and the law in that jurisdiction requires the proximate intermediary to deliver securityholder materials to beneficial owners including NOBOs, this fact may be stated in the response. This change conforms with the amendment to subsection 2.12(3) of the proposed National Instrument.

The Proximate Intermediary Response requires a proximate intermediary to state whether there are any intermediaries, that are entitled to decline to forward and who will not forward securityholder materials to an OBO, unless the OBO, or the relevant issuer, pays the costs of delivery.

The Omnibus Proxy (Depositories) (Form 54-101F3) and the Omnibus Proxy (Intermediaries) (Form 54-101F4) have been amended to delete certain restrictions that previously appeared on the face of the form of proxy. They have also been amended to clarify that the proxies are given as at the beneficial ownership determination date for the meeting, with

the inclusion of instructions to date and to sign the forms of proxy.

The prescribed electronic format for NOBO lists, Form 54-101F5, has been revised to use full calendar years in dates. It has also been reordered somewhat and amended to add space for NOBO's e-mail addresses, and to provide space to indicate if consent was given for electronic delivery by the intermediary to the beneficial owners, as contemplated by National Policy 11-201; except in respect of new clients, there is no existing obligation to collect this information, and it is recognized that these fields may not be completed for all NOBOs.

The form has also been amended to provide fields that disclose whether beneficial owners have consented to electronic delivery of documents and, in the case of OBOs, agreed to pay the costs of delivery of documents to them.

Request for Voting Instructions Made by a Reporting Issuer (Form 54-101F6) and the Request for Voting Instructions Made by an Intermediary (Form 54-101F7) have been amended to clarify the right of beneficial owners to attend meetings and vote in person by obtaining a legal proxy. These forms have also been amended to provide for inclusion of instructions for appointing an alternate proxy and to delete the previous references to the provision of return envelopes, reflecting the fact that the instructions may not be transmitted by mail.

The new proposed Form 54-101F8 is a legal proxy that can be used by a beneficial owner that receives proxy-related material and wishes to attend a meeting of securityholders rather than providing voting instructions. It has also been amended to require identification of not just the registered holder of the subject securities, but any intermediaries from whom the proxy is derived, in order to facilitate reconciliation.

Form 54-101F9 (previously Form 54-101F8) now consists of an undertaking rather than a form of statutory declaration.

Summary of Changes to the Proposed Companion Policy

This section describes changes made in the proposed Companion Policy from the July Draft Companion Policy. For a detailed summary of the contents of the July Draft Companion Policy, reference should be made to the July Notice.

Section 2.2

Subsection (1) of this section has been amended to reflect the changes to the terms of subsection 2.12(3) of the proposed National Instrument. It notes that if a reporting issuer is precluded from sending securityholder materials directly to NOBOs because of conflicting requirements of foreign law, it must send the materials indirectly through proximate intermediaries.

Section 3.1

Changes to the Draft Companion Policy

This section has been amended to reflect the changes to the timing requirements stipulated in sections 2.2, 2.3 and 2.5 of

the proposed National Instrument and the addition of section 2.20 to the proposed National Instrument. It has also been amended to note that the minimum time frames in sections 2.9 and 2.12 of the National Instrument for the sending of proxy-related materials are minimum requirements and that good corporate practice dictates that certain materials be sent earlier than the minimum required dates in the Instrument.

Deletions from Part 3

Section 3.2 of the July Draft Companion Policy referred to the fee schedule identified in section 1.5 of the July Draft National Instrument, attached as an Appendix to the July Draft National Instrument, and explained that the July Draft National Instrument required payment of fees in a reasonable amount, or in the case of British Columbia, a fixed amount. Section 3.2 also stated that the CSA considered the fees fixed by British Columbia to be reasonable, in light of current procedures and technology. As a result of the amendment of section 1.5, which eliminated the reference to an Appendix in the proposed National Instrument, the proposed National Instrument no longer contains a fee schedule. Section 3.2 of the July Draft Companion Policy has been deleted with the elimination of the Appendix.

Section 3.3 of the July Draft National Policy summarized sections 6.1 and 6.2 of the July Draft National Instrument. This was considered unnecessary and has been deleted. A new subsection 3.3(1) clarifies that a Request for Beneficial Ownership Information under subsection 2.5(2) of the proposed National Instrument may be for any class or series of securities, not just those with a right to receive notice of, or to vote at, a meeting, and need not necessarily be sent to all proximate intermediaries holding that class or series of securities. A new subsection 3.3(2) addresses the fact that a proximate intermediary must, if it is able to do so, respond to a request for a NOBO list by providing the list in electronic format. The new subsection 3.3(2) indicates that a reporting issuer that wishes a hard copy of a NOBO list should make arrangements for its transfer agent to convert the electronic format of NOBO lists that the transfer agent receives to a paper copy.

Section 4.1

Section 4.1 has been amended to provide that it is expected that proximate intermediaries will alert their clients to the costs and other consequences of the options in the client response form.

Section 4.3

Subsection 4.3(2) has been amended to clarify that the obligation of an intermediary to reconcile positions applies both to securities that are held directly and those held through nominees, depositories and other intermediaries.

Section 4.5

Section 4.5 is new and notes the obligations of an intermediary to notify each depository of changes in any information previously provided by it under section 3.1 of the Instrument within five business days of the change. This section notes that the five business days is a maximum and that it is expected that intermediaries will provide notice of such

changes as soon as possible, and if possible, in advance.

Section 4.7

Section 4.7 is new and has been added to discuss the responsibilities of intermediaries to their beneficial owners apart from the sending of securityholder material. It restates paragraph (ii) of Part IX of NP41.

Section 5.4

Subsection 5.4(4) has been added. It encourages proximate intermediaries to request e-mail addresses and consents from clients to permit the electronic sending of securityholder materials.

Subsection 5.4(5) has also been added. It refers to the obligation for intermediaries to seek from new clients their consent to electronic delivery of documents or to enquire as to whether or not the client would like to give their consent. It also clarifies the significance of information to be included in NOBO lists concerning whether or not the NOBO has consented to the electronic delivery of securityholder materials. It notes that this information may be of interest to a reporting issuer in connection with the reporting issuer's decision on whether to send materials directly to NOBOs and whether electronic delivery should be used for the sending. It cautions, however, that any consent of a beneficial owner restricted to its intermediary cannot be used by the reporting issuer.

Section 5.5

Section 5.5 is new. It concerns the "householding" of materials and suggests that the delivery of a single set of securityholder materials to a single investor who holds securities of the same class and two or more accounts with the same address would satisfy the delivery requirements under the Instrument. It states that the sending of a single document in those circumstances is encouraged in order to reduce the costs of securityholder communications.

Section 6.3

Section 6.3 has been amended to delete the reference to materials being furnished "in bulk" to reflect the fact that materials may not always be transmitted in physical form.

Comments on proposed National Instrument, Forms and Companion Policy

Interested parties are invited to make written submissions with respect to the proposed National Instrument, Forms and Companion Policy.

The CSA request specific comment on whether the Instrument should in the definition of "send" contemplate electronic delivery only where consent is first obtained, or whether the Instrument should in this respect conform to National Policy 11-201, which suggests, but does not specifically mandate, consent.

Submissions received by November 1, 2000, will be considered.

Submissions should be sent, in duplicate, to all of the Canadian securities regulatory authorities listed below in care of the Ontario Securities Commission as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Department of Government Services and Lands,
Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 17th Floor
Montréal, Québec H4Z 1G3

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published, confidentiality of submissions received cannot be maintained.

Questions may be referred to any of:

Diane Joly
Directrice de la recherche et du développement des marchés
Commission des valeurs mobilières du Québec
(514) 940-2199, Ext. 2150
email: Diane.Joly@cvmq.com

Glenda A. Campbell
Vice Chair
Alberta Securities Commission
(403) 297-6454
e-mail: Glenda.Campbell@seccom.ab.ca

Robert Hudson
Manager and Senior Legal Counsel
British Columbia Securities Commission
(604) 899-6691
or (800) 373-6393 (in B.C.)
e-mail: rhudson@bcsc.bc.ca

Veronica Armstrong
Senior Policy Advisor
British Columbia Securities Commission

(604) 899-6738
or (800) 373-6393 (in B.C.)
e-mail: varmstrong@bcsc.bc.ca

Robert F. Kohl
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 593-8233
e-mail: rkohl@osc.gov.on.ca

Rescission of National Policy Statement No. 41

NP41 is replaced by the proposed National Instrument. The text of the proposed rescission is:

"National Policy Statement No. 41 Shareholder Communication is rescinded effective upon the date proposed National Instrument 54-101 comes into force."

Text of Proposed National Instrument, Forms and Companion Policy

The text of the proposed National Instrument, Forms and Companion Policy follow, together with footnotes that are not part of the National Instrument, Forms or Companion Policy, as applicable, but have been included to provide background and explanation.

DATED: September 1, 2000

APPENDIX B

**SUMMARY OF COMMENTS RECEIVED
ON
DRAFT NATIONAL INSTRUMENT 54-101, DRAFT FORMS
54-101F1, 54-101F2, 54-101F3, 54-101F4, 54-101F5,
54-101F6, 54-101F7 AND 54-101F8
AND
DRAFT POLICY 54-101CP
AND
RESPONSE OF THE CANADIAN SECURITIES
ADMINISTRATORS**

1. INTRODUCTION

On February 27, 1998, the Canadian Securities Administrators

APPENDIX A

**LIST OF COMMENTERS
ON
PROPOSED NATIONAL INSTRUMENT, FORMS AND
COMPANION POLICY**

1. Caledonia Mining Corporation dated February 24, 1999
2. Canada Trust dated September 10, 1998
3. Canadian Investor Relations Institute dated September 18, 1998
4. Canadian Bankers Association dated September 15, 1998
5. Canadian Depository for Securities dated September 8, 1998
6. Canadian Corporate Shareholders Services Association dated September 15, 1998
7. Independent Investor Communications Corporation dated August 11, 1998
8. Investment Dealers Association of Canada dated August 20, 1998
9. Investors Group Financial Services Inc. dated September 14, 1998
10. Royal Trust dated September 15, 1998
11. Marketing News Publishing Inc. dated February 15, 1999
12. Security Transfer Association of Canada September 15, 1998
- *13. Canadian Shareowners Association dated May 26, 1998
- *14. Fairvest Investments dated June 19, 1998

* These letters contained comments on the February Draft National Instrument but were received following expiry of the comment period for that draft.

(the "CSA") published for comment proposed National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer (the "National Instrument"), Forms 54-101F1, 54-101F2, 54-101F3, 54-101F4, 54-101F5, 54-101F6, 54-101F7 and 54-101F8 (the "Forms"), the proposed Companion Policy 54-101CP (the "Companion Policy") and, in Ontario, the proposed Implementing Rule 54-801.⁴

Following a review of the comments received, the CSA published on July 17, 1998 a second draft of the proposed National Instrument, proposed Forms and proposed Companion Policy. The comment period for this second draft expired on September 15, 1998.

⁴ (1998), 21 OSCB 1388.

Request for Comments

In this Notice, the version of these materials published in February are called the "February Draft National Instrument", the "February Draft Forms" and the "February Draft Companion Policy" respectively. The version of these materials published in July are referred to in this notice as the "July Draft National Instrument", the "July Draft Forms" and the "July Draft Companion Policy" respectively.

CSA received 12 submissions on the July Draft National Instrument. The commenters providing the submissions can be grouped as follows:

Mutual Fund Companies/Registrants	1
- Investors Group Financial Services Inc. ("IG")	
Trade Associations	4
- Canadian Bankers Association ("CBA")	
- Canadian Investor Relations Institute ("CIRI")	
- Canadian Corporate Shareholders Services Association ("CCSSA")	
- Security Transfer Association of Canada ("STAC")	
Self-Regulatory Organizations	1
- Investment Dealers Association of Canada ("IDA")	
Financial Institutions	2
- Canada Trust ("CT")	
- Royal Trust ("RT")	
Others	4
- Canadian Depository for Securities Inc. ("CDS")	
- ADP Independent Investor Communications Corporation ("IICC"), whose comment adopted a letter of Stikeman, Elliott	
- Market News Publishing Inc. ("MNP")	
- Caledonia Mining Corporation ("Caledonia")	
TOTAL	12

Following expiry of the comment period for the February Draft National Instrument, CSA received comments on that draft from Canadian Shareowners Association ("CSha") and Fairvest Securities Corporation ("Fairvest"). Although the CSA consider that the points raised in those comments were adequately identified and addressed through the points raised by other comment letters in Appendix "B" to the July Notice, those two comment letters are also addressed specifically below.

Copies of the comment letters may be viewed at the office of Micromedia, 20 Victoria Street, Toronto, Ontario, (416) 312-5211 or (800) 387-2689; the office of the British Columbia Securities Commission, 200-865 Hornby Street, Vancouver, British Columbia, (604) 899-6660; the office of the Alberta Securities Commission, 10025 Jasper Avenue, Edmonton, Alberta, (780) 427-5201; and the office of the Commission des valeurs mobilières du Québec, Stock Exchange Tower, 800 Victoria Square, 22nd Floor, Montréal, Québec, (514) 940-2150.

The CSA have considered the comments received and thank all commenters for providing their comments. The July Draft

National Instrument, July Draft Forms and July Draft Companion Policy have been amended to reflect a number of the comments, and are being republished for further comment.

The following is a summary of the comments received, together with the CSA's responses and, where applicable, the proposed changes in response to the comments. The republished versions of these instruments are called the "proposed National Instrument", the "proposed Forms" and "proposed Policy" in this Appendix. Terms used in this summary that are defined in the proposed National Instrument have the meanings ascribed to them in that Instrument.

2. GENERAL COMMENTS

Permitting Reporting Issuers to Send Material Directly to NOBOs.

The most controversial aspect of the July Draft National Instrument as evidenced by the comments received remained the proposal to permit reporting issuers to deliver securityholder materials that are proxy-related materials directly to NOBOs of their securities. The commenters that objected to this proposal continued to express the view that the proposal ran the risk of significant inefficiencies for those parties involved in the process of distributing securityholder materials. The comment repeated by several of the commenters, including the IDA, IICC, CT, CSha and the CBA, was that the existing shareholder communication process is operating efficiently and should not be changed (or that any changes should be within the NP41 framework). IDA noted that the number of complaints it received from shareholders had dropped to almost zero. These commenters raised concerns about short term dislocation, thereby raising costs and undermining investor confidence in the efficiency and integrity of the shareholder communication process. The IICC described the July Draft National Instrument as a "compromise with no objective criteria against which it can be measured [and] no disciplined analysis of costs and benefits". It commented that the proposed Instrument will harm ordinary investors. The CSA were also criticized for their failure to carefully analyze the current process and consider all of the available alternatives. RT expressed the view that the proposed National Instrument will make the system unnecessarily complex, confusing, inefficient and costly for all parties. CSha noted it does not receive complaints about receipt of disclosure information and voting processes from its 14,000 members and expressed concern that opening up the mailing process to "self-service" by issuers may make the delivery of information to retail investors less effective than it is today. CSha commented that permitting issuers to conduct the proxy process may well lead to problems in the voting process and noted that unless regulators standardize forms and procedures for issuers, they are likely to use different formats for proxy voting which will add confusion to voting and thereby result in lowered voting rate by retail investors.

CCSSA, in contrast, commented that issuers continue to wish to be able to communicate directly with all of their shareholders and to have a choice of service provider in a free market competitive system and indicated that the changes in this regard contemplated by the July Draft National Instrument had its wholehearted support. STAC commented that it was time to move the agenda forward and implement the new

National Instrument for the benefit of Canadian beneficial shareholders. Caledonia sought to register "in the strongest possible terms" its support for the July Draft National Instrument and commented that the change is long overdue.

Response

The CSA continue to believe in the principle and importance of issuers having access to information about their beneficial owners combined with the right and ability to communicate directly with their beneficial owners. That is the relationship that exists under corporate law between reporting issuers and registered holders of securities. The CSA are attempting, to the extent possible and practical, to put beneficial owners of securities in the same position as registered holders of securities.

The CSA have considered the concerns expressed about the possibility of reduced efficiencies, compared to the existing communication process. However, the CSA believe that the objectives outlined above, and the benefits that could result, are so important that they outweigh efficiency concerns relating to the mailing process.

Some commenters submitted that there was no need to change NP41 because reporting issuers were satisfied with the existing policy. To investigate this submission, the CSA sent survey questionnaires, in English and French, to 200 reporting issuers that had been randomly selected, and to all reporting issuers comprising the TSE 35. This was followed by a second survey of the same issuers, containing a few slightly revised questions. A total of 78 and 83 issuers responded to the first and second surveys, respectively.

A majority of issuers that responded were either "unsatisfied" or "very unsatisfied" with the existing system of securityholder communications. They wanted the opportunity to communicate directly with beneficial owners of their securities. In response to a question about the likelihood that they would use a list of their beneficial owners to send out proxy-related materials, a substantial majority of the issuers replied that it was "somewhat" or "very likely" that they would do so. Two-thirds of the issuers would also use the list to send other materials, such as press releases, to beneficial owners. A detailed summary of responses may be viewed at the office of the British Columbia Securities Commission, 200-865 Hornby Street, Vancouver, British Columbia, (604) 899-6660.

In addition to conducting the survey, CSA staff, during on-site meetings, analyzed "back office" systems used by participants in the securityholder communications process. The results of this analysis have influenced the proposed National Instrument. However, the CSA have not been able to achieve a complete consensus concerning the proposed National Instrument, because certain market participants have mutually exclusive interests. The proposed National Instrument represents what the CSA believe is an appropriate balancing of interests.

Application to Non-Proxy-Materials

The IICC noted that the July Draft National Instrument did not make its procedures mandatory with respect to distribution of non-proxy materials and proposed that a uniform procedure should apply in respect of all shareholder materials and in

particular corporate actions.

Response

The rationale for making the proposed National Instrument permissive rather than mandatory with respect to non-proxy materials, as is the case under NP41, was explained in the July Notice. While the CSA encourage the use of the regime established under the proposed National Instrument for non-proxy materials, they do not feel it is appropriate to make the use of that regime mandatory at this time for all distributions given the general lack of consensus on the point and the desire not to hold up the implementation of the proposed National Instrument.

Loss of Confidentiality

CT expressed the view that loss of confidentiality will result from the implementation of the proposed National Instrument. The concern expressed was that confidentiality could only be maintained if a beneficial owner opts to become an OBO, which imposes on the beneficial owner certain costs related to securityholder communications. CT also commented and expressed concern that it would have no control over how information required to be provided by it to others would be used.

Response

The confidentiality rights in the proposed National Instrument reflect those in NP41. The beneficial owner of securities will continue to have the express right to remain anonymous to reporting issuers.

Loss of Control

CT commented that its clients should be able to expect that it would be in control of processes that affect their accounts but that under the proposed National Instrument it will lose the control it had under NP41 of the mailing process.

Response

If a trust company, for example, is uncomfortable with the concept of direct mailing by reporting issuers to the trust company's clients, it is open to the trust company to address this issue in its client agreements by requiring all of its clients to be OBOs and thus continue the process as it currently exists under NP41.

Non-Delivery of Material

The CBA suggested that further consideration be given to specifying in the proposed National Instrument that an intermediary is not responsible for the non-delivery of material to NOBOs where a reporting issuer has elected to distribute the material directly.

Response

The CSA regard this as a client relationship issue that may be addressed by each intermediary in a manner satisfactory to both it and its client.

Securities Lending

CBA proposed that the proposed National Instrument address the legal issue as to who, as between a borrower or lender of securities, is entitled to vote. CCSSA also identified this as a gap in the July Draft National Instrument.

Response

The proposed National Instrument addresses a process for securityholder communications, not the rights of securityholders. The CSA believe that the issue of who votes the securities that are subject to a securities lending arrangement is a contractual matter between the borrower or lender and beyond the scope of the proposed National Instrument. Market participants, however, cannot under the proposed National Instrument vote any securities that they are not lawfully entitled to vote. Where securities lending has occurred, section 4.3 of the proposed Companion Policy applies and in reconciling positions, the intermediary should only consider securities it or its clients have the right to vote.

Benefits of Competition and Economies of Scale

IDA in its comments commented that the proposed National Instrument provides no clear vision of how the proposed change will actually work and expressed scepticism that the benefits of competition anticipated by the proposed National Instrument will in fact be realized. It noted that the revenue of the "monopoly" provider of the proxy solicitation service was less than \$8 million in 1997. IDA commented that if the revenue available for shareholder communications is fragmented among many providers, the likely result will be that existing systems will not continue to improve. RT commented that further analysis was required as to whether economies of scale would result from the introduction of the proposed Instrument. Similarly, IICC commented that it might be helpful to retain outside expertise to review whether there are additional economies of or efficiencies of scale that might be exploited in the shareholder communications process. IICC went on to critique the CSA analysis in the July Draft of the efficiencies of the proposed system. IICC criticized CSA for disregarding the cost and expense implications arising from the July Draft National Instrument which it believed disregards market realities, would hamstring current technology and remove incentives to develop and implement new technology. IICC commented that opportunities to automate using electronic communications will be lost under the draft instrument and that electronic links with CDS that currently provide all specifications necessary for initiating and completing the shareholder communication process in connection with meetings will no longer be possible. IICC commented that it was an obvious step backwards to require intermediaries to keep both hard copies and electronic forms of NOBO lists because "certain issuers and third parties may not have the technical capacity to receive an electronic list". CSha similarly commented that it was unclear whether issuers would have the resources to keep abreast of emerging electronic technology for distributing information and conducting voting or would have the inclination to develop new technology for delivering information and retrieving votes. CCSSA was supportive of the proposed National Instrument and indicated it would support an in-depth analysis of the current process and its true costs which might identify ways of reducing the complexity of the proposed National Instrument and increasing its cost effectiveness.

Response

Industry consultation with experts in securityholder communities has been ongoing since 1988 and continues.

The proposed National Instrument has been amended to require that all requests for beneficial ownership information must be made using the services of a transfer agent. The CSA believe this will better facilitate an efficient communications process and encourage a limited number of entities to make investment in changing technologies which will allow them to optimally perform the required task. The CSA also note that the proposed National Instrument permits the option of continued use of the existing system or the option of direct mailing to NOBOs; the CSA expect market forces will lead issuers to the system most appropriate for their own situation.

The proposed National Instrument has been drafted so as not to require manual transmission of information in documents and does not preclude reporting issuers (through their professional transfer agents) from exploiting innovations that can be developed in the registered holder environment. Transfer agents and other potential service providers can make use of efficiencies that they have developed in their existing business operations and may be able to piggyback on technologies used by their parents or affiliates.

With respect to the comment concerning the electronic links with CDS, the CSA have investigated this point with CDS and have determined that the electronic link referred to is merely an early notice of record dates/meeting dates (not prescribed in NP41) that is also provided to "back-office" service providers. The CSA understand that CDS would continue to provide this linkage to IICC and would produce this linkage to other parties, including transfer agents, upon their request.

The CSA note that under the proposed National Instrument, intermediaries are only required to generate hard copies of NOBO lists on request. This parallels requirements under securities legislation that registrants be able to generate hard copies of computerized records. The proposed National Instrument contemplates recovery of reasonable costs to intermediaries required to provide a hard copy. There is no requirement in the proposed National Instrument to keep hard copies on hand.

Trust Companies' Fiduciary Responsibilities

RT commented that many institutional investors, including pension and mutual funds limit their trustee's power to vote to acting only on the direction of professional fund managers and at present it has retained IICC as its agent for the purpose of forwarding materials to these professionals, obtaining and tabulating the voting decisions, and then transmitting the vote on its behalf. RT expressed concern that issuers may expect that, under the proposed National Instrument, they can elect to replace the role of IICC and may not realize that the trustee votes the substantial holdings of institutional investors and that it is unlikely that the trustee will appoint issuers as agents to assist them with the trustee's duties.

Response

As with NP41, a beneficial owner holding securities through an

intermediary is free to organize its account with an intermediary in whatever manner is most appropriate to it. In the situation raised by RT, a trustee that has made arrangements with portfolio managers concerning how securities are to be voted is free to be shown on the records of the intermediary as a "beneficial owner" of those securities under the proposed National Instrument. There is no requirement in the proposed National Instrument that an issuer be advised of the arrangements between the trustee and the portfolio managers. Therefore, even if the trustee elects to be a NOBO, the issuer would deal only with the trustee, as only the trustee's name would appear on a NOBO list. The issuer would not be involved in the relationship between the trustee and portfolio managers. Alternatively, the trustee could elect to be an OBO, in which case the trustee would not deal directly with any issuers at all.

Documentation

CCSSA expressed concern that an issuer that mails indirectly one year and directly another might inadvertently overlook its obligation to print, in addition to a proxy form for registered holders, a request for voting instructions for non-registered holders and include the prescribed wording in the proxy-related materials to the effect that the names of non-registered holders were obtained from intermediaries.

Response

Issuers that change their method of contacting NOBOs will have to be attentive to the requirements of the proposed National Instrument including the obligation to include the prescribed wording concerning the source of names of non-registered holders.

Gaps in the July Draft National Instrument

CCSSA commented that there are gaps in the July Draft National Instrument. It noted that it understood that most institutional holders will elect to be OBOs and therefore issuers will still not know who their major shareholders are and proxy returns will remain low. CCSSA also commented that the July Draft National Instrument did not provide for a proximate intermediary to obtain a certificate of mailing from all intermediaries down the chain and therefore the reporting issuer will not know if the integrity of the mailing was maintained.

Response

The proposed National Instrument has been structured to accommodate beneficial owners that choose to remain anonymous and the CSA believe the proposed National Instrument strikes an appropriate balance between privacy interests and achieving efficiencies in securityholder communications. Indeed, with respect to institutional owners that choose to remain anonymous, this choice may also be available to them in the registered environment if they use nominees to hold their position. The CSA understand that, in many circumstances, issuers are able to ascertain institutional ownership by other means, including circumstances in which the institution directly advises the issuer.

The absence of a requirement for a certificate of mailing by intermediaries that are not proximate intermediaries is not new

to the proposed National Instrument. No such requirement exists under the current NP41 if there is a "tiering" of intermediaries. The provisions of the proposed National Instrument have been designed to deal most effectively with the more conventional circumstance in which the proximate intermediary holds securities on behalf of beneficial owners (rather than on behalf of other intermediaries that may in turn hold on behalf of beneficial owners or other intermediaries). While the proposed National Instrument might be able to achieve a theoretically pure result by establishing express provisions for certification and reimbursement of expenses at each tier of intermediary holdings, prescribing such additional administrative arrangements would likely be unnecessarily cumbersome and not justify the additional benefits; it would also preclude circumstance-specific arrangements being tailored for each multi-tiered situation. The CSA anticipate that, in the multi-tiered situations, intermediaries will make appropriate arrangements as between themselves for allocating delivery responsibilities to beneficial owners and the sharing of the corresponding amounts to be claimed through the proximate intermediary in certifying delivery to beneficial owners.

3. COMMENTS ON SPECIFIC PROVISIONS OF THE DRAFT NATIONAL INSTRUMENT⁵

Definition of intermediary (Section 1.1)

CCSSA questioned whether the CSA had completely satisfied themselves that the exclusions from the definition of intermediary will not further reduce the level of proxy returns and commented that it is important from a corporate governance perspective that issuers be able to raise their proxy returns. The CSA understand this concern to relate to the exclusion from the definition of persons or companies that hold securities only as custodians.

Response

The definition of intermediary in the proposed National Instrument has been clarified. Custodians that are excluded from the definition of "intermediary" are limited to those persons or companies that hold securities on behalf of other persons or companies where the securities are not registered in the name of the custodian on the books of the issuer or identified as being owned by the custodian as a participant in a depository.

Fees (Section 1.5)

The July Draft National Instrument contained as Appendix A, a fee schedule that stipulated the fees in British Columbia and required fees otherwise to be "a reasonable amount". Concerns were raised by IICC as to the clarity of these provisions and as to whether or not CSA were adopting the fees prescribed in B.C. as "reasonable". CIRI commented that it believed that the fees published in one jurisdiction would become the minimum benchmark in other jurisdictions. It indicated that it did not agree that third parties be required to pay a flat fee of \$100 per NOBO list while issuers, particularly

⁵ Section references are to section numbers in the proposed National Instrument.

those with broad shareholder bases were exposed to significantly higher fees. CCSSA also expressed concern about the quantum of the fees set out in Appendix A to the July Draft National Instrument, including the fees to be paid to proximate intermediaries for sending materials to NOBOs and OBOs and the fee to be paid by a third party which requests a NOBO list from a reporting issuer.

Response

The fee provisions in the proposed National Instrument have been changed. Section 1.5 of the proposed National Instrument now simply indicates that fees shall be the amount prescribed by the applicable regulator or securities regulatory authority or, where no amount is so prescribed, a reasonable amount. Consequently, the only present restriction is that the fee be a "reasonable amount".

Timing Requirements (Sections 2.2, 2.5, 2.9, 2.12 and 4.2)

IICC and CCSSA noted the non-inclusion in the July Draft National Instrument of timing requirements applicable to notification of meeting and record dates and requests for beneficial ownership information. IICC expressed the view that mandatory deadlines, or at least some guidelines, were needed and that their absence would lead to strained relations among issuers, intermediaries and investors as well as compliance problems. CCSSA recognized that the intent of removing these timing requirements was to allow flexibility in calling meetings on shorter notice but expressed concern that the caution to issuers that they must start the process early enough, which was contained in the July Draft Companion Policy, should be more prominent since it is a natural tendency to push deadlines to the limit and some issuers could unwittingly be in default of giving adequate notice of their meetings. Other commenters, including CCSSA, commented that it was unrealistic to set the deadline for delivery of bulk materials to intermediaries for the latter to mail, at three business days plus 21 days before the day of the meeting with a proximate intermediary being required to mail the material within three business days and each intermediary down the chain required to mail the materials in one business day. The view was expressed that these requirements were unrealistic and could result in some materials being mailed to the ultimate recipient less than 21 days before the meeting.

Fairvest commented that the shortening of the deadline for reporting issuers to deliver proxy materials in bulk to intermediaries from 33 days to a minimum of 21 calendar days plus three business days before the meeting could have negative consequences, including making dissident campaigns more difficult. Fairvest noted that there will be less time for shareholders to understand details of contentious management proposals and less time for a shareholder who wishes to solicit votes against a proposal to mount an effective campaign.

Response

Subsections 2.2(1) and 2.5(1) have been amended to reinstate the timing requirements from NP41 for giving notification of meetings and requesting beneficial ownership information.

A new Section 2.20 has been added to the Instrument. It provides that an issuer may abridge the time for providing

notification under subsection 2.2(1), or requesting beneficial ownership information under subsection 2.5(1), by filing with the regulator at the time it files its proxy-related material a certificate of one of its officers, reporting that it is relying upon section 2.20 and that it has arranged to have proxy-related materials for the meeting sent in compliance with the Instrument to all beneficial owners at least 21 days before the date fixed for the meeting, and to have carried out all of the other requirements of the proposed National Instrument. It has been added in connection with the amendments made to sections 2.2(1) and 2.5(1) wherein specific time frames were reinstated for providing notification of a meeting and requesting beneficial ownership information. Section 2.20 allows the time frames prescribed in section 2.2(1) and 2.5(1) to be abridged by filing the required officer's certificate.

A new provision has been added to section 4.2 of the proposed National Instrument to require that a reporting issuer that wishes to send proxy-related material by prepaid mail other than first-class mail must send the material to the proximate intermediary one day earlier than would be the case if the material is to be sent by other means. This change is intended to provide proximate intermediaries one extra day to complete the extra steps required when securityholder materials are to be sent by mail other than first-class mail. The CSA have not otherwise changed the requirement that the proximate intermediary be required to mail the materials within three business days of receipt and that each other intermediary down the chain be required to mail the materials in one business day. The proposed Companion Policy has been amended, however, to stipulate that intermediaries should make appropriate standing arrangements to ensure that any associated delay in sending material is minimized.

With respect to the reduction in the minimum window for review of materials by beneficial owners, the CSA note that issuers have routinely been able to obtain relief to permit the corresponding period to be reduced to 21 days under NP41. Moreover, the 21-day period exactly corresponds with the required period for review by registered holders under certain corporate law and certain securities legislation. The Companion Policy has, however, been amended to make clear that the 21-day period should be considered an absolute minimum.

Omnibus Proxy vs. Omnibus Power of Attorney (Paragraph 2.3(1)(d), Sections 2.16 and 2.17, Paragraph 4.1(1)(c), Sections 4.5 and 5.4 and Paragraph 8.2(b))

Stikeman, Elliott, on behalf of STAC, repeated a submission made by it in response to the February Draft National Instrument to the effect that the provisions of the July Draft National Instrument concerning voting by beneficial owners raise some legal and procedural concerns and fail to achieve the stated fundamental objective of equal treatment of registered and beneficial owners of securities.

In order to deal with this perceived problem, STAC proposed an alternative approach to that proposed in the July Draft. The major steps in the proposal were as follows:

- ! re-characterizing the omnibus proxy for depositories as an omnibus power of attorney to better reflect the function and legal effect of this delegation of voting authority. STAC

commented that the use of the term "proxy" is a misnomer insofar as Form 54-101F3 does not really constitute a "proxy" as such term is defined under applicable corporate law;

- ! the substitution of a standing omnibus power of attorney for the sub-delegation of voting authority from intermediaries to beneficial owners in place of the omnibus proxy for intermediaries. STAC commented that this level of subdelegation, which is arguably necessary under corporate law to permit personal voting by beneficial owners, was not provided for under the July Draft National Instrument;
- ! the delivery of issuer proxies to NOBOs in respect of meetings where the issuer has elected to deliver proxy-related materials directly to NOBOs, the voting of which may be reconciled directly by issuers or their agents; and
- ! the introduction of a form of "legal proxy" similar to that currently in use in the United States to permit OBOs, and those NOBOs to whom proxy-related materials are not delivered directly, to attend and vote in person at meetings. STAC commented that such legal proxies permit intermediaries to reconcile beneficial owner voting prior to completing a combined proxy and allow holders thereof to be identified as securityholders at a meeting.

STAC commented that these proposals would make administration of the Instrument more efficient through elimination of the need to handle large quantities of intermediary omnibus proxies and would permit beneficial owners to attend and vote in person at shareholder meetings; STAC commented that this was consistent with the stated fundamental principle that all shareholders be treated alike wherever possible.

Response

This alternative has been examined extensively by CSA staff. Although the CSA consider the proposal attractive in a number of ways, the CSA have not adopted the proposal as they are concerned that some elements of the proposal cannot be reconciled with the approach prescribed by certain sections of the *Canada Business Corporations Act* ("CBCA"), particularly section 153 of the CBCA. The proposal may be revisited if the CBCA is in the future amended in such a way as to permit the proposal.

However, the CSA have introduced a form of legal proxy to permit a beneficial owner to attend and vote personally at meetings, following some of the suggestions of STAC.

Statutory Declaration in Requests for Beneficial Ownership Information (Subsection 2.5(3))

STAC commented that the requirement in the July Draft National Instrument for a statutory declaration from a party seeking beneficial ownership information when a NOBO List is requested serves no operational purpose, and is contrary to

the stated fundamental principle that efficiency in the beneficial shareholder communication process should be encouraged.

Response

The CSA have concluded that it is preferable that an undertaking be used to confirm the obligation of persons or companies with respect to NOBO lists rather than a statutory declaration as contemplated in the July Draft National Instrument. This is a return to the proposal in the February Draft National Instrument. This change recognizes that a statutory declaration is not the most appropriate means of addressing promises with respect to future conduct as distinct from statements of existing fact. Consequential changes have been made to Forms 54-101F2 and 54-101F9.

Fees for Sending Materials Indirectly (Section 2.14)

CCSSA commented that if an issuer sends securityholder materials by airmail, the issuer should not be required to pay the mailing agent's reasonable costs of the airmail sort. CCSSA submitted that this should be the mailing agent's cost of doing business. It further commented that the notion of "reasonable" is subjective. It noted that an issuer may request airmail in an attempt to achieve some cost effectiveness and to promote shareholder value but if the issuer's savings were eroded by the cost of the airmail sort, the object of using it would be defeated.

Response

It is open to issuers to negotiate different arrangements with mailing agents.

Allocating Costs (Sections 2.14 and 3.7)

Objections were raised by several commenters to the provisions in the July Draft National Instrument that required OBOs to bear the cost of receiving securityholder materials indirectly when a reporting issuer sends such material directly to NOBOs. CT commented that the implementation of the July Draft National Instrument would lead to increased costs which would lead to increased fees to clients. CT expressed the view that costs of all mailings should continue to be the responsibility of the reporting issuers. CBA expressed the view that in order for the costs of confidentiality to be borne by OBOs, an extremely onerous process would need to be implemented including system changes, revised client agreements, Revenue Canada approval and revised fee schedules as well as detailed collection procedures. The CBA also commented that to be effective, the proposed National Instrument should prescribe how cost recovery is to be effected in the event an OBO fails to remit the fee. The IICC also challenged the CSA statement in the July Notice that the holding of securities by intermediaries and their requests for confidentiality increased communication costs throughout the system significantly and the use of this assumption by CSA as the basis for determining that OBOs should pay the costs associated with remaining anonymous; IICC commented that the CSA's premise was wrong and that in fact the common practice of holding securities by intermediaries substantially reduces the cost for issuers.

Response

The CSA have resolved to be silent on that issue and permit the market to determine how the costs of delivery to OBOs will be borne where the matter is not addressed by local rule.

Updates to Intermediary Master List (Subsection 3.1(2))

CDS noted that under the proposed National Instrument, which requires an intermediary to advise depositories of changes to information on the Intermediary Master List within five business days of the change, the list could be out of date for as long as five business days.

Response

The five-day period is a maximum requirement. A new section 4.5 to the proposed Companion Policy has been added to clarify the CSA's expectation that intermediaries will give notice of change as soon as possible and, if possible, in advance so as to avoid prejudice to their client.

Decline of Receipt of Materials (Section 3.2)

The CBA proposed that consideration be given to incorporating the option of allowing any shareholder to decline to receive all materials, including proxy-related materials for meetings at which non-routine business would be conducted. RT, by contrast, indicated it did not support the concept of beneficial owners being able to decline all materials and commented that it believed that in the case of corporate actions, all registered and beneficial holders must receive the material, whether or not they have requested it. RT also commented that the proposed definition of "routine materials" will probably result in more material being distributed to beneficial owners with an increase in costs for issuers.

Response

The CSA believe that the proposed National Instrument, by allowing beneficial owners to decline to receive some but not all securityholder material, reaches the appropriate balance. The CSA believe that all securityholders should receive proxy-related materials for meetings at which non-routine business will be conducted.

Deemed Elections (Section 3.3)

CIRI commented that the July Draft permits intermediaries to rely on choices previously made by shareholders under NP41 relating to receipt of materials and confidentiality. It noted that under the July Draft National Instrument no response is deemed to indicate the shareholder does not want to receive material. CIRI commented that the proposed National Instrument recognizes that the prior forms were very complicated and expressed the view that current NOBO lists are inaccurate. It recommended that intermediaries be required to request new instructions.

RT commented that in spite of the provision of the July Draft National Instrument permitting intermediaries to rely on their clients' instructions submitted pursuant to NP41, RT would feel compelled to canvass its entire client base for their instructions to preclude any possibility of breaching its fiduciary obligations to trusts or compromising its position on client confidentiality.

Response

The CSA view CIRI's and RT's comments as raising a client relationship issue. The proposed National Instrument does not compel an intermediary to conduct such a canvass. If an intermediary feels that it should conduct such a canvass, it is free under the proposed National Instrument to do so.

Index of Meeting and Record Dates (Section 5.2)

MNP noted the requirement that depositories disseminate information concerning company meeting dates and record dates through the national financial press. MNP noted that it is in the business of collecting and electronically distributing information on publicly traded companies and that its service is widely available to and used by brokers across Canada. It noted, however, that it cannot currently obtain information from CDS concerning meeting dates and record dates without paying CDS a \$20 per day subscription fee. MNP commented that while publication of meeting and notice dates in a national financial newspaper represents broad dissemination to the investing public, it requires that investors be diligent and proactive about obtaining such information. MNP indicated that it could make the list of meeting and record dates more easily accessible to brokers and investors and requested that it be included in the minimum publication requirements for distributing the list of meeting and notice dates.

Response

The proposed National Instrument has "codified" the long-standing existing practice established under NP41. The concern identified by the commenter has not previously been identified in comments received on previously-published versions of the proposed National Instrument. This is a point that can be revisited in the future. The CSA have instructed their NP41 Committee to investigate, including consideration of the feasibility of making meeting and record date information more accessible (e.g., on the SEDAR or other website).

Third Party Requests for NOBO Lists (Part 6)

CIRI indicated agreement with the change that permitted third parties to request NOBO lists directly from intermediaries with the proviso that issuers are provided with copies of such requests. It queried whether third parties were also to be free to obtain the most recent list from reporting issuers.

IG noted the absence in the proposed instrument of any requirement that an intermediary advise a reporting issuer of a request made by a third party for a NOBO list and commented that it believed that it was appropriate to include in the proposed National Instrument a provision for notification to be given by an intermediary to a reporting issuer if a NOBO list is requested directly by a third party.

CCSSA expressed concern that the July Draft National Instrument permitted third parties to obtain a NOBO list directly from proximate intermediaries and mail material directly to beneficial holders. Although the July Draft National Instrument required a third party to advise the issuer at the time of requesting a list, CCSSA commented that if there was no monitoring mechanism, the issuer may not be advised, or may be advised too late. CCSSA also expressed concern that intermediaries might supply NOBO lists indiscriminately without, for example, checking the Statutory Declaration

contemplated by the July Draft National Instrument.

CCSSA also noted that the form of Statutory Declaration attached to the July Draft National Instrument facilitates the obtaining of a NOBO list compared with obtaining a registered holders list pursuant to the legislation and queried to whom the Statutory Declaration was to be sent. CCSSA also commented that the cost for a NOBO list should not be prescribed as \$10 per intermediary but should be required to be "reasonable", which would be consistent with the provisions of corporate legislation. CCSSA also noted that if non-registered shareholders knew it was going to be easier for a third party to obtain a NOBO list, they might wish to become OBOs but that they may never know it will be easier because intermediaries will not be required to solicit new instructions and an annual reminder from the intermediary to the client concerning its existing instructions will no longer be required.

CCSSA also commented on the provision in Section 6.1(3) of the July Draft National Instrument which required a reporting issuer to send a NOBO list requested by a third party within three business days. CCSSA noted that the reporting issuer will have to remove the FINS numbers. It commented that the amount of work involved in this is unknown and that it is unclear whether this can be achieved within the required three business days.

Response

The proposed National Instrument allows a third party to request a NOBO list from either the reporting issuer or directly from intermediaries.

Section 6.2(4) of the proposed National Instrument requires that a copy of all intermediary search requests and all requests for beneficial ownership information be provided to the reporting issuer.

The CSA accept that it may be unreasonable, in certain circumstances, to expect an issuer to reply to a request for an on-hand NOBO list within 3 days. The CSA note that the timing for similar responses by an issuer to a request for a securityholder list under certain corporate legislation is ten days (e.g., section 21(3) of the CBCA). The CSA recognize that requests for on-hand NOBO lists may arise infrequently and that the issuer is not in the business of responding to such requests (and may not have the infrastructure to reply promptly). The CSA propose to harmonize the requirement in the Instrument to the CBCA.

Third Party Use of NOBO Lists (Part 6)

CIRI recommended that the proposed Instrument specify that NOBO lists can only be used by persons other than reporting issuers in proxy-related matters. It expressed concern that NOBO lists could be used by third parties for purposes other than those requiring the solicitation of securityholder votes. It indicated that it believed that the proposed National Instrument should state clearly that the use of the procedure set out in the Instrument by parties other than the issuer is mandatory.

Response

The CSA believe that the prohibitions on the misuse of NOBO list satisfactorily address concerns about their misuse. Any

party seeking a NOBO list must undertake not to misuse it and all NOBO lists must contain a warning about their misuse. The potential for misuse has been limited by requiring FINS numbers to be deleted from NOBO lists not requested in relation to a meeting. The CSA do not believe that it is advisable to make the procedures set out in the proposed Instrument mandatory for parties other than issuers at this time given the general lack of consensus on the point and the desire not to hold up implementation of the proposed National Instrument

Y2K Issues and the Implementation Date (Part 10)

A number of commenters (CT, RT, CBA, IDA, IICC) raised concerns about the fact the proposed National Instrument would require significant systems changes during a time when many market participants will be preoccupied with the Y2K challenge. CBA urged that the transition period for proxy-related materials be extended to on or after March 1, 2001. CIRI commented that it believed the implementation date in the July Draft National Instrument was reasonable. CCSSA expressed disappointment that the July Draft National Instrument proposed to delay implementation from the earlier date contemplated by the February Draft.

Response

It is now proposed that the proposed National Instrument come into force on July 1, 2001 but that it not apply to meetings that take place before January 1, 2002 and that NOBO lists not be required to be prepared before September 1, 2001. The proposed National Instrument incorporates the procedures and requirements of NP41 for meetings held between July 1, 2001 and January 1, 2002.

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

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PART 1 DEFINITIONS AND INTERPRETATION²

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 legislation³ 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 notice⁴;

"business day" means a day other than a Saturday, Sunday or statutory holiday in the local jurisdiction⁵;

"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 54-101F1⁶;

"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 authority⁷ 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

¹ This Instrument is based on National Policy Statement No. 41 ("NP41"). This Instrument is expected to be adopted as a rule in British Columbia, Alberta, Manitoba, Newfoundland, Ontario and Nova Scotia, as a Commission regulation in Saskatchewan, and as a policy in all other jurisdictions represented by the Canadian Securities Administrators ("CSA").

Earlier versions of this Instrument (the "February 1998 Draft" and the "July 1998 Draft") and the related Forms and Companion Policy were published for comment in February 1998 and July 1998. These versions reflect the consideration by the CSA of comments received on the February 1998 and July 1998 drafts.

² A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a National Instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision of a national instrument that specifically refers by name to a jurisdiction, other than a local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

³ The term "Canadian securities legislation" is defined in National Instrument 14-101 Definitions as meaning the statutes and other legislative instruments set out in an appendix to that instrument and will generally include the statute, regulations and, in some cases, rules, forms, rulings and orders relating to securities.

⁴ The definition "beneficial owner determination date" has been changed to "beneficial ownership determination date" to reflect the fact that this date is used to determine not just the relevant beneficial owners, but also their ownership positions.

⁵ The term "local jurisdiction" is defined in National Instrument 14-101 Definitions and is defined to mean "in a national instrument adopted or made by a Canadian securities regulatory authority, the jurisdiction in which the Canadian securities regulatory authority is situate".

⁶ The definition of "client response card" in the July 1998 Draft National Instrument has been replaced by a definition of "client response form". This change reflects the recognition that the response may be provided by electronic means as an alternative to a paper response. Conforming changes have been made to sections 3.2, 3.3, 3.4 and 3.5.

⁷ The term "securities regulatory authority" is defined in National Instrument 14-101 Definitions as meaning, for a local jurisdiction, the securities commission or similar regulatory authority set out in an appendix to that instrument opposite the name of the local jurisdiction.

securityholder of the security nor holding the security as a participant in a depository⁸,

(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 by either an intermediary or a reporting issuer under a written request of the beneficial owner⁹;

"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 1 or 2 of paragraph 3.3(b)¹⁰;

"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) below, or

(b) if prepared in electronic form, is prepared in the form of, and contains the information prescribed in, Form 54-101F5¹¹;

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

"NP41" means National Policy Statement No. 41 or a rule based on 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

⁸ The definition of "intermediary" has been amended by adding to paragraph (a) a reference that a custodian is excluded from the definition of "intermediary" only if it is not the registered securityholder nor holding as a participant in a depository. A custodian that was a registered securityholder or participant could be an intermediary.

⁹ This definition has been added in conjunction with the changes to section 4.5 and 2.18. A beneficial owner that receives proxy-related materials may, under the proposed Instrument, either provide voting instructions to an intermediary (or reporting issuer where it sends proxy-related materials directly to the beneficial owner) or acquire a legal proxy and attend the meeting to vote. The legal proxy ensures that such persons who attend a meeting have legal authority to vote the security they beneficially own.

¹⁰ The definition of "non-objecting beneficial owner" has been amended from the July 1998 Draft National Instrument to delete the reference to persons who fail to provide instructions. This change has been made in conjunction with the deletion of section 3.6 of the July 1998 Draft National Instrument which provided that in the absence of instructions, a beneficial owner was deemed to be a non-objecting beneficial owner. In light of the absolute obligation in section 3.2 to the proposed National Instrument to obtain instructions from all new clients and the changes to section 3.3 with respect to transitional instructions from existing clients, such default provisions are considered unnecessary. The definition, like the definition of "objecting beneficial owner" has also been amended to clarify that instructions by beneficial owners are given on an account-by-account basis.

¹¹ The definition of "non-objecting beneficial owner list" has been amended from the July 1998 Draft National Instrument to clarify that a list prepared in non-electronic form is to contain the same information as is required by the form prescribed for a list in electronic form (Form 54-101F5).

subparagraph 3 of paragraph 3.3(b)¹²;

"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;¹³

"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 legislation¹⁴ 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;

"routine business" means, for a meeting

- (a) consideration of the minutes of an earlier meeting,
- (b) consideration of the financial statements of the reporting issuer or an auditor's report on the financial statements of the reporting issuer,
- (c) election of directors of the reporting issuer,
- (d) setting or changing of the number of directors to be elected within a range permitted by corporate law, if no change to the constating documents of the reporting issuer is required in connection with that action, and
- (e) reappointment of an incumbent auditor of the reporting issuer;

"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;

¹² The definition of "objecting beneficial owner" has been amended from the July 1998 Draft National Instrument to clarify that instructions by beneficial owners are given an account-by-account basis.

¹³ Whether the beneficial owner has consented to the electronic delivery of documents from an intermediary may be of interest to a reporting issuer in connection with the reporting issuer's decision on whether to send materials directly to NOBOs and whether electronic delivery should be used for the sending. Any consent of a beneficial owner restricted to its intermediary cannot be used by a reporting issuer.

¹⁴ The term "securities legislation" is defined in National Instrument 14-101 Definitions as meaning the particular statute and legislative instruments of the local jurisdiction set out in an appendix to that instrument and will generally include the statute, regulations and, in some cases, the rules, forms, rulings and orders relating to securities in the local jurisdiction.

"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;¹⁵ and

"transfer agent" means a person or company that carries on the business of a transfer agent.¹⁶

1.2 Agents and Nominees

- (1) A reference in this Instrument to a depository, intermediary or reporting issuer includes a nominee or agent of the depository, intermediary or reporting issuer.
- (2) A person or company that uses an agent remains fully responsible for its compliance with the requirements of this Instrument.

1.3 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.

1.4 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.¹⁷

¹⁵ The July 1998 Draft required that delivery by electronic means could be made only with the consent of the recipient. The reference to this consent has been deleted in this draft, so that the principles contained in National Policy 11-201 Delivery of Documents by Electronic Means can apply to any such delivery.

¹⁶ The definition of a "transfer agent" has been added since the July 1998 Draft National Instrument in conjunction with the addition of the new requirement in subsection 2.5(4) that requires those seeking beneficial ownership information to do so through a transfer agent.

¹⁷ Subsection 1.4(2) has been amended from the July 1998 Draft National Instrument to permit an alternative form of electronic NOBO list to be used where both the party

1.5 Fees - Each fee payable under this Instrument shall be

- (a) an amount prescribed by the regulator¹⁸ or securities regulatory authority; or
- (b) a reasonable amount, if the regulator or securities regulatory authority has not prescribed an amount.¹⁹

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 date²⁰; 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 date for notice and for

requesting and the party receiving the list agree. This will allow parties who mutually agree to adopt a form that takes advantage of improvements in technology without awaiting an amendment to the proposed National Instrument.

¹⁸ The term "regulator" is defined in National Instrument 14-101 Definitions as meaning, in a local jurisdiction, the person set out in an appendix to that instrument opposite the name of the local jurisdiction.

¹⁹ This section has been changed and the Appendix that was in the July 1998 Draft National Instrument has been eliminated. These changes remove the reference to specific fees that were contemplated by British Columbia in the July 1998 Draft National Instrument. The section permits fees to be prescribed, if desired and permitted, by individual jurisdictions. It continues to require fees to be reasonable in jurisdictions where no fees have been prescribed.

²⁰ The minimum time between the record date for notice of a meeting and the meeting date has been reduced from 35 days, as provided for in the July 1998 Draft National Instrument, to 30 days. This reflects the shorter time period for sending now contained in sections 2.9 and 2.12 as compared to NP41. The change has been made to facilitate the calling of meetings on a more expedited basis than under NP41 and to conform more closely to timing requirements for sending to registered shareholders under corporate law.

- voting to
- (a) all depositories;
 - (b) the securities regulatory authority in each jurisdiction²¹ in which the reporting issuer is a reporting issuer; and
 - (c) each stock exchange in Canada on which securities of the reporting issuer are listed.²²
- (2) The notification of meeting and record date 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 only routine business is to be conducted at the 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;²³
 - (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 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 making the request referred to in subsection (1) in connection with a meeting, a reporting issuer may request, at any time, a depository to send the information referred to in any or all of paragraphs (1)(a), (1)(b) and (1)(c) for any class or series of securities of the reporting issuer, and as of a date, specified by the reporting issuer 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 paragraphs 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

²¹ The term "jurisdiction" is defined in National Instrument 14-101 Definitions as meaning a province or territory of Canada, except when used in the term foreign jurisdiction.

²² Section 2.2 has been amended from the July 1998 Draft National Instrument to specify the time for providing notification of a meeting. Subject to the provisions of section 2.20, this section requires that the notification be given at least 25 days before the record date for notice of a meeting. This is a return to the requirement contained in NP41.

Section 2.20 is new, and has been added to provide a mechanism for the shortening of some of the time periods contained in this Instrument. See the footnote to that section.

²³ Section 2.3 has been amended since the July 1998 Draft National Instrument to conform with section 5.3 by adding paragraph (a) to specify that the intermediary search request shall include a request for the identity of each entity that holds the specified securities on behalf of the depository and the respective holdings of each such entity. Conforming changes have been made to subsection 2.3(2) and section 2.4.

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 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 all proximate intermediaries identified by the depositories as holding the securities that entitle the holder to receive notice of the meeting or to vote at the meeting.²⁴
- (2) In addition to making the request referred to in subsection (1) in connection with a meeting, a reporting issuer, using information 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 identified as holding any securities of the reporting issuer.²⁵
- (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 54-101F9.²⁶
- (4) A reporting issuer that requests beneficial

ownership information under this section shall do so through a transfer agent and shall be deemed to authorize the response to such request to be provided to the transfer agent.²⁷

2.6 No Depositories or Intermediaries are Registered Holders - A reporting issuer is not subject to section 2.3 or 2.5 if none of the registered holders of its securities are depositories or intermediaries identified on the intermediary master list or if all of the information provided for in Part 2 of the request for beneficial ownership information is known to the reporting issuer.²⁸

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 by this Instrument 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.

²⁴ Section 2.5 has been amended from the July 1998 Draft National Instrument to specify the time within which reporting issuers are required to send requests for beneficial ownership information to proximate intermediaries. Subject to the provisions of section 2.20, this section requires that the request be sent at least 20 days before the record dates for notice of a meeting.

²⁵ Subsection 2.5(2) has been amended from the July 1998 Draft National Instrument to clarify that a request for beneficial ownership information that is not in connection with a meeting may be for any class or series of securities (not just those carrying a right to receive notice of a meeting or to vote) and need not necessarily be addressed to all proximate intermediaries holding that class of securities.

²⁶ The CSA, in response to further consideration of comments received on both the February 1998 and July 1998 Drafts, have proposed that an undertaking be used to confirm the obligations of persons or companies with respect to beneficial owner lists, rather than a statutory declaration as contemplated in the July 1998 Draft. This is a return to the proposal in the February 1998 Draft. This change recognizes that a statutory declaration is not the most appropriate means of addressing promises with respect to future conduct as distinct from statements of existing fact.

²⁷ Subsection 2.5(4) is new and requires that requests for beneficial ownership information be made through a transfer agent. Transfer agent is defined in section 1.1. This change has been made to ensure that proximate intermediaries need deal with only a limited number of entities with respect to requests for beneficial ownership information. By limiting the number of parties requesting and receiving this information from proximate intermediaries greater efficiencies and economies of scale may be realized.

²⁸ Section 2.6 in the July 1998 Draft National Instrument referred to an "intermediary master register". This has been changed to refer to the "intermediary master list" to be consistent with the terminology used elsewhere in the proposed Instrument. Section 2.6 has also been amended to excuse reporting issuers from having to make intermediary search requests and requests for beneficial ownership information where they already have all of the information which would be provided in response to a request for beneficial ownership information. This amendment will, for example, excuse mutual fund issuers that maintain such information from complying with sections 2.3 and 2.5.

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.

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 mail³⁰;

(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

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.²⁹

(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.

2.11 Disclose How Information Obtained - 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. The names and addresses of owners of the securities that are not registered holders, and information about their holdings of securities, have been obtained from intermediaries holding on behalf of those owners in accordance with applicable securities regulatory requirements."

(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 jurisdiction³¹ 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,³²

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

³⁰ Paragraph 2.12(1)(a) has been added in conjunction with a change to section 4.2(2) in response to a comment received. It requires a reporting issuer that wishes to indirectly send proxy-related material by prepaid mail other than first-class mail to send the material to the proximate intermediary one day earlier than would be the case if the material is to be sent by other means. This change is intended to provide proximate intermediaries one extra day to complete the extra steps required when securityholder materials are to be sent by mail other than first-class mail.

³¹ The term "foreign jurisdiction" is defined in National Instrument 14-101 Definitions. The definition is "a country other than Canada, or political subdivision of a country other than Canada".

³² This section has been amended since the July 1998 Draft National Instrument to indicate that it applies not only where the law of a foreign jurisdiction prohibits the reporting issuer from sending securityholder material directly to NOBOs but also where the proximate

²⁹ The CSA are proposing to continue the approach contained in NP41 whereby reporting issuers may override the election of securityholders not to receive certain materials. A reporting issuer would state its intention in that regard in the request for beneficial ownership information sent in connection with the meeting.

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 NOBOs³³;
- (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 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 section also has been amended to clarify that if the conditions in the section apply, the reporting issuer shall not send securityholder materials directly to the NOBOs.

³³ An intermediary that sends documents electronically will be entitled to this fee, but not any charges referred to in paragraph (b). As provided by section 1.5, the fee must be reasonable.

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 is required to give a notice of adjournment or other change for a meeting to registered holders of its securities shall immediately send a notice of the adjournment or change, including any change in the beneficial ownership determination date, to

- (a) each of the persons or companies referred to in subsection 2.2(1) and to the proximate intermediaries for the securities; and
- (b) any other person or company to whom the reporting issuer sent the original notification of meeting and record dates under this Instrument.³⁴

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.³⁵

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

³⁴ See section 3.2 of the proposed Companion Policy.

³⁵ This section has been amended since the July 1998 Draft National Instrument to provide that the proxy-related material provided must include an explanation of the right of the beneficial owner to attend and vote the securities directly at the meeting and a description of how those rights may be exercised.

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 will 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.³⁶

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 either or both of subsections 2.2(1) and 2.5(1) if the reporting issuer

- (a) arranges
 - (i) 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; and
 - (ii) to have carried out all of the requirements of this Instrument in addition to those described in subparagraph (i); and
- (b) 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 paragraph (a) and that the reporting issuer is relying upon this section.³⁷

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

3.1 Intermediary Information to Depository

- (1) An intermediary shall send, by the later of the date the intermediary commences business and the date this Instrument comes into force, notice to each depository of
 - (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) 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, before the intermediary holds securities on behalf of the client in the account,

- (a) send to the client an explanation to clients and a client response form and obtain instructions from the client on the matters to which the client response form pertains;
- (b) obtain the electronic mail address of the client, if available; and
- (c) enquire whether the client wishes to consent and if so, obtain consent of the client, to

³⁶ Form 54-101F8. Section 2.18 is a new section. It confirms that a NOBO that receives proxy-related material directly from a reporting issuer may request and receive a legal proxy and exercise its right to vote at a meeting. The legal proxy ensures that such persons who attend a meeting have legal authority to vote the securities that they beneficially own and to change any voting instructions previously given. This provision implements, in relation to reporting issuers that deal directly with NOBOs for a meeting, an obligation analogous to that imposed on registrants or custodians by Canadian securities legislation of some jurisdictions (including subsection 49(5) of the *Securities Act* (Ontario)).

³⁷ The changes to subsections 2.2(1) and 2.5(1) prescribe minimum periods for providing notification of a meeting and requesting beneficial ownership information. Section 2.20 is new. It allows the time frames in subsections 2.2(1) and 2.5(1) to be abridged where a reporting issuer files a certificate of one of its officers certifying that it has arranged to have carried out all of the requirements of the proposed National Instrument and to have proxy-related materials for the meeting sent to all beneficial owners at least 21 days before the date fixed for the meeting. Such arrangements must ensure that adequate time is allowed for intermediaries to receive, sort and send materials so that the materials are sent to the beneficial owners no later than 21 days before the relevant meeting.

electronic delivery of documents³⁸.

3.3 Transitional - Instructions from Existing Clients -

An intermediary that holds securities on behalf of a client in an account that was opened before this Instrument comes into force

(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:

1. If the client chose under NP41 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.

2. If the intermediary was permitted under NP41 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 until the third anniversary of the date that this Instrument came into force.

3. If the client chose under NP41 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.

4. If the client chose under NP41 not to receive material relating to annual or special meetings of securityholders or audited financial statements, or if the intermediary was permitted under NP41 not to provide that material to the client, the client is considered to have declined under this Instrument to receive

(a) proxy-related materials for meetings at which only routine

business is to be conducted;

(b) annual reports and financial statements that are part of proxy-related materials for meetings referred to in paragraph (a); and

(c) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders.

5. If the client chose under NP41 to receive material relating to annual or special meetings of securityholders or audited financial statements, the client is considered to have chosen under this Instrument to receive all securityholder materials sent to beneficial owners of securities.

6. 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; and

(c) shall obtain new instructions on the matters to which a client response form pertains from any client that is a NOBO under subparagraph 2 of paragraph (b) in sufficient time to obtain new instructions from the client before the third anniversary of the date that this Instrument came into force.³⁹

³⁸ The CSA expect that intermediaries will review with their clients the costs and consequences associated with the options referred to in the client response form. Section 3.2 creates an obligation to seek instructions from all new clients. The default provisions in section 3.6 of the July 1998 Draft National Instrument that addressed the possibility that instructions might in some cases not be given have been deleted. In light of the absolute obligation in section 3.2 to obtain instructions for all new client accounts and the changes to section 3.3 with respect to transitional instructions for existing client accounts, such default provisions are considered unnecessary.

³⁹ Section 3.3 has been amended since the July 1998 Draft National Instrument. The July 1998 Draft National Instrument contemplated that a proximate intermediary that wished to seek new instructions from existing clients would do so using Form 54-101F1. This section has been changed to delete the requirement that Form 54-101F1 be used when new instructions are sought so as to allow proximate intermediaries greater flexibility in seeking new instructions from existing clients. This is in conformity with the new provisions in section 3.4 that address the ability of a client to change at any time the choices it made, or was deemed to have made, in the client response form. An existing client that does not respond to a new request for instructions will continue to be governed by the instructions previously given or deemed to have been given under NP41. This is a change from the July 1998 Draft National Instrument in which a failure to respond to a new request for instructions would have resulted in the client having been deemed to have made the default elections set out in section 3.6 of the July 1998 Draft National Instrument. This section has also been amended from the July 1998 Draft National Instrument to clarify that a securityholder that is deemed to have elected pursuant to NP41 not to receive all securityholder materials will not receive annual reports or financial statements that are part of proxy-related materials for meetings at which only routine business is to be

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.⁴⁰

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 information⁴¹ other than Item 7; and

(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 meeting⁴²; 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.⁴³

(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

conducted.

This section has also been changed to provide that a person that is deemed to be a NOBO under subparagraph 2 of paragraph 3.3(b) (i.e. the person did not respond to a client response card provided under NP41) will be deemed to be a NOBO for three years after this Instrument came into force. Paragraph 3.3(c) provides that the intermediary shall seek new instructions from that client before the expiry of the three year period. This change has been made to ensure that the Instrument conforms with the spirit of the *Personal Information Protection and Electronics Documents Act* (Canada) by placing limits on the extent to which personal information may be provided without explicit instructions from the relevant person.

⁴⁰ Section 3.4 is new. It makes explicit the ability of a client to change the instructions it has previously given or is deemed to have given with respect to the matters addressed in the client response form.

⁴¹ Form 54-101F2.

⁴² The requirement in the July 1998 Draft National Instrument that a NOBO list requested in connection with a meeting be in electronic form has been deleted. Amendments to the request for beneficial ownership information form, however, now specify that if a proximate intermediary is able to do so, it must respond to requests for a NOBO list by providing the list in electronic format.

⁴³ Subsection 4.1(3) has been amended to clarify that it pertains to requests that pertain to neither a meeting nor the sending of securityholder materials. The July 1998 Draft National Instrument indicated that this subsection only applied to requests that did not relate to a meeting.

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 at least four business days after receipt in the case of securityholder materials to be sent by prepaid mail other than first class mail;
 - (b) within at least three business days after receipt in the case of securityholder materials to be sent by any other means.⁴⁴

⁴⁴Subsection 4.2(2) has been added in conjunction with a change to section 2.12 in response to a comment received. It allows proximate intermediaries four business days rather than three business days to send securityholder materials where the materials are to be

sent by mail other than first-class mail. This change is intended to provide proximate intermediaries one extra

- (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.⁴⁵

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

day to complete the extra steps required when securityholder materials are to be sent by mail other than first-class mail.

⁴⁵ When securityholder materials are sent indirectly to beneficial owners who have declined to receive them, the reporting issuer is required to pay the costs of sending under section 2.14.

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.⁴⁶

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.⁴⁷

⁴⁶ Form 54-101F8. This is a new section. It contemplates that a beneficial owner that receives proxy-related materials may, as an alternative to providing voting instructions, request a legal proxy and exercise its right to vote at the meeting. The legal proxy ensures that such a beneficial owner who attends a meeting has legal authority to vote the securities that it beneficially owns and to change any voting instructions previously given by the beneficial owner. Similar to section 2.18, this section imposes on intermediaries analogous obligations to those imposed on registrants and custodians by Canadian securities legislation of some jurisdictions (including subsection 49(5) of the *Securities Act* (Ontario)).

⁴⁷Section 4.7 is new, and recognizes that the provisions of the securities legislation of some jurisdictions specifically permit intermediaries to decline to forward securityholder materials to beneficial owners unless arrangements have been made for the payment to the intermediary for so doing. The CSA do not intend to override these provisions in this Instrument. This change is made in

conjunction with the deletion of section 3.7 of the July 1998 Draft National Instrument, which provided that OBOs were required to bear the costs of confidentiality.

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 possible⁴⁸, 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 company⁴⁹;
- (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

The CSA have resolved to be silent on that issue and allow the market to permit how the costs of delivery to OBOs will be borne where the matter is not addressed by local rule.

⁴⁸ Section 5.3 does not specify as of what date the required report is to be accurate. It is expected that the report will be reasonably current.

⁴⁹ Section 5.3 has been amended since the July 1998 Draft National Instrument to clarify that the response to an intermediary search request must specify each entity that holds the specified securities on behalf of the depository and the respective holdings of each such entity. The section has also been amended to stipulate that the response to an intermediary search request include the telephone numbers, fax numbers and electronic addresses of participants in the relevant depository.

- whose behalf the depository holds 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) Any 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 54-101F9⁵⁰ 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.⁵¹
- (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 section⁵².

⁵⁰ The form has been revised to be an undertaking rather than a statutory declaration.

⁵¹ Subsection 6.1(3) is new and specifically provides for the fee referred to in subsection 6.1(4).

⁵² Subsection 6.1(4) has been amended from the July 1998 Draft National Instrument to extend to ten days from three business days the time within which the reporting issuer

- (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.⁵³

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.
- (2) In connection with actions taken under subsection (1) by a person or company, references in this Instrument and the forms referred to 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 a reporting issuer.
- (3) Subsections (1) and (2) do not apply to sections 2.1, 2.2, subsections 2.3(1) and 2.5(1), section 2.18, paragraph 4.1(1)(c), section 5.4 and this Part.
- (4) A person or company that sends 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

must respond to a request for an existing NOBO list. This is consistent with the time prescribed by the Canada Business Corporations Act for responding to requests for a securityholder list.

⁵³ A NOBO list with FINS numbers will only be provided under section 6.2 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 as per paragraph 4.1(1)(c). The FINS number should not be required in circumstances where it is not necessary to reconcile voting instructions and/or proxies.

Form 54-101F9.⁵⁴

PART 7 PROHIBITED USE

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 Trafficking in Information Prohibited - Except as permitted by this Instrument, no person or company shall offer for sale or sell or purchase or otherwise traffic in any information obtained under this Instrument.

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 regulator⁵⁵ 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

10.1 Effective Date of Instrument - This Instrument comes into force on July 1, 2001.

10.2 Sending of Proxy-Related Materials

- (1) Proxy-related materials for a meeting held on or after July 1, 2001 and before January 1, 2002 shall be sent in accordance with NP41 as if NP41 were in force in the local jurisdiction.
- (2) This Instrument applies to the sending of proxy-related materials for a meeting held on or after January 1, 2002.

10.3 Sending of Other Securityholder Materials - Subject to section 10.4, this Instrument applies to the sending of securityholder materials other than proxy-related materials on or after July 1, 2001.

10.4 NOBO Lists - No person or company shall be obliged to furnish a NOBO list under this Instrument before September 1, 2001.

⁵⁴ The reference to statutory declaration which appeared in the July 1998 Draft National Instrument has been changed to undertaking to reflect the change made to Form 54-101F9.

⁵⁵ The term "regulator" is defined in National Instrument 14-101 Definitions as meaning, in a local jurisdiction, the person set out in an appendix to that instrument opposite the name of the local jurisdiction.

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER
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 second box on 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 first 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 three types of securityholder materials. Securities law does not provide for you to decline to receive other types of securityholder materials. The three types of material that you may decline to receive are:

- (a) proxy-related materials that are sent in connection with a securityholder meeting at which only "routine business"¹ is to be conducted;

¹ "Routine business" means:

- (i) consideration of the minutes of an earlier meeting;
- (ii) consideration of financial statements of the reporting issuer or an auditors' report on the financial statements of the reporting issuer;
- (iii) election of directors of the reporting issuer;
- (iv) the setting or changing of the number of directors to be elected within a range permitted by corporate law if no change to the

Request for Comments

- (b) annual reports and financial statements that are part of proxy-related materials sent in connection with a securityholder meeting at which only "routine" business is to be conducted; 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 securityholders.

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: Either state (1) if the client wishes to receive documents by electronic delivery, the client should complete, sign and return the enclosed consent form with the client response form or (2) inform the client that electronic delivery of documents 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].

-
- (v) constating documents of the reporting issuer is required in connection with that action; and
reappointment of an incumbent auditor of the reporting issuer.

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.]*

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

G I OBJECT to you disclosing the information described above.

PART 2 - Receiving Securityholder Materials

*Please mark the corresponding box to show whether you **WANT** to receive **ALL** materials sent to beneficial owners of securities or whether you **DECLINE** to receive all of the following materials: (a) proxy-related materials for meetings at which only routine business is to be conducted; (b) annual reports and financial statements that are part of proxy-related materials for meetings referred to in paragraph (a); and (c) materials sent to securityholders that are not required by corporate or securities law to be sent.*

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

G I DECLINE to receive all of the following materials: (a) proxy-related materials for meetings at which only "routine business" is to be conducted; (b) annual reports and financial statements that are part of proxy-related materials for meetings referred to in paragraph (a); and (c) materials sent to securityholders that are not required by corporate or securities law to be sent. (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.)

(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 statements of the reporting issuer.)

PART 3 - Preferred Language of Communication

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

G ENGLISH

G FRENCH

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

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER
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 ISIN² 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.
- 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

² "ISIN" means International Stock Identification Number.

- 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.]*
- 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) and whether only routine business is to be conducted at the meeting;
 - (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.]*
- 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.]*
- 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) and whether only routine business is to be conducted at the meeting;
 - (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.]*
- 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, pay 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.

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

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER
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 Securities³: _____
Date of Meeting: _____
Beneficial Ownership Determination Date: _____

[Include date and signature]

³ *[Instruction: Specify if securities are held through more than one registered holder, and specify the number of securities held through each registered holder.]*

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER
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, 1.4, 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 ¹	A	12	
FILLER	X	3	Blank
SECURITY DESC.	A	32	Security Description
RECORD DATE	N	8	Format YYYYMMDD
CREATION DATE	N	7	Format YYYYMMDD
FILLER	X	251	Blank

DETAIL RECORD DESCRIPTION

	TYPE	LENGTH	COMMENTS
RECORD TYPE	A	1	Detail Record = B
FINS NUMBER	A	4	Same as in Header record
ISIN ¹	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 ¹	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

¹ "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.

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A 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, 2.17 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 attached form to provide your voting instructions to us promptly.

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.)

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER
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 attached form to provide your voting instructions to us promptly.

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.)

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER
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, and are entitled to vote, such securities.

Registered Holder of Securities or Proxy Holder

Signing Officer

Date

**NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER
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 beneficial owners of the securities. The names and addresses of beneficial owners of the securities that are not registered holders, and disclosure of their holdings of securities, have been obtained from intermediaries holding on behalf of the beneficial owners under applicable securities regulatory requirements."
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**

**COMMUNICATION WITH BENEFICIAL OWNERS
OF SECURITIES OF A REPORTING ISSUER**

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**COMPANION POLICY 54-101CP
TO NATIONAL INSTRUMENT 54-101**

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; an example of these types of materials would be corporate communications containing product information.
- (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.
- (2) National Instrument 71-101 The Multi-Jurisdictional 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. Multi-Jurisdictional Disclosure regime.

2.3 Interim Financial Statements - Interim financial statements sent to beneficial owners in accordance with National Instrument 54-102 Supplemental Mailing List and Interim Financial Statement 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 mailing 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) In the Instrument, "beneficial owner" refers to a person or company that, ultimately, has the right to vote, or exercise control or direction over, the securities that are held through intermediaries and that therefore originates the instructions that are contained in a client response form, or that would have the authority to originate those instructions. If an intermediary that holds securities has discretionary authority over the securities, and consequently has authority to provide instructions in a client response form, it will be the beneficial owner of those securities for purposes of the Instrument 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 1.3 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.

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) Section 2.15 of the Instrument requires reporting issuers that are required to give notice of adjournment of, or other change concerning, a meeting of securityholders to send notice of the change to the persons and companies referred to in subsection 2.2(1) of the Instrument, to the proximate intermediaries for the securities and to the persons and companies to whom the original notice of meeting was given. Issuers are reminded of a number of the implications of the requirement to send the notice of adjournment to the persons and companies who received the original notice.
- (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 owner 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 is not routine business, it may be necessary to conduct new intermediary searches in order to ensure that beneficial owners that had elected not to receive proxy-related materials for meetings at which only routine business was to be conducted 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.

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 - 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.

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) Canadian securities legislation in certain jurisdictions, such as section 79 of the *Securities Act* (Alberta) and section 49 of the *Securities Act* (Ontario), permits a registrant or custodian as defined in those statutes to vote securities not beneficially owned by it only in accordance with written voting instructions received from the beneficial owner. Certain securities regulatory authorities have granted exemptions in the past from these requirements for written voting instructions, in

order to permit voting instructions to be sent by telephone in specified circumstances. The securities regulatory authorities are prepared to consider other applications for similar exemptions in appropriate cases, in order to permit voting instructions to be sent by telephone, through the Internet or by other electronic means, so long as appropriate safeguards are established to ensure valid and accurate instructions are obtained and supported by appropriate records.

(3) 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.

(4) National Policy 11-201 Delivery of Documents by Electronic Means discusses the sending of materials by electronic means. The guidelines set out in National Policy 11-201, particularly the suggestion that consent be obtained to an electronic transmission of a document, are applicable to documents sent under the Instrument. Under National Policy 11-201, 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.

(5) Form 54-101F1 requires an intermediary either to seek consent to electronic delivery of documents or to enquire as to whether the client would like to give this consent. This information 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. This information may be of interest to a reporting issuer in connection with the reporting issuer's decision on whether to send materials directly to NOBOs and whether electronic delivery should be used for the sending. Any consent of a beneficial owner restricted to its intermediary cannot be used by a reporting issuer.

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 EXEMPTIONS

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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 7 LIABILITY

- 7.1 Liability** - Market participants are reminded that use of a NOBO list contrary to Part 7 of the Instrument will constitute breach of the Instrument and securities legislation, and that the penalty provisions of securities legislation could be applied.

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

