Draft Regulations

Securities Act
(R.S.Q. c. V-1.1, s. 331.1, pars. (1), (2), (3), (4.1), (8), (11), (20), (30) and (34), and s. 331.2)

Regulation to amend Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer and concordant regulation

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 331.2 of the *Securities Act*, R.S.Q. c. V-1.1, the following Regulations, the texts of which are published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 60 days have elapsed since their publication in the Bulletin of the Authority:

- *Regulation to amend Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer.*

Draft amendments the following regulation are also publidhed hereunder :

- *Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations*.

Draft of the following policy statement are also published hereunder :

- *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;*

- *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations*.

Also, we are publishing underlined version of these policy statement.

Request for comment

Comments regarding the above may be made in writing before **August 16, 2011**, to the following:

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Further information

Further information is available from:

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June 17, 2011

Notice and Request for Comments

Draft *Regulation to amend Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer*

Draft *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer*

Draft *Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations*

Draft *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations*

June 17, 2011

1. Introduction

We, the members of the Canadian Securities Administrators (the **CSA**), are publishing for a 60-day comment period revised versions of proposals (the **Proposals**) intended to improve the process by which reporting issuers send proxy-related materials to and solicit voting instructions from registered holders and beneficial owners of their securities (the **Shareholder Voting Communication Process**).

Specifically, we are publishing the following materials (the **Revised Materials**):

- a revised version of draft *Regulation to amend Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* and the related forms (**Regulation 54-101**);

- a revised underlined version of draft *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (**Policy Statement 54-101**);

- a revised version of draft *Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations*, including Form 51-102F5 (**Form 51-102F5**) (collectively, **Regulation 51-102**);

- a revised underlined version of draft *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations* (**Policy Statement 51-102**).

The original versions of the above materials (the **Original Materials**) were first published on April 9, 2010. We received 27 comment letters. A summary of the comments we received and our responses to those comments are included in Schedule A.

The Original Materials also included proposed amendments to National Policy 11-201 *Delivery of Documents by Electronic Means* (**NP 11-201**). We are not publishing revised amendments to NP 11-201 at this time. An amended and restated version of NP 11-201 (**Proposed New NP 11-201**) was published for comment on April 29, 2011. We will consider at a later date what, if any, additional changes to Proposed New NP 11-201 should be made in connection with the Proposals.

The Revised Materials are published with this Notice. Certain jurisdictions may also include additional local information.

The Revised Materials will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca

www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

For more information on the comment process, see below under "How to provide your comments on the Revised Materials".

2. Substance and purpose of the Proposals and the Revised Materials

The most significant features of the Proposals are as follows:

- providing reporting issuers with a new "notice-and-access" mechanism to send proxy-related materials to registered holders and beneficial owners of securities, collectively **shareholders**;

- simplifying the process by which beneficial owners are appointed as proxy holders in order to attend and vote at shareholder meetings; and

- requiring reporting issuers to provide enhanced disclosure regarding the beneficial owner voting process.

The Revised Materials contain proposed changes affecting these three features of the Proposals, which we describe below. We also briefly describe additional changes to other aspects of the Original Materials.

(a) Changes to notice-and-access (proposed sections 2.7.1 to 2.7.6 of Regulation 54-101; proposed sections 9.1.1 to 9.1.6 of Regulation 51-102)

Under notice-and-access, a reporting issuer would be permitted to deliver proxy-related materials by sending a notice package to shareholders containing the following:

- a notice to shareholders informing them that proxy-related materials have been filed on SEDAR and posted on another non-SEDAR website and explaining how to access them; and

- the relevant voting document (a proxy, Form 54-101F6 or Form 54-101F7, as applicable).

The notice package would not contain the information circular. Instead, the information circular would be filed on SEDAR and also posted on a non-SEDAR website. A shareholder could request that a paper copy of the information circular be mailed to the shareholder free of charge.

We continue to take the view that properly designed notice-and-access procedures can enhance the Shareholder Voting Communication Process as well as increase the overall efficiencies of the system. We now propose several changes to our original proposal in response to the comments we received, as well as our ongoing examination of the Shareholder Voting Communication Process.

(i) Reporting issuers other than investment funds can use notice-and-access for all meetings

The original notice-and-access proposal would not have permitted reporting issuers to use notice-and-access for "special meetings" as defined in Regulation 54-101. We now propose that notice-and-access be permitted for all meetings of reporting issuers that are not investment funds. See proposed section 2.7.1 of Regulation 54-101 and proposed section 9.1.1 of Regulation 51-102.

This proposed change is intended to address concerns that restricting notice-and-access to meetings that are not special meetings:

- adds an additional layer of complexity to the voting process and may cause shareholder confusion;
- implies that "routine" annual matters such as director elections and auditor appointments are not important; and

- limits the potential efficiencies that can be realized by notice-and-access.

The proposed change also excludes investment funds from using notice-and-access. We did not explicitly request comment on, nor did we receive any comments that specifically addressed, the issue of whether investment fund reporting issuers should also be permitted to use notice-and-access for meetings. We would like to consider further and seek feedback on the appropriate form and content of notice for meetings involving investment funds, particularly those involving fundamental changes to an investment fund.

We also propose additional policy statement guidance on factors that reporting issuers should take into account when deciding when and how to use notice-and-access. Factors include:

- the nature of the meeting business; and

- whether notice-and-access resulted in material declines in shareholder voting rates where it was used for prior meetings.

(ii) Reporting issuers must provide advance notice of their first use of notice-and-access and disclosure and provide information regarding use of notice-and-access in the notification of meeting and record dates

The original notice-and-access proposal would have permitted a reporting issuer to use notice-and-access without giving shareholders any prior notification. This raises concerns that a shareholder who receives a notice package for the first time would be confused about what he or she is being sent.

We now propose that prior to using notice-and-access for the first time, a reporting issuer must provide advance notice that it intends to do so three to six months before the meeting. The issuer must issue a news release and post information regarding notice-and-access on a website that is not SEDAR. See proposed section 2.7.2 of Regulation 54-101 and proposed section 9.1.2 of Regulation 51-102.

We also no longer propose to require that each time a reporting issuer uses notice-and-access it issue a news release disclosing that fact at least 30 days before the meeting. We now propose that the reporting issuer state its intention to use notice-and-access in the notification of meeting and record dates required by section 2.2 of Regulation 54-101.

In addition, we provide policy statement guidance encouraging issuers to consider what additional methods of advance notice are appropriate, such as a mailing in advance of the meeting.

(iii) Reporting issuers must provide explanatory material regarding notice-and-access in the notice package

The original notice-and-access proposal did not require that any explanatory material regarding notice-and-access be included in the notice package. We now think that shareholders who receive a notice package always should have basic information about notice-and-access as part of the notice package.

We now propose that a reporting issuer must include a plain-language explanation of notice-and-access in the notice package that is sent to shareholders. The reporting issuer must also post the explanation on the website where the full set of proxy materials is posted. See proposed subparagraph 2.7.1(1)(a)(ii) of Regulation 54-101, and proposed subparagraph 9.1.1(1)(a)(ii) of Regulation 51-102.

(iv) Reporting issuers cannot include additional material in the notice package other than explanatory material regarding notice-and-access

The original notice-and-access proposal would have permitted reporting issuers to include additional material regarding the meeting (but not an information circular) in the notice package. We now propose to restrict a reporting issuer from including such additional material in the notice package unless a copy of the information circular is also included. We are concerned that provision of such additional material without an information circular encourages shareholders to only read the additional material without referring to the information circular.

(v) Inclusion of paper copies of the information circular with the notice package pursuant to standing instructions

The original notice-and-access proposal did not explicitly address whether it was permissible for a shareholder to provide annual or standing instructions to receive a paper copy of the information circular where a reporting issuer uses notice-and-access. Under the original proposal, the only specified method by which a shareholder could obtain a paper copy of the information circular was to contact the reporting issuer (or the reporting issuer's service provider) to request a paper copy after the notice package had been sent out.

We now think that shareholders should be able to request that a paper copy of the information circular be automatically included with the notice package. Having the information circular automatically included, as opposed to having to wait until the notice package has been sent out, is more user-friendly to shareholders.[1] Standing instructions also provide reporting issuers with information that can assist them in planning print volumes.

We therefore propose that reporting issuers be permitted to obtain standing instructions from registered holders, and intermediaries be permitted to obtain standing instructions from beneficial owners. Where a reporting issuer or intermediary obtains such instructions, they must comply with these instructions. We also impose obligations on reporting issuers and intermediaries to facilitate compliance with these standing instructions once they have been obtained. See proposed section 2.7.6 of Regulation 54-101 and proposed section 9.1.5 of Regulation 51-102.

(vi) Inclusion of paper copies of the information circular with the notice package where annual financial statements and MD&A are requested and sent as part of proxy-related materials

Section 4.6 of Regulation 51-102 establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. These documents are generally found in an annual report, so for ease of reference, we will use the term annual report to refer to those documents.

If a reporting issuer does not send the annual report to all shareholders, the reporting issuer must send the annual request form to its shareholders to enable shareholders to request the annual report for the following financial year. In practice, service providers have integrated the annual request form mechanism with the Shareholder Communication Voting Process by:

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[1] We note that data from the U.S. suggests that where retail beneficial owners receive full packages of materials as a result of standing instructions, their rate of vote return is extremely high. 60% of beneficial owner accounts that received full packages as a result of standing instructions voted, as compared to approximately 19% of beneficial owner accounts where notice-and-access was not used. See "Notice and Access: Statistical Overview of Use with Beneficial Shareholders As of December 31, 2010." Slides available at http://www.broadridge.com/notice-and-access/index.asp.

- incorporating the annual request form into the proxy or the voting instruction form sent as part of proxy-related materials to shareholders. This avoids a separate mailing of the request form; and

- where the annual report has been requested, automatically inserting the annual report into the proxy-related materials sent to the relevant shareholders. This avoids a separate mailing of the annual report.

We also encourage reporting issuers to send their audited annual financial statements or annual report at the same time as other proxy-related materials. See section 7.2 of Policy Statement 54-101.

We have received feedback from Broadridge Investor Communications Corporation, the primary intermediary service provider, that in order to facilitate the efficient integration of the annual request form mechanism with the Shareholder Communication Voting Process, annual instructions to receive the annual report should also constitute instructions to include a paper copy of the information circular where the reporting issuer uses notice-and-access. Conversely, standing instructions to receive paper copies of the information circular as part of the notice package should also constitute instructions to include the annual report as part of the notice package.

If the instructions were not integrated in the above fashion, service providers would need to modify the existing infrastructure to accommodate four types of notice packages:

- notice package without paper copy of information circular and annual report;

- notice package with paper copy of information circular;

- notice package with paper copy of annual report; and

- notice packages with paper copy of information circular and annual report.

In contrast, integrating the instructions as requested would reduce the types of notice packages to two:

- notice package without paper copy of information circular and annual report;

- notice package with paper copy of information circular and annual report.

Having two types of notice packages would be simpler to design, implement and maintain.

We do not have any concerns with automatically including a paper information circular with the notice package for those shareholders who have requested to receive the annual report, and therefore propose that section 4.6 of Regulation 51-102 be amended so that paper copies of the information circular will be included with the notice package where the annual report is requested and sent as part of proxy-related materials.

However, we are not proposing at this time to explicitly prescribe the converse, i.e., the automatic inclusion of an annual report with the notice package where a paper information circular is included pursuant to standing instructions. While we acknowledge that having two types of notice packages would be simpler to design, implement and maintain, we would appreciate additional input from stakeholders before proposing such a change. Is it reasonable to infer that a shareholder who wishes to receive a paper copy of the information circular would also wish to receive the annual report?

(vii) Stratification

The original notice-and-access proposal contemplated that a reporting issuer could choose to send a notice package to some shareholders, and send a standard package (which would contain the notice of meeting, voting document and information circular) to others.

We now propose that where a reporting issuer uses notice-and-access, it must send the same basic notice package containing the required notice, the voting document, and the explanation of notice-and-access to all shareholders. However, the notice package for those shareholders who have provided standing instructions and who have provided annual instructions (as discussed above) would also include the paper copy of the information circular.

We refer to the process of including a paper copy of the information circular in the notice package as "stratification", and have added a new definition in subsection 1(1) of Regulation 54-101 and subsection 1.1(1) of Regulation 51-102.

We do not propose at this time to prescribe other criteria for when stratification can be used by a reporting issuer. We would require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a paper copy of the information circular. However, we are proposing policy statement guidance that states our expectation that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions would do so in order to enhance effective communication, and not to disenfranchise shareholders.[2] The guidance also explains that we would not mandate the provision of stratification by reporting issuers or intermediaries, other than in order to comply with standing instructions or annual requests for paper copies of information circulars that they may have chosen to obtain from registered holders or beneficial owners. We expect any additional stratification criteria will evolve through market demand and practice, and we will monitor developments in this area.

(viii) The proposed exemption for delivery of proxy-related materials using US notice-and-access is available only to SEC issuers with a limited Canadian presence

The original notice-and-access proposal would have exempted reporting issuers who are SEC issuers from the obligation to deliver proxy-related materials to beneficial owners under Regulation 54-101 where they use the notice-and-access process prescribed by the SEC (**U.S. notice-and-access**). A similar exemption was proposed in respect of registered holders. We propose to amend the exemption to clarify that it is available only to SEC issuers with a limited Canadian presence. We also are exempting intermediaries who deliver proxy-related materials on behalf of the issuer using U.S. notice-and-access from their obligations under Regulation 54-101. See section 9.1.1 of Regulation 54-101 and section 9.1.6 of Regulation 51-102.

(ix) Methods for sending notice package

The original notice-and-access proposal contemplated that issuers would deliver the notice package either using:

- prepaid mail, courier or the equivalent; or
- any other method previously consented to by the shareholder.

[2] One example of how stratification could enhance communication is where a reporting issuer wishes to send proxy-related materials to all its beneficial owners, including those who have declined to receive materials (**declining beneficial owners**). These declining beneficial owners could be sent a notice package only, while the reporting issuer would send other beneficial owners who wished to receive all materials the notice package and the information circular. All beneficial owners thus would receive the documentation necessary to vote, but those declining to receive materials would not receive a paper copy of the information circular unless they requested it.

We now propose to remove the reference to "any other method previously consented to by the shareholder", as it was not clear what such methods would be and how in practice they could be used to send the notice package. The revised provisions now only refer to sending the notice package by prepaid mail, courier or the equivalent. See paragraph 7.1(1)(b) of Regulation 54-101 and paragraph 9.1.1(1)(c) Regulation 51-102.

However, a reporting issuer's decision to use notice-and-access would not preclude a shareholder from also being sent proxy-related materials using an alternate method to which the shareholder previously has consented. See section 2.7.5 of Regulation 54-101 and section 9.14 of Regulation 51-102. For example, our understanding is that one or more service providers acting on behalf of reporting issuers or intermediaries have previously obtained consents from shareholders for proxy-related materials to be sent by email (with links to the materials included in the body of the email). This delivery method would still be available to issuers and intermediaries even if notice-and-access is used.

(x) Specific times by which a reporting issuer must provide materials for forwarding to proximate intermediaries

The original notice-and-access proposal did not mandate specific times by which a reporting issuer would have to provide the documents for the notice package to proximate intermediaries for forwarding. We now propose specific timelines: three business days before the 30th day before the date fixed for the meeting where materials are sent by first class mail, courier or the equivalent, and four business days before the 30th day in the case of other types of prepaid mail. See subsection 2.12(3) of Regulation 54-101.

We provide guidance in Policy Statement 54-101 that "first class mail" is the equivalent of Canada Post Lettermail.

(xi) Methods and timing for fulfilling request for paper information circulars

We propose that there be two different sets of fulfillment requirements for requests received prior to the date of the meeting, and on or after the date of the meeting. Where the request is received prior to the date of the meeting, the paper information circular must be sent by first class mail, courier or the equivalent within three business days. Where the request is received on or after the date of the meeting, and within one year of the information circular being filed, the paper information circular must be sent by prepaid mail, courier or the equivalent within 10 calendar days. Requests for a paper copy of the information circular do not need to be fulfilled more than one year after the date of the applicable meeting. See paragraph 2.7.1(1)(f) of Regulation 54-101.

(xii) Other changes to the notice-and-access proposal

We are also making the following additional changes to the notice-and-access proposal:

- The information circular and other documents in the notice package must be filed on SEDAR and posted on a non-SEDAR website on or before the day that the reporting issuer sends the notice package (paragraph 2.7.1(1)(d) of Regulation 54-101). The original proposal that the posting had to occur on the same day as the sending of the notice package meant that reporting issuers potentially would have to choose between mailing the annual financial statements and annual MD&A with the notice package, and incorporating by reference the information circular in the AIF.

- We have modified the provisions that restrict information gathering by reporting issuers who receive requests for paper copies of information circulars or via the non-SEDAR website so that the prohibitions address intentional information gathering by the reporting issuer (section 2.7.3 of Regulation 54-101). Intentional information gathering can be contrasted with situations where information is volunteered by a

(b) Simplification of beneficial owner proxy appointment process (sections 2.18 and 4.5 of Regulation 54-101)

(i) Authority to act for and on behalf of the beneficial owner in respect of all matters that may come before the meeting

The Original Materials proposed the repeal of the provisions relating to legal proxies, and replaced them with a provision that requires intermediaries and management as applicable to appoint a beneficial owner (or another person designated by the beneficial owner) as proxy holder to attend and vote at the meeting, if requested by the beneficial owner. However, there was no explicit requirement that an intermediary or reporting issuer management give discretionary authority to a beneficial owner to vote on all matters that would come before the meeting. The lack of an explicit requirement would permit an intermediary or management to limit the scope of voting authority to only those matters identified in the voting instruction form, and therefore potentially prevent the beneficial owner from voting on important matters that might come before the meeting but that were not set out in the voting instruction form.

We therefore propose that unless a beneficial owner has instructed otherwise, where an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder, the beneficial owner or nominee also must be given authority to attend, vote and otherwise act for and on behalf of the intermediary (or the issuer's management, where the reporting issuer is sending proxy-related materials directly to NOBOs) in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

We also propose consequential changes to the instructions regarding attending and voting at a meeting in Form 54-101F6 and Form 54-101F7.

(ii) Deposit of proxy prior to proxy cut-off

The Original Materials proposed to require an intermediary (or if applicable the reporting issuer) to deposit any proxy appointing a beneficial owner as a proxy holder within any time specified under corporate law for the deposit of proxies (a **proxy cut-off**). We propose to modify this requirement so that it applies only where the intermediary or reporting issuer (as the case may be) obtains the instructions from the beneficial owner to appoint it as proxy holder at least one business day before the proxy cut-off.

(c) Enhanced disclosure of voting process (subsection 2.2(2) of Regulation 54-101)

We propose to add a requirement that the notification of meeting and record dates under subsection 2.2(2) of Regulation 54-101 also include disclosure regarding the reporting issuer's use of notice-and-access, whether it is sending proxy-related materials directly to NOBOs, and whether it intends to pay for delivery of proxy-related materials directly to OBOs. We think that including this information in the notification will enhance the transparency of the voting process. This requirement is in addition to the requirement to disclose the above information in the information circular if applicable.

(d) Other changes to Regulation 54-101

We propose several other changes in respect of the amendments to Regulation 54-101:

- Subsection 2.5(4): We propose that a reporting issuer or person retained by the reporting issuer may request beneficial ownership information for the purpose of obtaining a NOBO list, if the intermediary to whom the request is being made reasonably believes that the person making the request has the technological capacity to receive the

NOBO list. We think this change balances the concern with opening up the entire process of obtaining beneficial ownership information with streamlining the process for obtaining NOBO lists. It also enables the entity in the best position to assess a requester's technological capacity to receive the NOBO list to make that assessment.

- Removal of proposed changes to processing times in section 2.12: We no longer propose to have a single three-day processing time for proxy-related materials sent indirectly by prepaid mail. We are retaining the existing provision, which requires an additional day for processing proxy-related materials that are not sent by first class mail.

- Subsections 2.18(5) and 5.4(4): We propose to clarify that the confirmation provided to the intermediary must identify the specific meeting to which the confirmation applies, but is not required to specify each proxy appointment.

- Subsection 2.20(a.1) of Regulation 54-101: We propose to clarify that where a reporting issuer uses notice and access, a reporting issuer can abridge the record date for notice to not less than 30 days before the meeting date, and the sending of the notification of meeting and record dates under section 2.2 to not less than 30 days before the date of the meeting. This is to enable shareholders to have sufficient time to request and receive a paper copy of the information circular in advance of the meeting, if they wish to receive one.

- Removal of certain proposed record keeping requirements: We are removing the proposed requirements for issuers and intermediaries to retain a record of each Form 54-101F6 or Form 54-101F7 sent and the date and time of any voting instructions, including proxy appointment instructions, at this time. We will consider the broader issue of record-keeping generally in the proxy voting system at another time.

- Form 54-101F2 *Request for Beneficial Ownership Information*: We propose to amend the form to require the reporting issuer to state whether it is using notice-and-access, and any stratification criteria being used.

3. Other possible reforms to the proxy voting process

We received a number of comments on possible reforms to the proxy voting process which are set out and discussed in Schedule A. We thank all the commentators for their feedback. We are not at this stage publishing any specific regulatory proposals, other than the Proposals, in response to the comments we received. However, we continue to assess the proxy voting process, and may publish additional materials for consultation at a later date. We note that the proxy voting system is complex, and changes intended to improve one part of the system can cause "ripple effects" on other parts. Any proposed reforms must be carefully designed in order to minimize the likelihood of unintended consequences.

4. How to provide your comments on the Revised Materials

You must submit your comments in writing by **August 16, 2011**. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Please address your comments to all of the CSA member commissions as follows:

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

Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Please send you comments only to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

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Secretary
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Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

Questions

Please refer your questions to any of the following:

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Schedule A
Summary of Comments and Responses

We received comment letters from the following:

British Columbia Investment Management Corporation
Broadridge Investor Communication Solutions Canada
Canadian Bankers Association
Canadian Coalition for Good Governance
Canadian Foundation for Advancement of Investors Rights
Canadian Oil Sands
Canadian Society of Corporate Secretaries
Computershare Trust Company of Canada
Davies Ward Phillips & Vineberg LLP
GG Consulting
Hermes Equity Ownership Services Limited
Investment Industry Association of Canada
Kempenfelt House Consulting Inc.
Kenmar Associates
Kingsdale Shareholder Services
Laurel Hill Advisory Group
Manitoba Telecom Services Inc.
Manulife Financial Corporation
Mouvement d'Education et de Défense des Actionnaires
Ontario Bar Association
Pension Investment Association of Canada
RBC Dominion Securities
Scotia Capital Inc.
Securities Transfer Association of Canada
Shareholder Association for Research and Education
TMX Group Inc.
TransCanada Corporation

A. Comments on the Original Materials

#	Issue/Comment	Response
Notice-and-Access		
1.	*Whether notice-and-access generally is a positive development, particularly for retail investors*	
	The majority of comments, including comments from reporting issuers, institutional shareholders, intermediaries and service providers, were generally supportive of notice-and-access as being a positive step toward encouraging proxy voting and making the system more efficient. A transfer agent group noted that in its view, the main cause for a decrease of retail voting in the U.S. was the absence of the voting instruction form from the notice package. Several comment letters, however, recommended improvements be made to the proposed notice-and-access procedures, particularly a greater focus on shareholder education regarding notice-and-access. We received several comments from	We continue to think that permitting issuers to use notice-and-access to send proxy-related materials can improve the beneficial owner communication process. We are, however, proposing several changes to the notice-and-access procedures we originally proposed in order to address concerns that notice-and-access will be an obstacle to voting, particularly by retail shareholders. We now propose that reporting issuers who use notice-and-access must provide advance notification before they use notice-and-access for the first time; and explanatory material on notice-and-access must be included in the notice package along with the

#	Issue/Comment	Response
	groups with a shareholder focus that did not support notice-and-access. Two commentators were very concerned that notice-and-access would be an obstacle to informed voting by requiring beneficial owners to take additional steps to access the information circular. One of the commentators stated that fundamental changes needed to be made to the procedures, and said that the proposal as currently designed should not be adopted. We received one comment that was neither in favour of nor opposed to notice-and-access, but that recommended that the CSA should monitor the effect of notice-and-access on the participation of Canadian retail shareholders, with the aim of holding voting participation rates at 2010 levels or increasing them.	notice and voting instruction form. We also propose to permit registered holders and beneficial owners to provide standing instructions on whether they wish to receive paper copies of information circulars in all instances where a reporting issuer is using notice-and-access.
2.	*Whether notice-and-access should be available for special meetings under Regulation 54-101*	
	Only one comment supported restricting notice-and-access to meetings that are not special meetings under Regulation 54-101 and to only extend it to all meetings until the impact of notice-and-access on voting participation rates had been demonstrated. All other comments disagreed with restricting notice-and-access to meetings that are not special meetings. The comments expressed the following concerns regarding the proposed restriction: (a) it would add an additional layer of complexity to an already complex system; (b) the distinction between special and non-special meetings is not meaningful in many cases, as controversial matters are often voted on at non-special meetings (e.g., the case of proxy contests); (c) it could perpetuate a view that the election of directors and (re)appointment of auditors require less attention;	We agree with the large majority of comments that notice-and-access should be available for all meetings, not just special meetings. We therefore propose to eliminate this restriction. In addition, we also propose additional policy statement guidance on what factors reporting issuers should consider when deciding whether to use notice-and-access.

#	Issue/Comment	Response
	(d) it would significantly reduce the number of meetings for which notice-and-access could be used, thus significantly reducing the efficiency gains for the beneficial owner communication process.	
3.	*Whether there should be a prescribed form of notice*	
	Comments were divided on this issue. Those who supported a prescribed or standardized form of notice expressed concern that lack of specific requirements could create inconsistency between proxy-related materials and result in shareholder confusion. Those who did not think that a prescribed or standardized form was necessary noted that as long as the basic information about matters to be voted on was provided, it would be appropriate to provide additional information.	Regardless of whether commentators supported a prescribed or standardized form, all commentators appeared to agree that the notice should contain basic information about the matters to be voted on, and that investor confusion should be minimized. With the above objectives in mind, we have revised the proposal to specify that the notice must only state certain information. With respect to matters being voted on at the meeting, the notice must only state each matter or group of related matters to be voted on as identified in the form of proxy. This will facilitate consistency between the notice and other proxy-related materials, as well as standardization of the notice among issuers, both of which are intended to minimize investor confusion. We also propose policy statement guidance that states our expectations that reporting issuers draft the items to be voted on in the proxy in a clear and user-friendly manner.
4.	*Whether additional information (that is not an information circular) can be provided with the notice*	
	Comments were divided on this issue. Most commentators shared a concern that additional materials could be confusing and in some cases, intentionally or unintentionally inaccurate or misleading. One comment suggested mandating a plain language summary of the notice with all relevant voting information. Another comment suggested prescribing rules regarding the type, tone, content and purpose of additional materials. One comment also proposed requiring any additional materials to be provided to all investors, regardless of how the materials were delivered.	We think that permitting additional materials to be included in the notice-and-access package without any prescribed rules around type, tone, content and purpose could contribute to investor confusion. Furthermore, we are concerned that providing such additional materials without the information circular encourages shareholders not to review the information circular. We therefore propose to prohibit additional material from being included in the notice-and-access package without an information circular also being included.

#	Issue/Comment	Response
5.	*Whether notice-and-access can be used only in respect of some beneficial owners*	
	Comments were divided on this issue. Some comments expressed concern that selective use of notice-and-access would be confusing to shareholders, and in some cases could be used to manipulate voting outcomes by reporting issuers. Other comments viewed selective use of notice-and-access as being consistent with effective communication with shareholders while maximizing cost efficiencies in the communication process. One comment noted that there is a distinction to be made between selective use of notice-and-access, and "stratification". Stratification refers to procedures whereby an issuer that uses notice-and-access includes paper copies of the information circular in the notice package sent to a subset of beneficial owners.	In order to minimize the complexity of the system and investor confusion, we propose that an issuer that uses notice-and-access under Regulation 54-101must use it in respect of all its beneficial owners (subject to any alternate delivery methods such as e-mail delivery to which the shareholder has consented or may consent). However, the issuer can choose to include a paper copy of the information circular in the notice package that is delivered to a subset of its shareholders. We have added a definition of "stratification" to describe these procedures. We think that stratification as part of notice-and-access can be consistent with effective communication while maximizing cost efficiencies in the communication process. However, in order to increase transparency, we propose to require that stratification criteria be disclosed in the notification of meeting and record dates required by s. 2.2 of Regulation 54-101, the notice-and-access explanation required by s. 2.7.1(1)(a)(ii), and the information circular. We also propose policy statement guidance that states our expectation that a reporting issuer will use stratification in order to enhance effective communication, and not to disenfranchise shareholders.
6.	*Costs and benefits of notice-and-access*	
	Comments were divided on whether notice-and-access would result in cost savings to the Shareholder Voting Communication Process. Some commentators were of the view that notice-and-access would result in significant cost savings, while others were of the view that it would depend on the particular circumstances of the issuer. One commentator noted that notice-and-access also had costs associated with building and maintaining the infrastructure, lost economies of scale in printing and mailing materials and cost transfers to investors to access and print materials. In addition, several comments expressed concern that potential cost savings of notice-and-access would not be passed on to issuers absent	Based on the comments, it appears that the potential for costs savings will depend on a number of factors. For example, one issuer provided an estimate of $75,000 to $500,000 in savings (depending on the type of meeting), while another estimated savings of $500,000 to $700,000. We acknowledge concerns that the notice-and-access process not be overly complicated and expensive to design and maintain, and therefore have proposed a number of changes that are intended to streamline and standardize the procedures. With regard to the issue of service provider fees, we note that the use of notice-and-access is voluntary, and that it is up to each reporting issuer to assess

#	Issue/Comment	Response
	regulatory intervention on fees charged by service providers. An intermediary service provider noted that on a proportional basis, the opportunity for significant cost savings for issuers in Canada is likely to be less than that seen in the U.S. Issuers in Canada have already received cost savings due to regulatory changes. In particular, reporting issuers are not required to send annual financial statements and annual MD&A to all registered holders and beneficial owners if they use the annual request form mechanism in Regulation 51-102. The same intermediary service provider also noted that it is unclear at this stage whether building and maintaining a notice-and-access system is justified given the potential number of corporations that may use the proposed notice-and-access procedures. It also noted that notice-and-access as an additional option for distribution of proxy-related materials, can increase cost and complexity for participants in the Shareholder Voting Communication Process.	whether fees charged in connection with notice-and-access will be sufficiently offset by the savings associated with printing and mailing.
7.	*Whether notice-and-access is adequately integrated with the process for requesting copies of financial statements and MD&A*	
	The comments received on this issue were divided, although a small majority took the view that the two processes could be better integrated.	We have made the following changes in response to the comments: (a) We propose to permit proxy-related materials to be filed on or prior to the day the notice is sent. This will enable a reporting issuer to both incorporate by reference the information circular in its AIF (by filing the information circular prior to filing its AIF, annual financial statements and annual MD&A); and send a single set of proxy-related materials that includes the annual financial statements and annual MD&A. (b) We propose to amend Regulation 51-102 so that an annual request form used to request the annual financial statements and MD&A will also constitute a request for a paper copy of the information circular where the reporting issuer uses notice-and-access.

#	Issue/Comment	Response
		(c) We propose to reduce the period that a reporting issuer is obligated to fulfil requests for annual or interim financial statements and annual or interim MD&A to one year from the date that the materials were filed, which is consistent with the proposed provision that a reporting issuer is only required to fulfil a request for a paper information circular one year from the date of the meeting to which it relates.
8.	*Requirement that reporting issuer issue news release regarding use of notice-and-access*	
	The majority of comments questioned the utility of the news release requirement. One comment noted that the information required in the news release should be drafted to refer to both registered holders and beneficial owners.	We propose several changes as to how shareholders learn about a reporting issuer's use of notice-and-access. First, we propose a new requirement that a reporting issuer provide advance notice three to six months before the first meeting where notice-and-access is used by issuing a news release and posting information on a website that is not SEDAR. Second, we propose that information regarding notice-and-access subsequently be disseminated in the notification of meeting required in s. 2.2(2) of Regulation 54-101. Finally, the information to be disclosed must be in respect of both registered holders and beneficial owners.
9.	*Requirement that reporting issuer post "document with same information" on non-SEDAR website*	
	One comment noted that this requirement should be redrafted to require that the reporting issuer post the "information circular" on the non-SEDAR website.	We are adopting the suggested change.
10.	*Requirement that reporting issuer provide "information" to the intermediary*	
	One comment requested that this requirement be redrafted to clarify that the reporting issuer must provide the materials for forwarding, as the provision as currently drafted would require intermediaries to be responsible for producing the required notice.	We are adopting the suggested change.
11.	*Requirement that requests for paper copies of information circular be fulfilled within 3 business days*	
	One comment recommended that the requirement should only apply if a request is received at least 3 business	In our view, it is appropriate for any request for an information circular that is received on or before a meeting date

#	Issue/Comment	Response
	days prior to the meeting. Another comment requested that guidance be provided on how to deal with last-minute requests.	to be fulfilled in a prompt manner. We therefore are not proposing to change the 3 business day fulfillment requirement. We also propose to require that first class mail, courier or the equivalent be used in those cases. However, we propose to permit requests received after the date of the meeting to be fulfilled within 10 calendar days and by prepaid mail other than first class mail, which is consistent with the new proposed fulfillment time frames for annual financial statements and annual MD&A. The new proposed mandatory notice-and-access explanation must contain information about when requests should be received in order for the requester to receive the paper copy in advance of any deadline for the submission of voting instructions and the date of the meeting.
12.	*Requirement not to "obtain" information when fulfilling requests for paper copies*	
	One comment requested a change from the word "obtain" to "request".	We have adopted the suggested change.
13.	*Use of term "enable" in context of prohibition against identification of person accessing website where materials are posted*	
	One comment stated that the proposed prohibition against a reporting issuer using any means that would "enable" the reporting issuer to identify a person is too broad, and recommended that the provision be changed to read that the reporting issuer "must not collect" such information.	We have adopted the suggested change.
14.	*Reporting issuer must send notice and post materials on non-SEDAR website at least 30 days before the meeting and on same day that notice package is sent*	
	One comment stated that the 30-day period was too far in advance of the meeting, and that sending of the notice and posting of materials should be able to take place at least 21 days before the meeting. One comment raised a concern that the requirement that the notice be sent out on the same day that the proxy-related materials are made publicly available through filing on SEDAR could result in reporting issuers having to choose between mailing the annual financial statements and annual MD&A with the notice, and incorporating disclosure from the	We are not adopting the suggestion regarding reducing the 30-day period as we continue to take the view that 30 days is an appropriate period to reasonably enable shareholders who receive the notice to request and obtain a paper copy of the information circular if they wish. We have adopted the change suggested to permit the proxy-related materials to be filed on SEDAR on or before the day the notice package is sent.

#	Issue/Comment	Response
	information circular in the AIF.	
15.	*No specific time frame mandated for when intermediaries must receive notice materials for sending to beneficial owners*	
	One comment recommended that there be a specific time frame mandated for when intermediaries must receive notice materials where the reporting issuer is sending the materials indirectly to beneficial owners.	We propose that the time frames now track the time frames that apply to standard mailings of proxy-related materials. See s. 2.12 of Regulation 54-101.
16.	*No provision that permits beneficial owners to provide standing instructions to receive paper copy of information circular*	
	Two comments suggested that there should be provision for beneficial owners to give standing instructions that they wish to receive paper copies of information circulars in every case. One commentator noted that under the SEC notice-and-access rules, investors are permitted to give standing instructions to receive paper copies of meeting materials, and that statistics indicate that those investor who give these instructions tend to vote more often than the average retail investor.	We are adopting this suggestion. We propose that reporting issuers be permitted to obtain standing instructions in respect of registered holders, and that intermediaries be permitted to obtain standing instructions in respect of beneficial owners. We considered proposing that reporting issuers be permitted to obtain standing instructions from beneficial owners, but were not able to envision how reporting issuers could implement a mechanism to obtain, maintain and execute such instructions given the current infrastructure whereby intermediaries are primarily responsible for collecting and maintaining beneficial owner shareholder communication data. We therefore are not proposing such a provision at this time.
17.	*Reporting issuers who use notice-and-access are not required to pay for delivery to OBOs*	
	One comment stated that reporting issuers who use notice-and-access should be required to pay for delivery of the notice to OBOs. See also Issue/Comment 32, which relates to reporting issuers not being required to pay for delivery to OBOs generally.	We are not adopting this suggestion. The notice-and-access proposal is not intended to address the general question of how the cost of delivering proxy-related materials to OBOs should be allocated. However, we strongly encourage those reporting issuers who use notice-and-access to pay for delivery of the notice package to OBOs.
18.	*Integrating other delivery methods with notice-and-access (s. 2.7(2)(c) and 4.2(2)(c) of Regulation 54-101 in the Original Materials)*	
	One comment noted that it was unclear what other delivery methods are being contemplated and how they would be integrated into the beneficial owner communication process.	We are removing the originally proposed sections that enumerate the permitted delivery methods for proxy-related materials as these provisions are no longer necessary. We also are removing the reference to delivery methods other than prepaid mail,

#	Issue/Comment	Response
		courier or the equivalent for the notice package.
19.	*Exemption for SEC issuers who use U.S. notice-and-access*	
	A comment identified several technical issues with the proposed exemption for SEC issuers, including how the exemption would interact with the obligations of intermediaries subject to obligations under Regulation 54-101, but who might not be subject to the U.S. notice-and-access rules.	The proposed exemption is revised as follows: (a) We propose to eliminate the original condition that the SEC issuer obtain confirmation from each intermediary that it will "comply" with the U.S. notice-and-access rules, and replace it with a condition that the issuer arrange with each intermediary to send the materials using the U.S. notice-and-access procedures; (b) We narrow the application of the exemption to SEC issuers that have a limited Canadian presence; (c) We expand the exemption to apply to any intermediary that, at the request of an SEC issuer, uses U.S. notice-and-access procedures to deliver proxy-related materials to beneficial owners.
20.	*No consequential amendments to Form 54-101F2*	
	Two comments requested that the Form 54-101F2 *Request for Beneficial Ownership Information* be amended to reflect the changes proposed in Regulation 54-101 relating to notice-and-access and also require the issuer to indicate which method(s) of delivery were going to be used, i.e., direct delivery to NOBOs, indirect delivery to both types of beneficial owners, selective/complete use of N&A, etc.	We are adopting this suggestion. We note that some of the information listed is already required to be provided in Form 54-01F2, i.e., Items 7.4 and 10 of Part 1 – Reporting issuer Information.
Repeal of legal proxy provisions and appointment of beneficial owner or its nominee as proxy holder		
21.	*Reporting issuer must provide confirmation in a format that is acceptable to the intermediary that reporting issuer will appoint the NOBO as proxy holder where NOBO has so requested*	
	One comment noted that the clause as drafted could result in multiple confirmation formats, and recommended that it not be at the sole discretion of the intermediary. Furthermore, the clause as drafted also could permit an intermediary to demand confirmation of every proxy appointment submitted on behalf of its clients. This could create logistical	We removed the requirement that the confirmation be in a format acceptable to the intermediary. We also have added a new provision that clarifies that the confirmation does not need to specify every proxy appointment submitted, and that it is sufficient simply to identify the meeting to which the confirmation applies.

#	Issue/Comment	Response
	issues, especially on meetings for large reporting issuers during the height of meeting season.	
22.	*Beneficial owner or nominee that is appointed as proxy holder does not have power of attorney to act as principal with authority to vote on all matters before the meeting*	
	Issuers should clearly outline in the information circular and on the form of proxy/VIF that the appointee will have authority to present matters to the meeting and to vote on all matters brought before the meeting. Furthermore, issuers should clearly state this fact in the voting instruction form/form of proxy and the information circular.	We have added a provision that the appointee has full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in the VIF or the information circular.
23.	*No specific mechanism outlined for appointing a beneficial owner to attend and vote at a meeting*	
	One comment requested that there should be a specific mechanism outlined in Regulation 54-101 for appointing a beneficial owner to attend and vote at a meeting.	We are not adopting this change. However, as we noted in the notice accompanying the Original Materials, the appointee system has been developed and in place for some time, and we are adding a discussion of it in the policy statement.
24.	*Obligation to deposit proxy by proxy cut-off*	
	A comment requested that the requirement to deposit the proxy by the proxy cut-off pursuant to voting instructions from a beneficial owner only apply where the voting instructions were received at least one business day prior to the proxy cut-off.	We are adopting this suggestion. However, we propose policy statement guidance that we expect that reporting issuers and intermediaries will make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.
Enhanced disclosure of proxy voting process in information circular		
25.	*Requirement to disclose where notice-and-access used only for some beneficial owners*	
	Comments were divided on the whether the disclosure would be helpful to shareholders.	We continue to take the view that this disclosure is helpful to shareholders. We have made changes to the proposed requirement so that the disclosure regarding stratification is in respect of registered holders and beneficial owners. We also propose to require that the information be disclosed earlier, when the issuer files the notification of meeting.

#	Issue/Comment	Response
26.	*Requirement to disclose non-payment for delivery to OBOs*	
	One comment supported disclosure, while two comments questioned the utility of the disclosure. One of the latter two comments noted that the more fundamental issue was the potential that an OBO would not receive proxy-related materials as a result of the reporting issuer not paying for OBO delivery. The second comment suggested that the disclosure of non-payment should be included in the press release.	As noted in our responses to Issue/Comment 17 and 32, we do not intend to address the issue of requiring reporting issuers to pay for delivery to OBOs as part of the Proposals. We are maintaining the proposed disclosure requirement, but also propose to require reporting issuers to disclose whether they will pay for OBOs in the notification of meeting.
Use of NOBO information		
27.	*Increased restrictions on use of NOBO information*	
	The comments were generally supportive, although one comment questioned why such restrictions were necessary. One comment suggested that issuers, intermediaries and subcontractors be required to adopt specific privacy standards, such as those in PIPEDA and the Canadian Standards Association's Model Code.	We continue to think that the restrictions are appropriate. We are not adopting the suggestion regarding adoption of specific privacy standards. We expect issuers, intermediaries and service providers to comply with their obligations under privacy legislation, and encourage adoption of appropriate best practices.
Requests for beneficial ownership information		
28.	*Permitting non-transfer agents to request beneficial ownership information on behalf of reporting issuers*	
	Comments generally supported this proposed amendment. One comment suggested that s. 2.5(4) be eliminated completely, as information can be delivered using a variety of media and by direct electronic exchange with a much wider array of parties than was anticipated when the original provision was drafted. In the alternative, the assessment regarding technological capacity should be made by the intermediary, as it is the party providing the information. However, one comment strongly disagreed with the proposed amendment, noting that: (a) beneficial owners completing their client response form do not have the expectation that their information would be accessible to non-transfer agents; and (b) transfer agents are trusted entities that are recognized by the regulator and exchanges and are active	We continue to think that issuers and third parties should be able to obtain NOBO lists directly (subject to the permitted purposes for obtaining NOBO lists, and permitted uses of NOBO lists in Regulation 54-101). We therefore propose changes to the provision that clarify that a reporting issuer can request a NOBO list without using a transfer agent provided the intermediary reasonably believes that the reporting issuer (or the person making the request on its behalf) has the technological capacity to receive the information. We note that the client response reform does not indicate that beneficial ownership information will only be released to a transfer agent.

#	Issue/Comment	Response
	participants in the daily affairs of publicly traded companies.	
Miscellaneous comments		
29.	*Requirement for issuers/intermediaries to retain a record of the Form 54-101F6/7 and the date and time of any voting instructions and proxy appointment*	
	One comment was supportive of this requirement. However, other comments took the view that the proposed requirements were unclear. For example, one comment noted that the purpose of the proposed requirement was unclear. If the aim was to generate an audit trail for voting, then the recordkeeping requirements should go further to mandate keeping the date(s) the materials were sent to investors, full details of the instructions received and the date(s), time(s) and details of tabulated votes that were sent by an intermediary to the issuer. If the longer term aim was to have a system that can confirm voting instructions and that proxies were executed as securityholders intended, then it would be less expensive and more efficient to require full records to be kept now, rather than introduce additional requirements over time, necessitating multiple systems changes.	We propose to remove the proposed requirements at this stage. We will consider the broader issue of appropriate recordkeeping in the proxy voting system separately from the Proposals.
30.	*Differences in definitions of special resolution and proxy-related material in Regulation 51-102 and Regulation 54-101*	
	A comment noted that there were differences in the drafting of the definitions of special resolution and proxy-related material in Regulation 51-102 and Regulation 54-101.	We propose to harmonize the definitions.
31.	*Reasonable assurance of payment to intermediaries before mailing materials*	
	A comment noted that the language in Part 4 of Regulation 54-101 relating to the intermediary's obligation to deliver NOBO lists to issuers and proxy-related materials to beneficial owners on behalf of issuers should be amended to make the conditions contingent on the intermediary receiving reasonable assurance of payment.	We are not proposing to adopt this change at this time. We will consider this issue separately from the Proposals.

B. Comments on other aspects of Regulation 54-101

#	Comments	Response
32.	*Issuers should pay for delivery to OBOs under all circumstances.*	We are not adopting this suggestion at this time. We will consider the issue of whether Regulation 54-101 should require reporting issuers to deliver to OBOs separately from the Proposals.
33.	*Regulation 54-101 needs to be strengthened to make intermediaries more accountable.*	We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals.
34.	*For special meetings as defined in Regulation 54-101, materials should be sent 45 days in advance.*	We are not adopting this suggestion as we continue to take the view that 21 days (30 days where notice-and-access is used) is an appropriate period. We note that existing policy statement guidance states that for meetings that deal with contentious matters, good corporate practice will often require that meeting materials be sent earlier than the time frames set out in Regulation 54-101 so that shareholders have the full opportunity to understand and react to matters raised.
35.	*NOBO status should be the default for beneficial owners; shareholders who wish to remain anonymous must sign waiver of right to receive materials directly.*	We are not adopting this suggestion at this time. We will consider issues generally related to OBO and NOBO status separately from the Proposals.
36.	*Issuers should not be able to override a security holder's choice not to receive materials. In the alternative, securityholders who have declined to receive materials altogether should only be sent a notice package under notice-and-access.*	We are not adopting this suggestion, as we think that reporting issuers are entitled to contact securityholders in connection with voting matters. Nor do we propose to effectively prohibit a reporting issuer from sending a beneficial owner a paper copy of the information circular. However, we encourage issuers to consider whether notice-and-access and stratification can be used to enhance effective communication in the beneficial owner communication process by sending notice-only packages to securityholders who do not wish to receive materials, and including paper copies of the information circulars in notice packages for shareholders who do wish to receive materials.
37.	*Include FINS number in the NOBO list where it is requested by a person other than the reporting issuer.*	We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals.

#	Comments	Response
38.	*OBOs and NOBOs should not be treated in the same manner where it is possible for NOBOs to be treated more like registered shareholders. The Original Materials should be amended to reflect this principle. Issuers should be allowed to provide NOBOs with a form of proxy rather than a request for voting instructions using the STAC protocol for NOBO omnibus proxies.*	We are not adopting this suggestion at this time. We will consider the issue of whether NOBOs should be treated more like registered holders separately from the Proposals.
39.	*Regulation 54-101 should mandate that any party that has carriage of mailing (such as the transfer agents or Broadridge) file with the CSA and on SEDAR a confirmation that the mailing was completed in accordance with the requirements of Regulation 54-101.*	We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals.
40.	*Any party involved in the beneficial owner voting process should be entitled to rely upon the consent to electronic delivery of material obtained by another party.*	We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals.

C. Comments on the proxy voting system generally

#	Comment	Response
41.	*There needs to be a clear voting audit trail. Consideration should be given to requiring a regulatory or independent audit of meetings where the vote was determined by a narrow margin.*	We thank the commentators for their suggestions on areas where the proxy voting system requires regulatory attention. Although we are not proposing any specific regulatory initiatives as a result of these comments at this time, we continue to consider these comments separately from the Proposals, and what, if any, appropriate regulatory responses to take. We support enhancing investor education on the proxy voting system and are considering how we as securities regulators can facilitate achieving this outcome.
42.	*Shareholders should have the right to confidentiality when voting.*	
43.	*There needs to be a charter of shareholder rights.*	
44.	*The regulators should send each beneficial owner a reminder form about casting votes.*	
45.	*Majority voting/individual director voting should be mandatory for reporting issuers.*	
46.	*Shareholders should have greater access to the proxy.*	
47.	*There should be policy guidance requiring the fair allocation of votes received in respect of all beneficial owner positions at a particular intermediary.*	

#	Comment	Response
48.	*There should be a CSA proxy voting section on CSA websites similar to SEC proxy voting section/There should be an investor education campaign about the beneficial owner voting process.*	

REGULATION TO AMEND REGULATION 54-101 RESPECTING COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

Securities Act
(R.S.Q., c. V-1.1, a. 331.1, par. (1), (2), (3), (4.1), (8), (11), (20), (30) and (34))

1. Section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer is amended:

(1) by deleting, in the French text of the definition of the expression “beneficial owner”, the words “ou société”;

(2) by deleting, in the French text of the definition of the expression “client”, the words “ou la société”;

(3) by deleting, in the French text of the definition of the expression “depository”, the words “ou société”;

(4) in the French text of the definition of the expression “intermediary”:

(a) by deleting, wherever they occur in the part preceding paragraph (a), the words “ou société”;

(b) by deleting, in paragraph (a), the words “ni une société”;

(5) by deleting the definition of the expression “legal proxy”;

(6) by deleting, in the French text of the definition of the expression “nominee”, the words “ou société”;

(7) by inserting, after the definition of the expression “non-objecting beneficial owner list”, the following:

““notice-and-access” means

(a) in respect of registered holders of voting securities of a reporting issuer, the delivery procedures referred to in section 9.1.1 of Regulation 51-102 respecting Continuous Disclosure Obligations (M.O. 2005-03, 05-05-19);

(b) in respect of beneficial owners of securities of a reporting issuer, the delivery procedures referred to in section 2.7.1 of this Regulation;”;

(8) by deleting, in the French text of the definition of the expression “participant in a depository”, the words “ou une société”;

(9) by inserting, in the definition of the expression “proxy-related materials” and after the words “registered holders”, the words “or beneficial owners”;

(10) by deleting, in the French text of the definition of the expression “registered holder”, the words “ou société”;

(11) by inserting, after the definition of “request for beneficial ownership information”, the following:

““SEC issuer” means an issuer that

(a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act; and

(b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended;

(12) by deleting the definition of the expression “request for voting instructions”;

(13) by inserting, in the definition of the expression “securityholder materials” and after the words “registered holders”, the words “or beneficial owners”;

(14) by inserting, after the definition of the expression “special meeting”, the following:

““stratification”, in relation to a reporting issuer using notice-and-access, means procedures whereby a paper copy of the information circular is included with either or both of the following:

(a) the documents required to be sent to registered holders under subsection 9.1(1) of Regulation 51-102 respecting Continuous Disclosure Obligations;

(b) the documents required to be sent to beneficial owners under subsection 2.7.1(1) of this Regulation;”;

(15) by deleting, in the French text of the definition of the expression “transfer agent”, the words “ou société”.

2. Section 2.2 of the Regulation is amended by replacing subparagraph (h) of paragraph (2) with the following:

“(h) whether the meeting is a special meeting;

(i) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(j) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(k) whether the reporting issuer intends to pay for delivery to OBOs.”.

3. Section 2.5 of the Regulation is amended by replacing paragraph (4) with the following:

“(4) A reporting issuer that requests beneficial ownership information under this section must do so through a transfer agent.

(5) Despite subsection (4), a reporting issuer may request beneficial ownership information without using a transfer agent for the purpose of obtaining a NOBO list if the intermediary to whom the request is being made reasonably believes that the reporting issuer, or if the reporting issuer has made the request through another person, the person making the request, has the technological capacity to receive the NOBO list.”.

4. Section 2.7 of the Regulation is amended by replacing, in the French text of the title, the words “**de documents”** with the words “**des documents**”.

5. The Regulation is amended by inserting, after section 2.7, the following:

"2.7.1. Notice-and-Access

(1) A reporting issuer that is not an investment fund may send proxy-related materials to a beneficial owner of its securities using notice-and-access that complies with all of the following:

(a) the beneficial owner is sent the following:

(i) a notice containing all the following information, and no other information:

A. the date, time and location of the reporting issuer's meeting;

B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;

C. the website address other than the address for SEDAR, where the proxy-related materials are located;

D. a reminder to review the information circular before voting;

E. an explanation of how to obtain a paper copy of the information circular from the reporting issuer;

(ii) a document in plain language that explains notice-and-access and includes the following information:

A. why the reporting issuer is using notice-and-access;

B. if the reporting issuer is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;

C. the date and time by which a request for a paper copy of the information circular should be received in order for the requester to receive the information circular in advance of any deadline for the submission of voting instructions and the date of the meeting;

D. an explanation of how the beneficial owner is to return voting instructions, including any deadline for return of such instructions;

E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)B can be found;

F. a toll-free telephone number the beneficial owner can call to ask questions about notice-and-access;

(b) using the direct or indirect procedures in section 2.9 or 2.12 as applicable, the beneficial owner is sent by prepaid mail, courier or the equivalent, the documents required by paragraph (a), and a Form 54-101F6 or Form 54-101F7, as applicable;

(c) at least 30 days before the date fixed for the meeting the reporting issuer files the notification required by subsection 2.2(1) of this Regulation;

(d) public electronic access to the information circular and the documents in paragraph (a) is provided on or before the day that the reporting issuer sends the documents in paragraph (a) to registered holders, in the following manner:

(i) the documents are filed on SEDAR;

(ii) the documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the documents relate, at a website address other than the address for SEDAR;

(e) a toll-free telephone number is provided for use by the beneficial owner to request a paper copy of the information circular at any time from the date that the reporting issuer sends the documents in paragraph (a) to the beneficial owner, up to and including the date of the meeting including any adjournment;

(f) if a request is received under paragraph (e) or by any other means, a paper copy of the information circular is sent free of charge to the person at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;

(ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.

(2) A reporting issuer that sends proxy-related materials to a beneficial owner of its securities using notice-and-access must not include with the proxy-related material any document that relates to the particulars of any matter to be submitted to the meeting unless an information circular also is included, other than any one or more of the following documents:

(a) a document set out in paragraphs (1)(a) or (b);

(b) a document related to the approval of financial statements.

"**2.7.2. Notice in advance of first use of notice-and-access**

A reporting issuer that uses notice-and-access to send proxy-related materials to a beneficial owner of its securities must do the following not more than 6 months and not less than 3 months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

(a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;

(b) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

"**2.7.3. Restrictions on information gathering**

(1) A reporting issuer that receives a request under paragraph 2.7.1(1)(e) or by any other means must not do any of the following:

(a) request any information about the person making the request, other than the name and address to which the paper copy of the information circular is to be sent;

(b) disclose or use the name or address of the person making the request for any purpose other than sending the paper copy of the information circular.

(2) A reporting issuer that posts proxy-related materials pursuant to subparagraph 2.7.1(1)(d)(ii) must not collect information that can be used to identify a person who has accessed the website address where the proxy-related materials are located.

"**2.7.4. Posting materials on non-SEDAR website**

(1) A reporting issuer that posts proxy-related materials in the manner referred to in subparagraph 2.7.1(1)(d)(ii) must also post on the website the following documents:

(a) any other disclosure material regarding the meeting that the reporting issuer has sent to registered holders or beneficial owners of its securities;

(b) any written communications the reporting issuer has made available to the public regarding the meeting, whether sent to registered holders or beneficial owners of its securities or not.

(2) Proxy-related materials that are posted under subparagraph 2.7.1(1)(d)(ii) must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following conveniently:

(a) access, read and search the documents on the website;

(b) download and print the documents.

"**2.7.5. Consent to other delivery methods**

For greater certainty, section 2.7.1 does not

(a) prevent a beneficial owner from consenting to a reporting issuer's or intermediary's use of other delivery methods to send proxy-related materials; or

(b) prevent a reporting issuer or intermediary from sending proxy-related materials using a delivery method to which a beneficial owner has previously consented.

"**2.7.6. Instructions to receive paper copies**

(1) Despite section 2.7.1, an intermediary may obtain standing instructions from a beneficial owner that is a client of the intermediary that a paper copy of the information circular be sent to the beneficial owner in all cases where a reporting issuer uses notice-and-access.

(2) If an intermediary has obtained standing instructions from a beneficial owner under subsection (1), the intermediary must do all of the following:

(a) if the reporting issuer is sending proxy-related materials directly under section 2.9 of this Regulation, provide the reporting issuer with the names of those NOBOs who have provided standing instructions to receive a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access, at the same time as the intermediary provides the reporting issuer with the NOBO list;

(b) if the intermediary is sending proxy-related materials to a beneficial owner on behalf of a reporting issuer using notice-and-access, request appropriate quantities of paper copies of the information circular from the reporting issuer for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;

(c) provide a mechanism for the beneficial owner to revoke the beneficial owner's standing instructions."

6. Section 2.9 de the Regulation is replaced with the following:

"**2.9. Direct sending of proxy-related materials to NOBOs by reporting issuer**

(1) 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 must send the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request at its own expense.

(2) A reporting issuer that sends by prepaid mail, courier or the equivalent, paper copies of proxy-related materials directly to a NOBO must send the proxy-related materials at least 21 days before the date fixed for the meeting.

(3) A reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access must send the documents required by paragraphs 2.7.1(1)(a) and (b) and any paper copies of information circulars required to comply with standing instructions under section 2.7.6 or requests under section 4.6 of Regulation 51-102 respecting Continuous Disclosure Obligations (M.O. 2005-03, 05-05-19) at least 30 days before the date fixed for the meeting.".

7. Section 2.10 of the Regulation is amended by inserting, after "Except as required by securities legislation,", "and despite subsection 2.9(1),".

8. Section 2.12 of the Regulation is replaced with the following:

"**2.12. Indirect sending of securityholder materials by reporting issuer**

(1) A reporting issuer sending securityholder materials indirectly to beneficial owners must 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 for sending to beneficial owners.

(2) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner by having the proximate intermediary send the proxy-related materials by prepaid mail must send the proxy-related materials to the proximate intermediary

(a) at least 3 business days before the 21st day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent;

(b) at least 4 business days before the 21st day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.

(3) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using notice-and-access must send the documents required by paragraph 2.7.1(1)(a) and any paper copies of information circulars to be included with such documents to the proximate intermediary

(a) at least 3 business days before the 30th day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent;

(b) at least 4 business days before the 30th day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.

(4) A reporting issuer that sends securityholder materials that are not proxy-related materials indirectly to beneficial owners must send the securityholder materials to the intermediary on the day specified in the request for beneficial ownership information.

(5) A reporting issuer must not send securityholder materials directly to a NOBO if a proximate intermediary in a foreign jurisdiction holds securities on behalf the NOBO and one or both of the following applies:

(a) the law of the foreign jurisdiction does not permit the reporting issuer to send securityholder materials directly to NOBOs;

(b) the proximate intermediary has stated in a 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.".

9. Sections 2.16 to 2.18 of the Regulation are replaced with the following:

"**2.16. Explanation of voting rights**

(1) If a reporting issuer sends proxy-related materials for a meeting to a beneficial owner of its securities, the materials must explain, in plain language, how the beneficial owner can exercise voting rights attached to the securities, including an explanation of how to attend and vote the securities directly at the meeting.

(2) Management of a reporting issuer must provide the following disclosure in the information circular:

(a) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(c) whether the reporting issuer intends to pay for delivery to OBOs, and if the reporting issuer does not intend to pay for delivery to OBOs, a statement that it is the OBO's responsibility to contact the OBO's intermediary to make any necessary arrangements to exercise voting rights attached to the OBO's securities.

"**2.17. Voting instruction form (Form 54-101F6)**

(1) A reporting issuer that sends proxy-related materials that solicit votes or voting instructions directly to a NOBO must provide a Form 54-101F6 in substitution for the form of proxy.

"**2.18. Appointing beneficial owner as proxy holder**

(1) A reporting issuer whose management holds a proxy in respect of securities beneficially owned by a NOBO must arrange, without expense to the NOBO, to appoint the NOBO or a nominee of the NOBO as a proxy holder in respect of those securities if the NOBO has instructed the reporting issuer to do so using either of the following methods:

(a) the NOBO submitted the completed Form 54-101F6 previously sent to the NOBO by the reporting issuer;

(b) the NOBO submitted any other document in writing that requests that the NOBO be appointed as a proxyholder.

(2) Unless the NOBO has instructed otherwise, if management appoints a NOBO or a nominee of the NOBO as a proxy holder under subsection (1), the NOBO or nominee of the NOBO as applicable also must be given authority to attend, vote and otherwise act for and on behalf of management of the reporting issuer in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

(3) A reporting issuer who appoints a NOBO as a proxy holder pursuant to subsection (1) must deposit the proxy within any time specified under corporate law for the deposit of proxies if the reporting issuer obtains the instructions under subsection (1) at least one business day before the termination of such time.

(4) If legislation requires an intermediary or depository to appoint the NOBO or nominee of the NOBO as proxy holder in respect of securities beneficially owned by the NOBO in accordance with any written voting instructions received from the NOBO, the intermediary may ask for, and the reporting issuer must provide, confirmation of both of the following:

(a) management of the reporting issuer will comply with subsections 2.18(1) and (2);

(b) management of the reporting issuer is acting on behalf of the intermediary or depository to the extent it appoints a NOBO or nominee of the NOBO as proxy holder in respect of the securities of the reporting issuer beneficially owned by the NOBO.

(5) A confirmation provided under subsection (4) must identify the specific meeting to which the confirmation applies, but is not required to specify each proxy appointment that management of the reporting issuer has made.”.

10. Section 2.20 of the Regulation is amended by replacing paragraph (a) with the following:

“(a) arranges to have proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12;

(a.1) if the reporting issuer uses notice-and-access, fixes the record date for notice to be at least 30 days before the date of the meeting and sends the notification of meeting and record dates under section 2.2 at least 30 days before the date of the meeting;”.

11. Section 4.1 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words “through the transfer agent of the reporting issuer that sent the request” with the words “through the transfer agent, or in the case of a NOBO list, a person described in subsection 2.5(5) that sent the request”;

(2) by deleting, in the French text of paragraph (6), the words “ou société”.

12. Sections 4.4 and 4.5 of the Regulation are replaced with the following:

“**4.4. Voting instruction form (Form 54-101F7)**

An intermediary that forwards proxy-related materials to beneficial owners that solicit votes or voting instructions from securityholders must provide a Form 54-101F7 in substitution for the form of proxy.

“4.5. Appointing beneficial owner as proxy holder

(1) An intermediary who is the registered holder of, or holds a proxy in respect of, securities owned by a beneficial owner must arrange, at no expense to the beneficial owner, to appoint the beneficial owner or a nominee of the beneficial owner as a proxy holder if the beneficial owner has instructed the intermediary to do so using either of the following methods:

(a) the beneficial owner submitted the completed Form 54-101F7 previously sent to the beneficial owner by the intermediary;

(b) the beneficial owner submitted any other document in writing that requests that the beneficial owner be appointed as a proxy holder.

(2) Unless the beneficial owner has instructed otherwise, if an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder under subsection (1), the beneficial owner or nominee of the beneficial owner as applicable also must be given authority to attend, vote and otherwise act for and on behalf of the intermediary in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

(3) An intermediary who appoints a beneficial owner as proxy holder pursuant to subsection (1) must deposit the proxy within any time specified under corporate law for the deposit of proxies if the intermediary obtains the instructions under subsection (1) at least one business day before the termination of such time.”.

13. Section 5.4 of the Regulation is amended by adding, after paragraph (2), the following:

“(3) If legislation requires a depository to appoint a beneficial owner or nominee of the beneficial owner as proxy holder in respect of securities that are beneficially owned by a beneficial owner in accordance with any written voting instructions received from the beneficial owner, the depository may ask any participant described in subsection (1) for, and the participant must provide confirmation of all of the following:

(a) the participant will comply with subsections 4.5(1) and (2);

(b) the participant is acting on behalf of the depository to the extent it appoints a beneficial owner or nominee of a beneficial owner as proxy holder in respect of the securities of the reporting issuer beneficially owned by the beneficial owner;

(c) if the participant is required to execute an omnibus proxy under section 4.1, that the participant will obtain the confirmation set out in subsection 2.18(3).

(4) A confirmation provided under subsection (3) must identify the specific securityholder meeting to which the confirmation applies, but is not required to specify each proxy appointment that the participant has made.”.

14. Section 6.2 of the Regulation is amended:

(1) by deleting, in the French text of the title, the words “**et sociétés**”;

(2) by deleting, wherever they occur in the French text of paragraphs (1), (2), (4) et (5), the words “ou société” and the words “ou sociétés”;

(3) by replacing paragraph (6) with the following:

“(6) A person, other than the reporting issuer to which the request relates, that sends materials indirectly to beneficial owners must comply with all of the following:

(a) the person must pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners;

(b) the person must provide an undertaking to the proximate intermediary in the form of Form 54-101F10.".

15. The Regulation is amended by replacing the title of Part 7 and sections 7.1 and 7.2 with the following:

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

"**7.1. Use of NOBO list**

(1) A reporting issuer may use a NOBO list or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Regulation in connection with any matter relating to the affairs of the reporting issuer.

(2) A person that is not the reporting issuer must not use a NOBO list or a report prepared under section 5.3 relating to a reporting issuer and obtained under this Regulation in any manner other than the following:

(a) for sending securityholder materials directly to NOBOs in accordance with this Regulation;

(b) in respect of an effort to influence the voting of securityholders of the reporting issuer;

(c) in respect of an offer to acquire securities of the reporting issuer.

"**7.2. Sending of Materials**

(1) A reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, in connection with any matter relating to the affairs of the reporting issuer.

(2) A person that is not the reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, only in connection with one or more of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.".

16. The Regulation is amended by inserting, after section 9.1, the following:

"**9.1.1. Compliance with SEC Notice-and-access Rules**

(1) Section 2.7 does not apply to a reporting issuer that is an SEC issuer if it satisfies all of the following:

(a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act;

(b) the SEC issuer has arranged with each intermediary through whom the beneficial owner holds its interest in the reporting issuer's securities to have each such intermediary send the proxy-related materials to the beneficial owner by implementing the

procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act;

(c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50 per cent of the votes for the election of directors, and none of the following applies:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada;

(iii) the business of the issuer is administered principally in Canada.

(2) Part 4 of this Regulation does not apply to an intermediary with whom a reporting issuer has made arrangements under paragraph (1)(b) if the intermediary implements the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act.".

17. Section 10.3 of the Regulation is amended by replacing, in the French text of the title, the words "**de documents**" with the words "**des documents**".

18. Form 54-101F2 of the Regulation is amended:

(1) by replacing, in items 6.7 and 7.8, the words "National Policy 11-201 and, in Québec, Staff Notice 11-201" with the words "Policy Statement 11-201 respecting Electronic Delivery of Documents";

(2) by inserting, after item 7.11, the following:

"**7.12** State whether the reporting issuer is using notice-and-access, and any stratification criteria being used.";

(3) by replacing, in items 8.5 and 9.7, the words "National Policy 11-201 and, in Quebec, Staff Notice 11-201" with the words "Policy Statement 11-201 respecting Electronic Delivery of Documents";

(4) by inserting, after item 9.8, the following:

"**9.9** State whether the reporting issuer is using notice-and-access, and any stratification criteria being used.".

19. Form 54-101F6 of the Regulation is amended by replacing the paragraph that begins with "Should you wish to attend the meeting and vote in person…" with the following:

"If you want to attend the meeting and vote in person, please write your name in the place provided for that purpose in this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless you instruct otherwise, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in this form or the information circular. If you require help, please contact [the undersigned].".

20. Form 54-101A7 of the Regulation is amended by replacing the paragraph that begins with "Should you wish to attend the meeting and vote in person…" with the following:

"If you want to attend the meeting and vote in person, please write your name in the place provided for that purpose in this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless you instruct otherwise, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in this form or the information circular. If you require help, please contact [the undersigned].".

21. Form 54-101F8 of the Regulation is revoked.

22. Form 54-101F9 of the Regulation is amended:

(1) by replacing paragraph (2) with the following:

"**<Option #1:** ***use this alternative if the reporting issuer is providing the undertaking*****>**

2. I undertake that the information set out on the NOBO list will be used only in connection with one or more matters relating to the affairs of the reporting issuer.

<Option #2: ***use this alternative if a person other than the reporting issuer is providing the undertaking*****>**

2. I undertake that the information set out on the NOBO list will be used only for one or more of the following purposes:

(a) sending securityholder materials directly to NOBOs in accordance with Regulation 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.";

(2) by replacing paragraph (4) with the following:

"4. I am aware that it is a contravention of the law to use a NOBO list for purposes other than in connection with one or more of the following:

(a) sending securityholder materials directly to NOBOs in accordance with Regulation 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.".

23. The Regulation is amended by adding, after Form 54-101F9, the following:

"**FORM 54-101F10 UNDERTAKING**

Note: Terms used in this Form have the meaning given to them in Regulation 54-101.

The use of this Form is referenced in section 6.2 of Regulation 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 wish to send materials to beneficial owners of securities of [*insert name of the reporting issuer*] on whose behalf intermediaries hold securities, using the indirect sending procedures provided in Regulation 54-101 (the Regulation 54-101 Procedures).

2. I undertake that I am using the Regulation 54-101 Procedures to send materials to beneficial owners only for the purpose of one or both of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.

3. I am aware that it is a contravention of the law to send materials using the Regulation 54-101 Procedures for purposes other than in connection with one or both of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.

_____
Signature

_____
Name of person signing

_____
Date".

24. The Regulation is amended by deleting, wherever they occur in the French text, the words "ou une société", "ou société", "ni société", "ou la société", "ou sociétés" and "et sociétés", and making the necessary changes.

25. This Regulation comes into force on (*insert the date of the coming into force of this Regulation*).

POLICY STATEMENT TO REGULATION 54-101 RESPECTING COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

PART 1 BACKGROUND

1.1 History

(1) Obligations imposed on reporting issuers under corporate law and securities legislation to communicate with securityholders are typically cast as obligations in respect of registered holders and not in respect of beneficial owners. For purposes of market efficiency, securities are generally no longer 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 *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (the "Regulation").

(3) The purpose of this Policy Statement is to state the views of the Canadian securities regulatory authorities on various matters relating to the Regulation in order to provide guidance and interpretation to market participants in the practical application of the Regulation.

1.2 Fundamental Principles

The following fundamental principles have guided the preparation of the Regulation:

(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 Regulation

(1) The securityholder communication procedures in the Regulation are relevant to all securityholder materials sent by a reporting issuer to beneficial owners of its securities under Canadian securities legislation. Securityholder materials include, but are not limited to, proxy-related materials. Securityholder materials include:

(a) materials required by securities legislation or applicable corporate law to be sent to registered holders and beneficial owners of a reporting issuer's securities, such as interim financial reports or annual financial statements;

(b) materials required by securities legislation or applicable corporate law to be sent only to registered holders of a reporting issuer's securities, such as issuer bid and directors circulars, and dissident proxy-related materials;

(c) materials sent to registered holders or beneficial owners of a reporting issuer's securities absent any legal requirement to do so.

(2) As provided in section 2.7 of the Regulation, compliance with the procedures set out in the Regulation is mandatory for reporting issuers when sending proxy-related materials to beneficial owners, and, under section 2.8 of the Regulation, is optional for the sending of other materials. Once a reporting issuer, or another person pursuant to Part 6 of the Regulation, chooses to use the communications procedures specified in the Regulation for a reporting issuer, depositories, intermediaries and other persons must comply with their corresponding obligations under the Regulation.

2.2 Application to Foreign Securityholders and U.S. Issuers

(1) As provided in subsection 2.12(5) of the Regulation, 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 Multijurisdictional Disclosure System* provides, in Part 18, that a "U.S. issuer", as defined in that Instrument, is considered to satisfy the requirements of the Regulation, 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 Regulation.

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

2.3 [Deleted]

2.4 "Client" and "Intermediary" to be Distinguished From "Beneficial Owner"

(1) Section 1.1 of the Regulation 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 Regulation, "beneficial owner" refers to a person 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 Regulation and would not also be an "intermediary" with respect to those securities.

(3) The term "client" refers to the person for whom an intermediary directly holds securities, regardless of whether the client is a beneficial owner. For example, if a dealer holds securities on behalf of a bank that in turn holds the securities on behalf of the beneficial owner, the bank is a client of the dealer, and the beneficial owner is a client of the bank. The beneficial owner is not a client of the dealer. Section 1.2 of the Regulation recognizes that, under the Regulation, an intermediary may "hold" securities for a client, even if another person 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 Regulation defines "corporate law" as any legislation, constating instrument or agreement that governs the affairs of a reporting issuer. The term "corporate law"

therefore encompasses Canadian and foreign laws, a declaration or deed of trust in the case of a trust, and the partnership agreement in the case of a partnership.

2.6 Fees

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

2.7 Agent

A depository, intermediary, reporting issuer or any other person subject to obligations under the Regulation's securityholder communication procedures may use a service provider as its agent to fulfil its obligations. A person that uses an agent remains fully responsible for fulfilling its obligations under the Regulation, and for the conduct of the agent in this regard.

A person may fulfil its obligations relating to another party through an agent of that other party. For example, under section 2.12 of the Regulation, a reporting issuer fulfills its obligation to send securityholder materials to a proximate intermediary if it provides the materials to a person designated by that proximate intermediary.

PART 3 REPORTING ISSUERS

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

(1) Section 2.2 of the Regulation 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 that includes certain basic information about the meeting. Section 2.5 of the Regulation 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 so long as the reporting issuer arranges to have the proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12, and upon filing of an officer's certificate containing the information specified in section 2.20. Where the reporting issuer uses notice-and-access, the reporting issuer also must fix the record date for notice to be at least 30 days before the date of the meeting, and send the notification of meeting and record dates at least 30 days before the meeting.

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 Regulation.

(2) The time frames stipulated by sections 2.9 and 2.12 of the Regulation 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 Regulation. 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 Regulation 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 Statement, 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 Regulation to furnish the information requested in a request for beneficial ownership information, in certain circumstances, within three business days of receipt. It should be noted that this timing refers to receipt of the request by the proximate intermediary, which may not be the same date as the request was sent by the reporting issuer. The time necessary for a request for beneficial ownership information to be received by a proximate intermediary should be factored into a reporting issuer's planning.

3.2 Adjournment or Change in Meeting

(1) Under section 2.15, a reporting issuer that sends a notice of adjournment or other change for a meeting to registered holders of its securities shall concurrently send the notice, including any change in the beneficial ownership determination date, to the persons listed in section 2.15. Issuers are reminded of a number of other potential implications associated with an adjournment or other change, including those set out below.

(2) If additional proxy-related materials are sent in connection with the meeting after proxy-related materials have previously been sent, a new intermediary search may be required if the beneficial ownership determination date for the meeting is changed.

(3) New intermediary searches may have to be conducted if the nature of the business to be transacted at the meeting is materially changed. If the nature of the business is changed to add business that 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 Regulation, unless an exemption from the time periods of the Regulation 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 Regulation 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. Subsection 2.5(4) provides that a

request for beneficial ownership information must be made through a transfer agent. However, where only a NOBO list is being requested, the request may be made by the reporting issuer (or another person retained by the reporting issuer); provided the relevant proximate intermediary reasonably believes that the reporting issuer (or the person retained by the reporting issuer) has the technological capacity to receive the NOBO list.

3.4 Depository's Index of Meetings

CDS advises that the index referred to in section 5.2 of the Regulation 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.

3.4.1 Explanation of Voting Rights

(1) Subsection 2.16(1) of the Regulation requires a reporting issuer's proxy-related materials to contain a plain language explanation of how the beneficial owner can exercise the voting rights attached to the securities.

(2) Subsection 2.16(2) of the Regulation requires management of a reporting issuer to provide in the information circular disclosure about the following:

(a) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(c) whether the reporting issuer intends to pay for delivery to OBOs. If the reporting issuer does not intend to pay for such delivery, the information circular must disclose this fact.

This disclosure is intended to explain to beneficial owners why they may receive different proxy-related materials than other beneficial owners and why they may not receive proxy-related materials even if they have requested them. Item 4.3 of Form 51-102F5 Information Circular also requires this disclosure.

We also encourage reporting issuers to disclose whether they are sending proxy-related materials to beneficial owners who have declined to receive them and explain their decision.

(3) If a reporting issuer has chosen not to pay for proximate intermediaries to deliver proxy-related materials and Form 54-101F7 to OBOs, it must still provide to the proximate intermediary the number of sets of proxy-related materials that the proximate intermediary requested for forwarding to OBOs.

3.5 NOBO Voting Instructions

(1) 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 according to the instructions received from the NOBOs to the extent that management has the corresponding proxy. The proximate intermediary that provides the NOBO list under subsection 4.1(1) of the Regulation gives management that proxy.

We expect reporting issuers that choose to solicit voting instructions directly from NOBOs to have appropriate procedures for NOBO voting. This includes doing the following in a timely manner:

(a) responding to inquiries from NOBOs or intermediaries with NOBO clients about the voting process;

(b) appointing a NOBO or nominee of the NOBO as a proxyholder in respect of securities beneficially owned by the NOBO;

(c) generating a new Form 54-101F6 if a NOBO requests one. For example, a NOBO may have misplaced a Form 54-101F6 that he or she had received; or may now wish to provide voting instructions although he or she had previously indicated on his or her client response form that he or she did not wish to receive proxy-related materials.

We expect reporting issuers and intermediaries to work together to address any issues arising from the NOBO voting process.

3.6 Appointing NOBO as Proxy Holder

Section 2.18 of the Regulation requires reporting issuers who request voting instructions from NOBOs to:

- arrange to appoint the NOBO as proxy holder, if he or she so instructs, at no expense to the NOBO; and

- deposit the proxy within any time specified under corporate law for the deposit of proxies (a “proxy cut-off”) if the reporting issuer obtains the instructions at least one business day before the proxy cut-off. We expect reporting issuers to make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.

However, subject to these basic obligations, reporting issuers have flexibility as to the specific mechanism used to appoint the beneficial owner as proxy holder.

PART 4 INTERMEDIARIES

4.1 Client Response Form

By completing a client response form as provided in Part 3 of the Regulation, 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 Regulation, 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 Regulation work properly, it is important that the records of an intermediary be accurate. Its records must reconcile accurately with the records of the person 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 holding through an intermediary not exceed the number of votes for which the intermediary itself is a proxyholder.

4.4 Identification of Intermediary

(1) A NOBO list with FINS numbers will only be provided where the list is sought by a reporting issuer in conjunction with a meeting of its securityholders in circumstances in which the issuer is sending proxy-related materials under paragraph 4.1(1)(c) of the Regulation. The FINS number should not be required in circumstances where it is not necessary to reconcile voting instructions and/or proxies.

(2) Identification of the intermediary and the holdings specified in the corresponding NOBO list on requests for voting instructions as required in Form 54-101F6 is necessary for the reporting issuer to be able to reconcile voting instructions received from a NOBO to the corresponding position registered in the name of the intermediary or its nominee or in respect of which the intermediary holds a proxy. In addition, should a NOBO wish to change its voting instructions, before or at a meeting of securityholders, knowledge of the corresponding intermediary and the NOBO’s holdings is necessary.

4.5 Changes to Intermediary Master List

It is the obligation of intermediaries under section 3.1 of the Regulation 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 Regulation addresses the obligations of intermediaries in connection with the forwarding of securityholder materials. It is noted that intermediaries will have other obligations to the beneficial owners holding through them that arise from the nature of the relationship between the intermediary and the beneficial owners. These obligations will likely include advising the beneficial owners of the commencement of take-over bids, issuer bids, rights offerings and other events, and advising as to how the beneficial owners can obtain the relevant materials.

4.8 Appointing Beneficial Owner as Proxy Holder

Section 4.5 of the Regulation requires intermediaries to:

- arrange to appoint the beneficial owner as proxy holder, if he or she so instructs, at no expense to the beneficial owner; and

- deposit the proxy within any proxy cut-off if the intermediary obtains the instructions at least one business day before the proxy cut-off. We encourage intermediaries to

make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.

However, subject to these basic obligations, intermediaries have flexibility as to the specific mechanism used to appoint the beneficial owner as proxy holder. One mechanism in current use and permitted under section 4.5 of the Regulation is the "appointee system". Under the appointee system, a beneficial owner who wishes to be appointed as proxy holder for the intermediary in respect of securities that he or she beneficially owns can print his or her name or the name of his or her appointee in a space provided on the voting instruction form. The name of the beneficial owner or her appointee is then recorded on a cumulative proxy, which is provided to the proxy tabulator or meeting scrutineer. When the beneficial owner or his or her appointee arrives at the meeting, the scrutineer has all the necessary proxies and information at hand to enable the beneficial owner or other appointees to vote at the meeting.

PART 5 – MEANS OF SENDING

5.1 General

The following tables illustrate the options available for sending proxy-related materials to beneficial owners.

Table A: Direct Sending to NOBOs

Delivery Method	Documents Sent	Beneficial Owner Consent Required?
Prepaid mail, courier or the equivalent	Reporting issuer sends paper copies of notice of meeting, management information circular, and Form 54-101F6	No
Notice-and-access	Reporting issuer files management information circular on SEDAR and posts on non-SEDAR website. Reporting issuer sends paper copies of documents required by para. 2.7.1(1)(a) and Form 54-101F6. Reporting issuer will include paper copy of management information circular in compliance with any standing instructions under s. 2.7.6 or annual request forms under *Regulation 51-102 respecting Continuous Disclosure Obligations*. Reporting issuer is responsible for providing paper copy of information circular on request.	No
Other delivery method	Reporting issuer sends notice of meeting, management information circular and Form 54-101F6 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access, e.g., e-mail with embedded links.	Yes.

Table B: Indirect Sending to Beneficial Owners

Delivery Method	Documents Sent	Beneficial Owner Consent Required?
Prepaid mail, courier or the equivalent	Reporting issuer sends paper copies of notice of meeting, management information circular to proximate intermediary. Proximate intermediary sends paper copies of materials and Form 54-101F7 using prepaid mail, courier or the equivalent.	No
Notice-and-access	Reporting issuer files management information circular on SEDAR and posts on non-SEDAR website. Reporting issuer sends paper copies of documents required by para. 2.7.1(1)(a) to proximate intermediary for sending to beneficial	No

	owners. Reporting issuer also sends appropriate numbers of paper copies of management information circular to comply with any standing instructions under s. 2.7.6 or annual request forms under *Regulation 51-102 respecting Continuous Disclosure Obligations*. Proximate intermediary sends paper copies of the above documents and Form 54-101F7 using prepaid mail, courier or the equivalent. Reporting issuer is responsible for providing paper copy of information circular on request.	
Other delivery method	Proximate intermediary sends notice of meeting, management information circular and Form 54-101F7 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access, e.g., email with embedded links.	Yes.

5.2 Securityholder Materials Sent to Intermediaries

Reporting issuers and other persons should make arrangements with proximate intermediaries to send securityholder materials to beneficial owners in a timely manner. 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.

5.3 Prepaid Mail, Courier or the Equivalent

Paper copies of proxy-related materials must be sent using prepaid mail, courier or an equivalent delivery method. We consider “first class mail” to be the equivalent of Canada Post Lettermail. An equivalent delivery method is any delivery method where the beneficial owner receives paper copies in a similar time frame as prepaid mail or courier. For example, a reporting issuer that sponsors an employee share purchase plan could arrange for the proximate intermediary to deliver proxy-related materials to beneficial owner employees through the reporting issuer’s internal mail system.

5.4 Notice-and-Access

(1) The Regulation permits a reporting issuer to use notice-and-access to send proxy-related materials to beneficial owners. Notice-and-access cannot be used for sending proxy-related materials relating to meetings of investment fund reporting issuers. However, it can be used for all other types of meetings.

Prior to using notice-and-access for the first time, a reporting issuer must provide advance notice as specified in subsection 2.7.2 of the Regulation. We also encourage issuers to consider what additional methods of advance notice are appropriate. For example, an issuer could consider a special purpose mailing to its retail beneficial owners in advance of the first meeting for which notice-and-access is used.

We expect reporting issuers to evaluate the potential impact of using notice-and-access on beneficial owners of their voting securities when deciding whether to use notice-and-access. Factors that reporting issuers should take into account include:

- the nature of the meeting business (including whether it is expected to be contentious); and
- whether notice-and-access resulted in material declines in shareholder voting rates in prior meetings where notice-and-access was used.

(2) Notice-and-access can be used by reporting issuers to send proxy-related materials directly to NOBOs under section 2.9 of the Regulation or indirectly under section 2.12 of the Regulation.

Direct sending to NOBOs:

The reporting issuer must send the documents required by paragraph 2.7.1(1)(a), any paper copies of information circulars required to comply with standing instructions or annual request form instructions, and Form 54-101F6 to NOBOs at least 30 days before the meeting (subsection 2.9(3) of the Regulation).

Indirect sending to beneficial owners:

The reporting issuer must send the documents required by paragraph 2.7.1(1)(a) and any paper copies of information circulars required to comply with standing instructions or annual request form instructions within the relevant timelines set out in subsection 2.12(3). The proximate intermediary must prepare a Form 54-101F7 and forward it and the notice document (section 4.4 of the Regulation). The notice can be combined with the Form 54-101F7 in a single document.

(3) Subparagraph 2.7.1(1)(a)(i) of the Regulation requires the beneficial owner to be sent a notice containing required information about the meeting. With respect to matters to be voted on at the meeting, the notice must only contain a factual description of each matter or group of related matters identified in the form of proxy. We expect that reporting issuers who use notice-and-access will state each matter or group of related matters in the proxy in a reasonably clear and user-friendly manner. For example, it would not be appropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular, e.g., “To vote For or Against the resolution in Schedule A of management’s information circular”.

Subparagraph 2.7.1(1)(a)(ii) of the Regulation requires the beneficial owner be sent a plain language document that explains notice-and-access. This document can also be used to explain other aspects of the proxy voting process to beneficial owners. However, this document should not contain any substantive discussion of the matters to be considered at the meeting.

(4) Paragraph 2.7.1(1)(b) of the Regulation requires the beneficial owner to be sent as part of the notice package the appropriate voting instruction form, i.e., a Form 54-101F6 where the reporting issuer is sending proxy-related materials and soliciting voting instructions from NOBOs, and a Form 54-101F7 where an intermediary is doing so.

(5) Paragraph 2.7.1(1)(c) of the Regulation requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) at least 30 days before the date fixed for the meeting. This is intended to broadly communicate to the reporting issuer’s beneficial owners that the reporting issuer is using notice-and-access.

(6) Paragraph 2.7.1(1)(d) of the Regulation requires the information circular and other proxy-related materials to be filed on SEDAR and posted on a website other than SEDAR. The non-SEDAR website can be the reporting issuer’s website or the website of a service provider.

(7) Paragraph 2.7.1(1)(e) of the Regulation requires the reporting issuer to establish a toll-free telephone number for the beneficial owner to request a paper copy of the information circular. A reporting issuer may choose to, but is not required to, provide additional methods for requesting a paper copy of the information circular. If a reporting issuer does so, it must still comply with the fulfillment timelines in paragraph 2.7.1(1)(f) of the Regulation and the restrictions on use of information obtained in connection with the request.

(8) Section 2.7.3 of the Regulation is intended to restrict intentional information gathering about beneficial owners by reporting issuers who receive requests for paper copies of information circulars or via the website other than SEDAR.

(9) Section 2.7.4 of the Regulation is intended to allow beneficial owners to access the posted proxy-related materials in a user-friendly manner. For example, requiring the beneficial owner to navigate through several web pages to access the proxy-related materials would not be user-friendly. Providing the beneficial owner with the specific URL where the documents are

posted would be more user-friendly. We encourage reporting issuers and their service providers to develop best practices in this regard.

(10) Where a reporting issuer uses notice-and-access, it generally must send the same basic notice package to all beneficial owners. However, the following are exceptions to this general principle:

- Section 2.7.5 of the Regulation provides that where a reporting issuer uses notice-and-access, a beneficial owner still can be sent proxy-related materials using an alternate method to which the shareholder has previously consented. For example, service providers acting on behalf of reporting issuers or intermediaries may have previously obtained (and continue to obtain) consents from shareholders for proxy-related materials to be sent by email. This delivery method would still be available.

- Section 2.7.6 of the Regulation permits an intermediary to obtain standing instructions from a beneficial owner client to be sent a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access. Where such standing instructions have been obtained, the notice package for the beneficial owner will contain a paper copy of the information circular.

- Subsection 4.6 of *Regulation 51-102 respecting Continuous Disclosure Obligations* establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. A request for annual financial statements and annual MD&A will also constitute a request that the notice package for the beneficial owner contain a paper copy of the information circular.

The addition of a paper information circular to the notice package sent to some beneficial owners is referred to as "stratification", and is a term defined in section 1.1 of the Regulation.

We do not mandate the use of stratification, other than to the extent it is necessary to comply with standing instructions or annual requests for paper copies of information circulars that reporting issuers or intermediaries have chosen to obtain from registered holders or beneficial owners. We expect that any additional stratification criteria will develop and evolve through market demand and practice. However, we expect that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions does so in order to enhance effective communication, and not to disenfranchise shareholders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a copy of the information circular.

One example of how stratification could enhance communication is where a reporting issuer wishes to send proxy-related materials to all its beneficial owners, including those who have declined to receive materials ("declining beneficial owners"). These declining beneficial owners could be sent a notice package only, while the reporting issuer would send other beneficial owners who wished to receive all materials the notice package and the information circular. All beneficial owners thus would receive the documentation necessary to vote, but those declining to receive materials would not receive a paper copy of the information circular unless they requested it.

5.5 Consent to Electronic Delivery

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

5.6 Multiple Deliveries to One Person

A single investor may hold securities of the same class in two or more accounts with the same address. Delivering a single set of securityholder materials to that person would satisfy the

delivery requirements under the Regulation. We encourage this practice as a way to help reduce the costs of securityholder communications.

PART 6 USE OF NOBO LIST

6.1 Permitted Uses

(1) A person that is not a reporting issuer may only use the NOBO list and the procedures in sections 2.9 or 2.12 of the Regulation in connection with an effort to influence voting or an offer to acquire securities of a reporting issuer. In our view, a person may obtain the NOBO list if the person , acting reasonably and in good faith, intends to use the NOBO list to determine whether to begin an effort to influence securityholder voting or an offer to acquire securities of the reporting issuer.

(2) Using a NOBO list contrary to Part 7 of the Regulation will constitute a breach of the Regulation and securities legislation. Penalty provisions of securities legislation may be applied.

PART 7 EXEMPTIONS

7.1 Materials Sent in Less Than the Required Number of Days Before Meeting

In general, exemptive relief to shorten the relevant periods in sections 2.9 and 2.12 of the Regulation will not be granted, except in extraordinary circumstances.

7.2 Delay of Audited Annual Financial Statements or Annual Report

Section 9.1 of the Regulation 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 Regulation provides that the time periods applicable to sending proxy-related materials prescribed in the Regulation do not apply to the sending of proxy-related materials that are annual financial statements or an annual report if the statements or report are sent by the reporting issuer to beneficial owners of the securities within the time limitations established in applicable corporate law and securities legislation for the sending of the statements or report to registered holders of the securities. Reporting issuers are nonetheless encouraged to send their audited annual financial statements or annual report at the same time as other proxy-related materials.

7.3 Additional Costs for Expedited Processing

Where reporting issuers wish to have intermediaries comply with the procedures in the Regulation within shorter time limits than provided in the Regulation, they should provide for recovery by the intermediary of reasonable costs incurred in expedited processing of securityholder materials in order to ensure forwarding of the materials to beneficial owners. Examples of such costs include courier, long distance telephone and overtime costs.

7.4 Applications

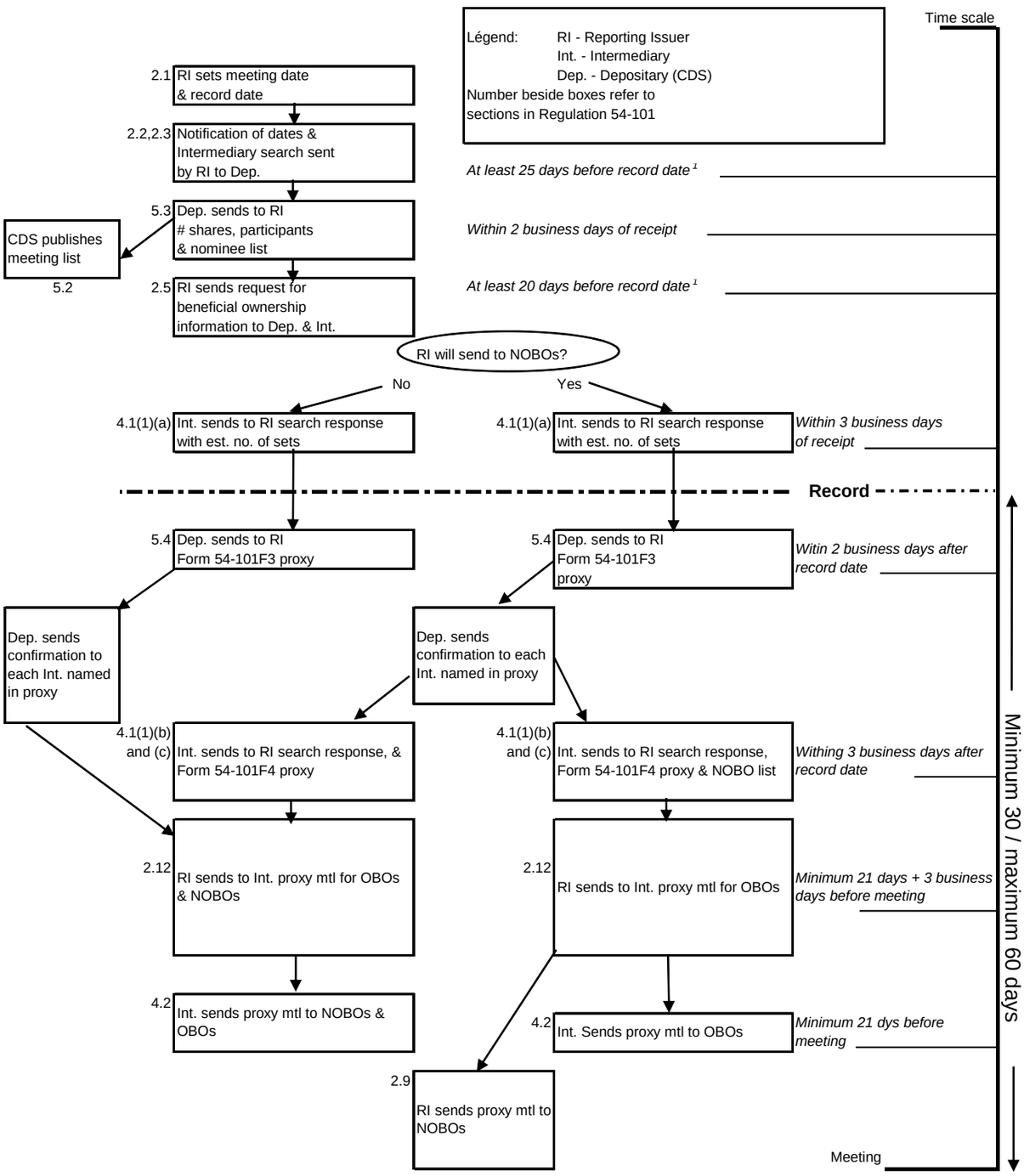
Major exemptions from the requirements of the Regulation will likely be granted infrequently. We encourage applicants to discuss requests for exemptive relief on a pre-file basis with the relevant Canadian securities regulatory authorities.

PART 8 APPENDIX A

8.1 Appendix A

This Policy Statement contains, as Appendix A, a flow chart outlining the processes prescribed by the Regulation for the sending of proxy-related materials by prepaid mail.

APPENDIX A
Proxy solicitation under Regulation 54-101



[1] Subject to abridgement under section 2.20.

POLICY STATEMENT TO REGULATION 54-101 RESPECTING COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

PART 1 BACKGROUND

1.1 History

(1) Obligations imposed on reporting issuers under corporate law and securities legislation to communicate with securityholders are typically cast as obligations in respect of registered holders and not in respect of beneficial owners. For purposes of market efficiency, securities are ~~increasingly not~~generally no longer 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 *Regulation 54-101 (the "Instrument-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (the "Regulation").

(3) The purpose of this Policy Statement is to state the views of the Canadian securities regulatory authorities on various matters relating to the ~~Instrument~~Regulation in order to provide guidance and interpretation to market participants in the practical application of the ~~Instrument.~~ Regulation.

1.2 Fundamental Principles

The following fundamental principles have guided the preparation of the ~~Instrument:~~ Regulation:

(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~~Regulation

(1) The securityholder communication procedures ~~contemplated by~~in the ~~Instrument~~Regulation are ~~applicable~~relevant to all securityholder materials sent by a reporting issuer to ~~holders~~beneficial owners of its securities ~~of the reporting issuer~~ under Canadian securities legislation ~~including~~. Securityholder materials include, but are not limited to, proxy-related materials. Securityholder materials include :

(a) materials required by securities legislation or applicable corporate law to be sent to registered holders ~~of securities~~and beneficial owners of a reporting issuer's securities, such as interim financial reports or annual financial statements ~~and~~;

(b) materials required by securities legislation or applicable corporate law to be sent only to registered holders of a reporting issuer's securities, such as issuer bid and directors circulars~~. Securityholder~~, and dissident proxy-related materials ~~can also include~~ ;

(c) materials sent to registered holders or beneficial owners of a reporting issuer's securities absent any legal requirement to do so.

(2) As provided in section 2.7 of the ~~Instrument~~Regulation, compliance with the procedures set out in the ~~Instrument~~Regulation is mandatory for reporting issuers when sending proxy-related materials to beneficial owners, and, under section 2.8 of the ~~Instrument~~Regulation, is optional for the sending of other materials. Once a reporting issuer, or another person ~~or company~~ pursuant to Part 6 of the ~~Instrument~~Regulation, chooses to use the communications procedures specified in the ~~Instrument~~Regulation for a reporting issuer, depositories, intermediaries and other persons ~~or companies~~ must comply with their corresponding obligations under the ~~Instrument.~~ Regulation.

2.2 Application to Foreign Securityholders and U.S. Issuers

(1) As provided in subsection 2.12(~~3~~5) of the ~~Instrument~~Regulation, a reporting issuer that is precluded from sending securityholder materials directly to NOBOs because of conflicting legal requirements in the United States or elsewhere outside of Canada shall send the materials indirectly, i.e., by forwarding the materials to NOBOs through proximate intermediaries for those securities. ~~Subsection 2.12(3) does not require a reporting issuer to send proxy-related materials to all beneficial owners outside Canada. A reporting issuer need only send proxy-related materials to beneficial owners who hold through proximate intermediaries that are either participants in a recognized depository, or intermediaries on the depository's intermediary master list.~~

(2) National Instrument 71-101 *The Multijurisdictional Disclosure System* provides, in Part 18, that a "U.S. issuer", as defined in that Instrument, is considered to satisfy the requirements of the Regulation ~~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.~~ Regulation.

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

2.3 ~~Interim Financial Statements~~ [Deleted]

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

2.4 "Client" and "Intermediary" to be Distinguished From "Beneficial Owner"

(1) Section 1.1 of the ~~Instrument~~Regulation distinguishes between "client" and "beneficial owner". The two definitions recognize that, for many reporting issuers, there may be layers of intermediaries between the registered holder of a security and the ultimate beneficial owner. For example, a dealer could hold a security on behalf of another dealer that in turn holds the security for the beneficial owner.

(2) ~~For the purposes of the Regulation, if~~In the Regulation, "beneficial owner" refers to a person 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 ~~voting~~ 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 ~~providing instructions in a client~~

~~response form,~~the Regulation and would not also be an "intermediary" with respect to those securities.

(3) The term "client" refers to the person ~~or company~~ for whom an intermediary directly holds securities, regardless of whether the client is a beneficial owner. For example, if a dealer holds securities on behalf of a bank that in turn holds the securities on behalf of the beneficial owner, the bank is a client of the dealer, and the beneficial owner is a client of the bank. The beneficial owner is not a client of the dealer. Section 1.2 of the ~~Instrument~~Regulation recognizes that, under the ~~Instrument~~Regulation, 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~~Regulation defines "corporate law" as any legislation, constating instrument or agreement that governs the affairs of a reporting issuer. The term "corporate law" therefore encompasses Canadian and foreign laws, a declaration or deed of trust in the case of a trust, and the partnership agreement in the case of a partnership.

2.6 Fees

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

2.7 Agent

A depository, intermediary ~~or reporting issuer~~, reporting issuer or any other person subject to obligations under the Regulation's securityholder communication procedures may use a service provider as its agent to fulfil its obligations. A person that uses an agent ~~to comply with the requirements of the Instrument is reminded that it~~ remains fully responsible for ~~such compliance~~fulfilling its obligations under the Regulation, and for the conduct of the agent in this regard.

A person may fulfil its obligations relating to another party through an agent of that other party. For example, under section 2.12 of the Regulation, a reporting issuer fulfills its obligation to send securityholder materials to a proximate intermediary if it provides the materials to a person designated by that proximate intermediary.

PART 3 REPORTING ISSUERS

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

(1) ~~Subject to section 2.20, section~~Section 2.2 of the ~~Instrument~~Regulation 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~~ that includes certain basic information about the meeting. Section 2.5 of the ~~Instrument~~Regulation 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 so long as the reporting issuer arranges to have the proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12, and upon filing of an officer's certificate containing the information specified in section 2.20. Where the reporting issuer uses notice-and-access, the reporting issuer also must fix the record date for notice to be at least 30 days before the date of the meeting, and send the notification of meeting and record dates at least 30 days before the meeting.

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.~~ Regulation.

(2) The time frames stipulated by sections 2.9 and 2.12 of the ~~Instrument~~Regulation 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~~Regulation. 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~~Regulation 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 Statement, 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~~Regulation to furnish the information requested in a request for beneficial ownership information, in certain circumstances, within three business days of receipt. It should be noted that this timing refers to receipt of the request by the proximate intermediary, which may not be the same date as the request was sent by the reporting issuer. The time necessary for a request for beneficial ownership information to be received by a proximate intermediary should be factored into a reporting issuer's planning.

3.2 Adjournment or Change in Meeting

(1) Under section 2.15, a reporting issuer that sends a notice of adjournment or other change for a meeting to registered holders of its securities shall concurrently send the notice, including any change in the beneficial ownership determination date, to the persons ~~and companies~~ listed in section 2.15. Issuers are reminded of a number of other potential implications associated with an adjournment or other change, including those set out below.

(2) If additional proxy-related materials are sent in connection with the meeting after proxy-related materials have previously been sent, a new intermediary search may be required if the beneficial ownership determination date for the meeting is changed.

(3) New intermediary searches may have to be conducted if the nature of the business to be transacted at the meeting is materially changed. If the nature of the business is changed to add business that ~~results in the meeting becoming a special meeting~~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 ~~only~~ proxy-related materials ~~that are sent in connection with a special~~

~~meeting~~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~~Regulation, unless an exemption from the time periods of the ~~Instrument~~Regulation 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 Regulation 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~~Subsection 2.5(4) provides that a request for beneficial ownership information ~~including NOBO lists are required to~~must 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.~~ However, where only a NOBO list is being requested, the request may be made by the reporting issuer (or another person retained by the reporting issuer); provided the relevant proximate intermediary reasonably believes that the reporting issuer (or the person retained by the reporting issuer) has the technological capacity to receive the NOBO list.

3.4 Depository's Index of Meetings

CDS advises that the index referred to in section 5.2 of the ~~Instrument~~Regulation 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.

3.4.1 Explanation of Voting Rights

~~**3.5 Voting Instructions**~~

(1) Subsection 2.16(1) of the Regulation requires a reporting issuer's proxy-related materials to contain a plain language explanation of how the beneficial owner can exercise the voting rights attached to the securities.

(2) Subsection 2.16(2) of the Regulation requires management of a reporting issuer to provide in the information circular disclosure about the following:

(a) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(c) whether the reporting issuer intends to pay for delivery to OBOs. If the reporting issuer does not intend to pay for such delivery, the information circular must disclose this fact.

This disclosure is intended to explain to beneficial owners why they may receive different proxy-related materials than other beneficial owners and why they may not receive proxy-related materials even if they have requested them. Item 4.3 of Form 51-102F5 Information Circular also requires this disclosure.

We also encourage reporting issuers to disclose whether they are sending proxy-related materials to beneficial owners who have declined to receive them and explain their decision.

(3) If a reporting issuer has chosen not to pay for proximate intermediaries to deliver proxy-related materials and Form 54-101F7 to OBOs, it must still provide to the proximate intermediary the number of sets of proxy-related materials that the proximate intermediary requested for forwarding to OBOs.

3.5 NOBO Voting Instructions

(1) 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~~according to the instructions received from the NOBOs to the extent that management has the corresponding proxy. ~~That proxy is given to management by the~~The proximate intermediary that provides the NOBO list under subsection 4.1(1) of the ~~Instrument~~Regulation gives management that proxy.

We expect reporting issuers that choose to solicit voting instructions directly from NOBOs to have appropriate procedures for NOBO voting. This includes doing the following in a timely manner:

(a) responding to inquiries from NOBOs or intermediaries with NOBO clients about the voting process;

(b) appointing a NOBO or nominee of the NOBO as a proxyholder in respect of securities beneficially owned by the NOBO;

(c) generating a new Form 54-101F6 if a NOBO requests one. For example, a NOBO may have misplaced a Form 54-101F6 that he or she had received; or may now wish to provide voting instructions although he or she had previously indicated on his or her client response form that he or she did not wish to receive proxy-related materials.

We expect reporting issuers and intermediaries to work together to address any issues arising from the NOBO voting process.

3.6 Appointing NOBO as Proxy Holder

Section 2.18 of the Regulation requires reporting issuers who request voting instructions from NOBOs to:

- arrange to appoint the NOBO as proxy holder, if he or she so instructs, at no expense to the NOBO; and

- deposit the proxy within any time specified under corporate law for the deposit of proxies (a “proxy cut-off”) if the reporting issuer obtains the instructions at least one business day before the proxy cut-off. We expect reporting issuers to make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.

However, subject to these basic obligations, reporting issuers have flexibility as to the specific mechanism used to appoint the beneficial owner as proxy holder.

PART 4 INTERMEDIARIES

4.1 Client Response Form

By completing a client response form as provided in Part 3 of the ~~Instrument~~Regulation, 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~~Regulation, a beneficial owner may, by notice to the intermediary through which it holds, change any prior instructions given in a client response form. Proximate intermediaries should alert their clients to the costs and other consequences of the options in the client response form.

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

4.2 Separate Accounts

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

4.3 Reconciliation of Positions

(1) The records of an intermediary must show which of its clients are NOBOs, OBOs or other intermediaries, and specify the holdings of each of those clients.

(2) In order that the ~~Instrument~~Regulation work properly, it is important that the records of an intermediary be accurate. Its records must reconcile accurately with the records of the person ~~or company~~ through whom the intermediary itself holds the securities, which could either be another intermediary or a depository, or the security register of the relevant issuer, if the intermediary is a registered securityholder. This reconciliation must include securities held both directly and through nominees.

(3) A proximate intermediary should provide accurate responses to requests for beneficial ownership information. Information about the holdings of NOBOs, when added to the holdings of OBOs, the holdings of other intermediaries holding through the proximate intermediary and the holdings that the proximate intermediary holds as principal, must not exceed the total security holdings of the proximate intermediary, including its nominees, as shown on the register of the issuer or in the records of the depository.

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

4.4 Identification of Intermediary

(1) A NOBO list with FINS numbers will only be provided where the list is sought by a reporting issuer in conjunction with a meeting of its securityholders in circumstances in which the issuer is sending proxy-related materials under paragraph 4.1(1)(c) of the ~~Instrument.~~ Regulation. The FINS number should not be required in circumstances where it is not necessary to reconcile voting instructions and/or proxies.

(2) Identification of the intermediary and the holdings specified in the corresponding NOBO list on requests for voting instructions as required in Form 54-101F6 is necessary for the reporting issuer to be able to reconcile voting instructions received from a NOBO to the corresponding position registered in the name of the intermediary or its nominee or in respect of which the intermediary holds a proxy. In addition, should a NOBO wish to change its voting instructions, before or at a meeting of securityholders, knowledge of the corresponding intermediary and the NOBO's holdings is necessary.

4.5 Changes to Intermediary Master List

It is the obligation of intermediaries under section 3.1 of the ~~Instrument~~Regulation 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~~Regulation addresses the obligations of intermediaries in connection with the forwarding of securityholder materials. It is noted that intermediaries will have other obligations to the beneficial owners holding through them that arise from the nature of the relationship between the intermediary and the beneficial owners. These obligations will likely include advising the beneficial owners of the commencement of take-over bids, issuer bids, rights offerings and other events, and advising as to how the beneficial owners can obtain the relevant materials.

4.8 ~~Instructions from Existing Clients~~ Appointing Beneficial Owner as Proxy Holder

Section 4.5 of the Regulation requires intermediaries to:

- arrange to appoint the beneficial owner as proxy holder, if he or she so instructs, at no expense to the beneficial owner; and

- deposit the proxy within any proxy cut-off if the intermediary obtains the instructions at least one business day before the proxy cut-off. We encourage intermediaries to make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.

~~A client deemed to be a NOBO under National Policy nº 41 can continue to be treated as a NOBO under paragraph 3.3(b)(ii) of this Regulation. However, intermediaries are responsible for ensuring that they comply with their obligations under privacy legislation with respect to their clients' personal information. Intermediaries may find that, notwithstanding paragraph 3.3(b)(ii), privacy legislation requires that they take measures to obtain their clients' consent before they disclose their clients' names and security holdings to a reporting issuer or other sender of material.~~ However, subject to these basic obligations, intermediaries have flexibility as to the specific mechanism used to appoint the beneficial owner as proxy holder. One mechanism in current use and permitted under section 4.5 of the Regulation is the "appointee system". Under the appointee system, a beneficial owner who wishes to be appointed as proxy holder for the intermediary in respect of securities that he or she beneficially owns can print his or her name or the name of his or her appointee in a space provided on the voting instruction form. The name of the beneficial owner or her appointee is then recorded on a cumulative proxy, which is provided to the proxy tabulator or meeting scrutineer. When the beneficial owner or his or her appointee arrives at the meeting, the scrutineer has all the necessary proxies and information at hand to enable the beneficial owner or other appointees to vote at the meeting.

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.~~ The following tables illustrate the options available for sending proxy-related materials to beneficial owners.

Table A: Direct Sending to NOBOs

Delivery Method	Documents Sent	Beneficial Owner Consent Required?
Prepaid mail, courier or the equivalent	Reporting issuer sends paper copies of notice of meeting, management information circular, and Form 54-101F6	No
Notice-and-access	Reporting issuer files management information circular on SEDAR and posts on non-SEDAR website. Reporting issuer sends paper copies of documents required by para. 2.7.1(1)(a) and Form 54-101F6. Reporting issuer will include paper copy of management information circular in compliance with any standing instructions under s. 2.7.6 or annual request forms under *Regulation 51-102 respecting Continuous Disclosure Obligations*. Reporting issuer is responsible for providing paper copy of information circular on request.	No
Other delivery method	Reporting issuer sends notice of meeting, management information circular and Form 54-101F6 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access, e.g., e-mail with embedded links.	Yes.

~~**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.~~ **Table B: Indirect Sending to Beneficial Owners**

Delivery Method	Documents Sent	Beneficial Owner Consent Required?
Prepaid mail, courier or the equivalent	Reporting issuer sends paper copies of notice of meeting, management information circular to proximate intermediary. Proximate intermediary sends paper copies of materials and Form 54-101F7 using prepaid mail, courier or the equivalent.	No
Notice-and-access	Reporting issuer files management information circular on SEDAR and posts on non-SEDAR website. Reporting issuer sends paper copies of documents required by para. 2.7.1(1)(a) to proximate intermediary for sending to beneficial owners. Reporting issuer also sends appropriate numbers of paper copies of management information circular to comply with any standing instructions under s. 2.7.6 or annual request forms under *Regulation 51-102 respecting Continuous Disclosure Obligations*. Proximate intermediary sends paper copies of the above documents and Form 54-101F7 using prepaid mail, courier or the equivalent. Reporting issuer is responsible for providing paper copy of information circular on request.	No

Other delivery method	Proximate intermediary sends notice of meeting, management information circular and Form 54-101F7 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access, e.g., email with embedded links.	Yes.

5.2 Securityholder Materials Sent to Intermediaries

~~5.3 Number of Sets of Materials~~

Reporting issuers and other persons should make arrangements with proximate intermediaries to send securityholder materials to beneficial owners in a timely manner. 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.

5.3 Prepaid Mail, Courier or the Equivalent

Paper copies of proxy-related materials must be sent using prepaid mail, courier or an equivalent delivery method. We consider "first class mail" to be the equivalent of Canada Post Lettermail. An equivalent delivery method is any delivery method where the beneficial owner receives paper copies in a similar time frame as prepaid mail or courier. For example, a reporting issuer that sponsors an employee share purchase plan could arrange for the proximate intermediary to deliver proxy-related materials to beneficial owner employees through the reporting issuer's internal mail system.

5.4 ~~Electronic Communication~~ Notice-and-Access

(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.~~ The Regulation permits a reporting issuer to use notice-and-access to send proxy-related materials to beneficial owners. Notice-and-access cannot be used for sending proxy-related materials relating to meetings of investment fund reporting issuers. However, it can be used for all other types of meetings.

Prior to using notice-and-access for the first time, a reporting issuer must provide advance notice as specified in subsection 2.7.2 of the Regulation. We also encourage issuers to consider what additional methods of advance notice are appropriate. For example, an issuer could consider a special purpose mailing to its retail beneficial owners in advance of the first meeting for which notice-and-access is used.

We expect reporting issuers to evaluate the potential impact of using notice-and-access on beneficial owners of their voting securities when deciding whether to use notice-and-access. Factors that reporting issuers should take into account include:

- the nature of the meeting business (including whether it is expected to be contentious); and
- whether notice-and-access resulted in material declines in shareholder voting rates in prior meetings where notice-and-access was used.

(2) Notice-and-access can be used by reporting issuers to send proxy-related materials directly to NOBOs under section 2.9 of the Regulation or indirectly under section 2.12 of the Regulation.

Direct sending to NOBOs:

The reporting issuer must send the documents required by paragraph 2.7.1(1)(a), any paper copies of information circulars required to comply with standing instructions or annual

request form instructions, and Form 54-101F6 to NOBOs at least 30 days before the meeting (subsection 2.9(3) of the Regulation).

Indirect sending to beneficial owners:

The reporting issuer must send the documents required by paragraph 2.7.1(1)(a) and any paper copies of information circulars required to comply with standing instructions or annual request form instructions within the relevant timelines set out in subsection 2.12(3). The proximate intermediary must prepare a Form 54-101F7 and forward it and the notice document (section 4.4 of the Regulation). The notice can be combined with the Form 54-101F7 in a single document.

(3) Subparagraph 2.7.1(1)(a)(i) of the Regulation requires the beneficial owner to be sent a notice containing required information about the meeting. With respect to matters to be voted on at the meeting, the notice must only contain a factual description of each matter or group of related matters identified in the form of proxy. We expect that reporting issuers who use notice-and-access will state each matter or group of related matters in the proxy in a reasonably clear and user-friendly manner. For example, it would not be appropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular, e.g., "To vote For or Against the resolution in Schedule A of management's information circular".

Subparagraph 2.7.1(1)(a)(ii) of the Regulation requires the beneficial owner be sent a plain language document that explains notice-and-access. This document can also be used to explain other aspects of the proxy voting process to beneficial owners. However, this document should not contain any substantive discussion of the matters to be considered at the meeting.

(4) Paragraph 2.7.1(1)(b) of the Regulation requires the beneficial owner to be sent as part of the notice package the appropriate voting instruction form, i.e., a Form 54-101F6 where the reporting issuer is sending proxy-related materials and soliciting voting instructions from NOBOs, and a Form 54-101F7 where an intermediary is doing so.

(5) Paragraph 2.7.1(1)(c) of the Regulation requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) at least 30 days before the date fixed for the meeting. This is intended to broadly communicate to the reporting issuer's beneficial owners that the reporting issuer is using notice-and-access.

(6) Paragraph 2.7.1(1)(d) of the Regulation requires the information circular and other proxy-related materials to be filed on SEDAR and posted on a website other than SEDAR. The non-SEDAR website can be the reporting issuer's website or the website of a service provider.

(7) Paragraph 2.7.1(1)(e) of the Regulation requires the reporting issuer to establish a toll-free telephone number for the beneficial owner to request a paper copy of the information circular. A reporting issuer may choose to, but is not required to, provide additional methods for requesting a paper copy of the information circular. If a reporting issuer does so, it must still comply with the fulfillment timelines in paragraph 2.7.1(1)(f) of the Regulation and the restrictions on use of information obtained in connection with the request.

(8) Section 2.7.3 of the Regulation is intended to restrict intentional information gathering about beneficial owners by reporting issuers who receive requests for paper copies of information circulars or via the website other than SEDAR.

(9) Section 2.7.4 of the Regulation is intended to allow beneficial owners to access the posted proxy-related materials in a user-friendly manner. For example, requiring the beneficial owner to navigate through several web pages to access the proxy-related materials would not be user-friendly. Providing the beneficial owner with the specific URL where the documents are posted would be more user-friendly. We encourage reporting issuers and their service providers to develop best practices in this regard.

(10) Where a reporting issuer uses notice-and-access, it generally must send the same basic notice package to all beneficial owners. However, the following are exceptions to this general principle:

- Section 2.7.5 of the Regulation provides that where a reporting issuer uses notice-and-access, a beneficial owner still can be sent proxy-related materials using an alternate method to which the shareholder has previously consented. For example, service providers acting on behalf of reporting issuers or intermediaries may have previously obtained (and continue to obtain) consents from shareholders for proxy-related materials to be sent by email. This delivery method would still be available.

- Section 2.7.6 of the Regulation permits an intermediary to obtain standing instructions from a beneficial owner client to be sent a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access. Where such standing instructions have been obtained, the notice package for the beneficial owner will contain a paper copy of the information circular.

- Subsection 4.6 of *Regulation 51-102 respecting Continuous Disclosure Obligations* establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. A request for annual financial statements and annual MD&A will also constitute a request that the notice package for the beneficial owner contain a paper copy of the information circular.

The addition of a paper information circular to the notice package sent to some beneficial owners is referred to as "stratification", and is a term defined in section 1.1 of the Regulation.

We do not mandate the use of stratification, other than to the extent it is necessary to comply with standing instructions or annual requests for paper copies of information circulars that reporting issuers or intermediaries have chosen to obtain from registered holders or beneficial owners. We expect that any additional stratification criteria will develop and evolve through market demand and practice. However, we expect that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions does so in order to enhance effective communication, and not to disenfranchise shareholders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a copy of the information circular.

One example of how stratification could enhance communication is where a reporting issuer wishes to send proxy-related materials to all its beneficial owners, including those who have declined to receive materials ("declining beneficial owners"). These declining beneficial owners could be sent a notice package only, while the reporting issuer would send other beneficial owners who wished to receive all materials the notice package and the information circular. All beneficial owners thus would receive the documentation necessary to vote, but those declining to receive materials would not receive a paper copy of the information circular unless they requested it.

~~(2) The Instrument does not require manual signatures to the forms referred to in the Instrument. While manual signatures are permitted and may be included, the CSA are of the view that if the Instrument is to promote and facilitate the use of electronic communication, the obligation to include manual signatures would impede the promotion of this technology. Accordingly, the Instrument does not require authentication by manual signature, and persons or companies should satisfy themselves as to the authenticity of instructions or other communications received in electronic form.~~

5.5 Consent to Electronic Delivery

~~(3) In Quebec, Staff Notice 11-201, and, in the rest of Canada,~~ National Policy 11-201 *Electronic Delivery of Documents* ~~by Electronic Means (the~~ ("NP 11-201~~ Documents~~") ~~discuss~~discusses the sending of materials by electronic means. The guidelines set out in ~~the~~NP 11-~~201 Documents,~~201, particularly the suggestion that consent be obtained to an electronic transmission of a document, are applicable to documents sent under the ~~Instrument. Under the 11-201 Documents, securityholder materials could be sent to beneficial owners by electronic~~

~~means in satisfaction of the requirements of the Instrument if the beneficial owner has consented to receive them in that form.~~ Regulation.

~~(4) Section 3.2 of the Regulation requires intermediaries that hold securities on behalf of a client in an account to obtain the electronic mail address of the client, if available, and if applicable, to enquire whether the client wishes to consent to electronic delivery of documents by the intermediary to the client. The client's electronic mail address and whether they have consented to electronic delivery by the intermediary forms part of the "ownership information" associated with a beneficial owner that will be contained in NOBO lists. The electronic form of NOBO list has a field for this information. Because the consent identified in the NOBO list relates to electronic delivery by the intermediary only, the reporting issuer cannot rely on the consent for its electronic delivery. However, the field in the NOBO list for this consent may be of interest to a reporting issuer. It may assist the reporting issuer in ascertaining whether the intermediary will forward electronically the securityholder materials that the reporting issuer elects to send indirectly through the intermediary. It may also assist the reporting issuer to determine the feasibility of sending materials directly to NOBOs and whether to use electronic delivery itself. Where the reporting issuer chooses to obtain consent for the purposes of satisfying the provisions of the 11-201 Documents, the Canadian securities regulatory authorities anticipate that the reporting issuer will use the electronic mail address contained in the NOBO list.~~

~~5.5~~ 5.6 Multiple Deliveries to One Person ~~or Company~~

~~It is noted that sometimes a~~A single investor ~~holds~~may hold securities of the same class in two or more accounts with the same address. ~~The Canadian securities regulatory authorities note that the delivery of~~Delivering 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~~Regulation. We encourage this practice as a way to help reduce the costs of securityholder communications.

PART 6 USE OF NOBO LIST

6.1 ~~Use of NOBO List~~ Permitted Uses

(1) A person that is not a reporting issuer may only use the NOBO list and the procedures in sections 2.9 or 2.12 of the Regulation in connection with an effort to influence voting or an offer to acquire securities of a reporting issuer. In our view, a person may obtain the NOBO list if the person , acting reasonably and in good faith, intends to use the NOBO list to determine whether to begin an effort to influence securityholder voting or an offer to acquire securities of the reporting issuer.

~~Market participants are reminded that the trafficking of~~(2) Using a NOBO list~~,~~ contrary to Part 7 of the ~~Instrument,~~Regulation will constitute a breach of the ~~Instrument~~Regulation and securities legislation~~, and that the penalty~~. Penalty provisions of securities legislation may be applied.

PART 7 EXEMPTIONS

7.1 Materials Sent in Less Than ~~21~~the Required Number of Days Before Meeting

In ~~the absence of~~general, exemptive relief to shorten the relevant periods in sections 2.9 and 2.12 of the Regulation will not be granted, except in extraordinary circumstances~~, the Canadian securities regulatory authorities will generally not consider shortening the 21-day period for the sending of proxy-related materials to beneficial owners of securities referred to in sections 2.9 and 2.12 of the Instrument.~~ .

7.2 Delay of Audited Annual Financial Statements or Annual Report

Section 9.1 of the ~~Instrument~~Regulation 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~~Regulation provides that the time periods applicable to sending proxy-related materials prescribed in the ~~Instrument~~Regulation do not apply to the sending of proxy-related materials that are annual financial statements or an annual report if the statements or report are sent by the reporting issuer to beneficial owners of the securities within the time limitations established in applicable corporate law and securities legislation for the sending of the statements or report to registered holders of the securities. Reporting issuers are nonetheless encouraged to send their audited annual financial statements or annual report at the same time as other proxy-related materials.

7.3 Additional Costs ~~If Time Limitations Shortened~~ for Expedited Processing

~~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~~Where reporting issuers wish to have intermediaries ~~to~~ comply with the procedures in the ~~Instrument~~Regulation within shorter time limits ~~may wish to~~than provided in the Regulation, they should provide for recovery by the intermediary of reasonable costs ~~attributable to the shorter time limits that it would not otherwise incur (for example,~~incurred in expedited processing of securityholder materials in order to ensure forwarding of the materials to beneficial owners. Examples of such costs include courier, long distance telephone and overtime costs~~) to ensure forwarding of the materials to OBOs.~~ .

7.4 Applications

~~Applicants should be aware that major exemptions from the requirements of the Instrument will probably be granted infrequently. Exemptions to the predecessor policy statement to the Instrument that were granted typically involved reporting issuers that were incorporated or organized outside of Canada, that had only an insignificant connection to Canada in terms of the percentage of its securityholders that were resident in Canada and the percentage of its securities that were held by those securityholders, and in circumstances in which the reporting issuer was also subject to requirements imposed by securities or corporate legislation outside of Canada that served to ensure that beneficial owners would receive a comparable level of communication from the issuer.~~ Major exemptions from the requirements of the Regulation will likely be granted infrequently. We encourage applicants to discuss requests for exemptive relief on a pre-file basis with the relevant Canadian securities regulatory authorities.

PART 8 APPENDIX A

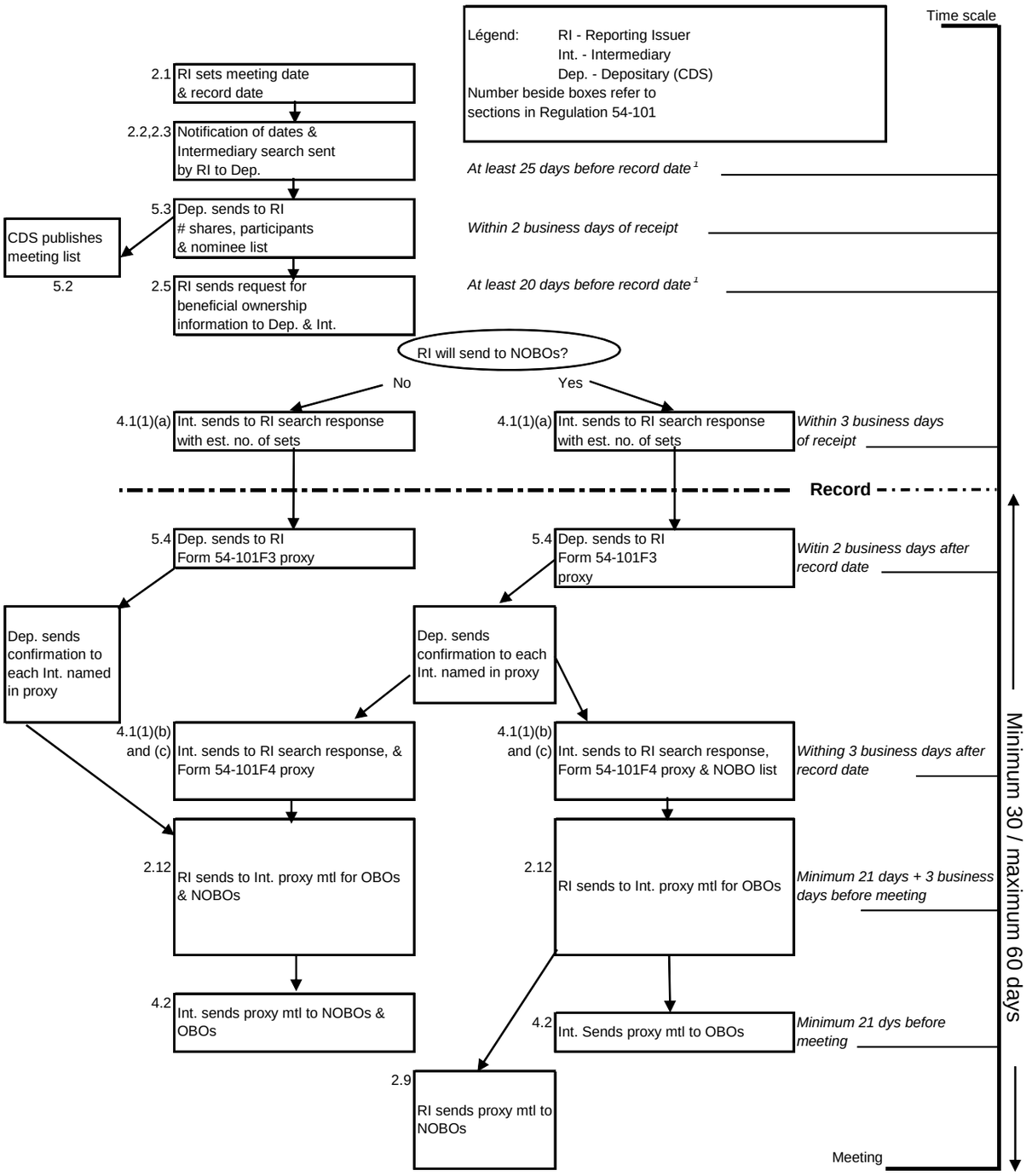
8.1 Appendix A

This Policy Statement contains, as Appendix A, a flow chart outlining the processes prescribed by the ~~Instrument~~Regulation for the sending of proxy-related materials by prepaid mail.

~~**Appendix**~~

APPENDIX A
Proxy ~~Solicitation~~solicitation under Regulation 54-101

~~**Notes: 1. Subject to abridgement under section 2.20.**~~



[1] Subject to abridgement under section 2.20.

REGULATION TO AMEND REGULATION 51-102 RESPECTING CONTINUOUS DISCLOSURE OBLIGATIONS

Securities Act
(R.S.Q., c. V. 1-1, a. 331.1, par. (1), (2), (3), (4.1), (8), (11), (20) and (34))

1. Section 1.1 of Regulation 51-102 respecting Continuous Disclosure Obligations is amended:

(1) by inserting, after the definition of the expression "common share", the following:

""corporate law" has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (Decision 2003-C-0082, 03-03-03);";

(2) by inserting, after the definition of the expression "non-voting security", the following:

""notice-and-access" has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;";

(3) by inserting, after the definition of the expression "proxy", the following:

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

(4) by deleting, in paragraph (g) of the definition of the expression "solicit", "(Decision 2003-C-0082, 03-03-03)";

(5) by inserting after the definition of the expression "solicit", the following:

""special meeting" has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;

"special resolution" has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;

"stratification" has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;".

2. Section 4.6 of the Regulation is amended:

(1) by replacing paragraph (1) with the following:

"(1) A reporting issuer must send an annual request form to the registered holders and beneficial owners of its securities, other than debt instruments, that the registered holders and beneficial owners may use to request one or both of the following:

(a) a copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements and, where the reporting issuer uses notice-and-access to send proxy-related materials, a paper copy of the information circular;

(b) a copy of the reporting issuer's interim financial reports and MD&A for the interim financial reports.";

(2) by replacing, in paragraph (2), the words "The reporting issuer must" with the words "Despite paragraph (1), the reporting issuer must";

(3) by inserting, in paragraph (3) and after the words "interim financial reports", the words "using the request form in subsection (1)";

(4) by replacing, in paragraph (4), "2 years" with the words "one year";

3. Section 5.6 of the Regulation is amended, in the French text of paragraph (3), by replacing the words "porteurs véritables" with the words "propriétaires véritables".

4. Section 8.4 of the Regulation is amended, in the French text:

(1) by replacing, in subparagraph (i) of subparagraph (b) of paragraph (5), the words "au cours de cet exercice" with the words "depuis le début de cet exercice";

(2) in paragraph (7):

(a) by deleting the words "sauf en regard du sous-paragraphe *f*";

(b) by replacing, in subparagraph (d), the words "conformément dans le" with the words "conformément au";

5. The Regulation is amended by inserting, after section 9.1, the following:

"9.1.1. Notice-and-Access

(1) A person soliciting proxies may send proxy-related materials to a registered holder of voting securities by notice-and-access that complies with all of the following:

(a) the registered holder of voting securities is sent the following:

(i) a notice containing all of the following information, and no other information:

A. the date, time and location of the reporting issuer's meeting;

B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;

C. the website address other than the address for SEDAR, where the proxy-related materials are located;

D. a reminder to review the information circular before voting;

E. an explanation of how to obtain a paper copy of the information circular from the person;

(ii) a document in plain language that explains notice-and-access and includes the following information:

A. why the person is using notice-and-access;

B. if the person is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;

C. the date and time by which a request for a paper copy of the information circular should be received in order for the requester to receive the paper copy in advance of any deadline for the submission of the proxy and the date of the meeting;

D. an explanation of how the registered holder is to return the proxy, including any deadline for return of the proxy;

E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)(B) can be found;

F. a toll-free telephone number the registered holder can call to ask questions about notice-and-access;

(b) the registered holder of voting securities is sent a form of proxy for use at the meeting;

(c) the registered holder of voting securities is sent by prepaid mail, courier or the equivalent, paper copies of the documents required by paragraphs (a) and (b), and in the case of a solicitation by or on behalf of management of the reporting issuer the documents are sent at least 30 days before the date fixed for the meeting;

(d) in the case of a solicitation by or on behalf of management of the reporting issuer, at least 30 days before the date fixed for the meeting the reporting issuer files the notification required by subsection 2.2(1) of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (Decision 2003-C-0082, 03-03-03);

(e) public electronic access to the information circular, form of proxy and the documents in paragraph (a) is provided on or before the day that the person soliciting proxies sends the documents in paragraphs (a), in the following manner:

(i) the documents are filed on SEDAR as required by section 9.3;

(ii) the documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the documents relate, at a website address other than the address for SEDAR;

(f) a toll-free telephone number is provided for use by the registered holder of voting securities to request a paper copy of the information circular at any time from the date that the person soliciting proxies sends the documents in paragraph (a) to the registered holder, up to and including the date of the meeting including any adjournment;

(g) if a request is received under paragraph (f) or by any other means, a paper copy of the information circular is sent free of charge to the person at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;

(ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.

(2) A person that sends proxy-related materials to a registered holder of voting securities using notice-and-access must not include with the proxy-related material any documents other than the documents set out in paragraphs (1)(a) or (b) unless an information circular also is included.

"9.1.2. Notice in advance of first use of notice-and-access

Management of a reporting issuer that uses notice-and-access to send proxy-related material to a registered holder of voting securities must do the following not more than six months and not less than three months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

(a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;

(b) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

"9.1.3. Posting materials on non-SEDAR website

(1) A person that posts proxy-related materials in the manner referred to in subparagraph 9.1.1(1)(e)(ii) must also post on the website the following documents:

(a) any other disclosure material regarding the meeting that the person has sent to registered holders or beneficial owners of voting securities;

(b) any written communications the person soliciting proxies has made available to the public regarding the meeting, whether sent to registered holders or beneficial owners of voting securities or not.

(2) Proxy-related materials that are posted under subparagraph 9.1.1(1)(e)(ii) must be posted in a manner and be in a format that permits an individual with a reasonable level of computer skill and knowledge to do all of the following conveniently:

(a) access, read and search the documents on the website;

(b) download and print the documents.

"9.1.4. Consent to other delivery methods

Nothing in section 9.1.1 shall be interpreted as

(a) restricting a registered holder of voting securities from consenting to a reporting issuer's use of other delivery methods to send proxy-related materials;

(b) terminating or a modifying a consent that a registered holder of voting securities previously gave to reporting issuer regarding a reporting issuer's use of other delivery methods to send proxy-related materials; or

(c) preventing a reporting issuer from sending proxy-related materials using a delivery method to which a registered holder has previously consented.

"9.1.5. Instructions to receive paper copies

(1) Despite section 9.1.1, a reporting issuer may obtain standing instructions from a registered holder of voting securities that a paper copy of the information circular be sent to the registered holder in all cases where the reporting issuer uses notice-and-access.

(2) Where a reporting issuer has obtained standing instructions from registered holder under subsection (1), the reporting issuer must do all of the following:

(a) include any paper copies of information circulars required to comply with standing instructions obtained under subsection (1) with the documents required by paragraphs 9.1.1(1)(a) and (b);

(b) provide a mechanism for the registered holder to revoke the registered holder's standing instructions.

(3) Where a reporting issuer has received a request for a paper copy of the information circular from a registered holder under paragraph 4.6(1)(a), the reporting issuer must include a paper copy of the information circular with the documents required by paragraphs 9.1.1(1)(a) and (b).

"9.1.6. Compliance with SEC Rules

Section 9.1 does not apply to a reporting issuer that is an SEC issuer if it satisfies both of the following:

(a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act;

(b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50 per cent of the votes for the election of directors, and none of the following is true:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada;

(iii) the business of the issuer is administered principally in Canada.".

6. Section 13.4 of the Regulation is amended, in the French text of paragraph (3):

(1) by replacing the words "si les conditions suivantes sont réunies" with the words "lorsque les conditions suivantes sont réunies";

(2) by replacing, in subparagraph (b), the words "l'initié n'est pas le garant et" with the words "si l'initié n'est pas garant";

(3) by replacing subparagraph (c) with the following:

"*c)* si l'initié est garant, il n'est propriétaire véritable d'aucun titre garanti désigné.".

7. Form 51-102F2 of the Regulation is amended by replacing, in the French text of paragraph (1.2) of item 10.2, ", ou si un séquestre," with ", ou pour laquelle un séquestre,".

8. Form 51-102F5 of the Regulation is amended:

(1) by inserting, after item 4.2, the following:

"**4.3** The information circular must state the following information if applicable:

(a) that the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is being used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(b) that the reporting issuer is sending proxy-related materials directly to non-objecting beneficial owners under Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (Decision 2003-C-0082, 03-03-03);

(c) that management of the reporting issuer has decided not to pay for intermediaries to forward to objecting beneficial owners under Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer the proxy-related materials and Form 54-101F7 – Request for Voting Instructions Made by Intermediary, and that it is the responsibility of objecting beneficial owners to contact their intermediaries to make any necessary arrangements to exercise voting rights attached to securities they beneficially own.";

(2) by replacing, in the French text of paragraph (b) of item 7.2, ", ou si un séquestre," with ", ou pour laquelle un séquestre,".

9. This Regulation comes into force on *(indicate the date of the coming into force of this Regulation)*.

POLICY STATEMENT TO REGULATION 51-102 RESPECTING CONTINUOUS DISCLOSURE OBLIGATIONS

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose

(1) *Regulation 51-102 respecting Continuous Disclosure Obligations* (the "Regulation") sets out disclosure requirements for all issuers, other than investment funds, that are reporting issuers in one or more jurisdictions in Canada.

(2) The purpose of this Policy Statement is to help you understand how the provincial and territorial regulatory authorities interpret or apply certain provisions of the Regulation. This Policy Statement includes explanations, discussion and examples of various parts of the Regulation.

1.2 Filing Obligations

(1) Reporting issuers must file continuous disclosure documents under the Regulation only in the local jurisdictions in which they are a reporting issuer.

(2) In some circumstances, the Regulation permits an issuer to satisfy a filing requirement by filing a different document instead. If an issuer is relying on one of these sections, the issuer must file the substitute document in the appropriate filing category and type on SEDAR. For example, an exchangeable share issuer relying on section 13.3(2) that must file a copy of its parent issuer's annual financial statements must file those financial statements under the exchangeable share issuer's SEDAR profile in the "Annual Financial Statement" filing type.

1.3 Corporate Law Requirements

Reporting issuers are reminded that they may be subject to requirements of corporate law that address matters similar to those addressed by the Regulation, and which may impose additional or more onerous requirements. For example, applicable corporate law may require the delivery of annual financial statements to shareholders or may require the board of directors to approve interim financial reports.

1.4 Definitions

(1) **General** – Many of the terms for which the Regulation or Forms prescribed by the Regulation provide definitions are defined somewhat differently in the applicable securities legislation of several local jurisdictions. A term used in the Regulation and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires.

For instance, the terms "form of proxy", "material change", "proxy", and "recognized quotation and trade reporting system" are defined in local securities legislation of most jurisdictions. The provincial and territorial regulatory authorities consider the meanings given to these terms in securities legislation to be substantially similar to the definitions set out in the Regulation.

(2) **Asset-backed security** – Section 1.8 of Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions provides guidance for the definition of "asset-backed security".

(3) **Directors and Executive Officers** – Where the Regulation or any of the Forms use the term "directors" or "executive officers", a reporting issuer that is not a corporation must refer to the definitions in securities legislation of "director". The definition of "director"

typically includes a person acting in a capacity similar to that of a director of a company. Therefore, non-corporate issuers must determine in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with the Regulation and the Forms. Further, in considering paragraph (c) of the definition of "executive officer", we would consider an individual that is employed by an entity separate from the reporting issuer, but that performs a policy-making function in respect of the reporting issuer through that separate entity or otherwise, to fit within this definition.

Similarly, the terms chief executive officer and chief financial officer should be read to include the individuals who have the responsibilities normally associated with these positions or act in a similar capacity. This determination should be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

(4) **Investment Fund** – Generally, the definition of "investment fund" would not include a trust or other entity that issues securities which entitle the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

(5) **Reverse Takeover** – The definition of reverse takeover includes reverse acquisitions as defined or interpreted in Canadian GAAP applicable to publicly accountable enterprises and any other transaction in which an issuer issues enough voting securities as consideration for the acquisition of an entity such that control of the issuer passes to the securityholders of the acquired entity (such as a Qualifying Transaction, as that term is defined in the TSX Venture Exchange policies). In a reverse acquisition, although legally the entity (the legal parent) that issued the securities is regarded as the parent, the entity (the legal subsidiary) whose former securityholders now control the combined entity is treated as the acquirer for accounting purposes. As a result, for accounting purposes, the issuing entity (the legal parent) is deemed to be a continuation of the acquirer and the acquirer is deemed to have acquired control of the assets and business of the issuing entity in consideration for the issue of capital.

(6) **Restructuring transaction** – A "restructuring transaction" includes a transaction in which a reporting issuer acquires assets, which may include assets that constitute a business, and issues securities resulting in

- new securityholders owning or controlling more than 50% of the reporting issuer's outstanding voting securities, and

- a new control person, or new control group.

The acquisition and issuance may be in a single transaction, or a series of transactions. To be a "series of transactions", the transactions must be related to each other.

The phrase "new securityholders" includes both beneficial owners who did not hold any of the reporting issuer's securities before the restructuring transaction, and beneficial owners that held some securities in the reporting issuer before the transaction, but who now, as a result of the transaction, own more than 50% of the outstanding voting securities.

(7) **Accounting terms** – The Regulation uses accounting terms that are defined or used in Canadian GAAP applicable to publicly accountable enterprises. In certain cases, some of those terms are defined differently in securities legislation. In deciding which meaning applies, you should consider that *Regulation 14-101 respecting Definitions* provides that a term used in the Regulation and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires.

For example, the term “associate” is defined in local securities statutes and Canadian GAAP applicable to publicly accountable enterprises. Securities regulatory authorities are of the view that the references to the term “associate” in the Regulation and its forms (e.g., item 7.1(g) of Form 51-102F5 *Information Circular*) should be given the meaning of the term under local securities statutes since the context does not indicate that the accounting meaning of the term should be used.

(8) **Acceptable accounting principles other than Canadian GAAP applicable to publicly accountable enterprises** – If an issuer is permitted under *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* to file financial statements in accordance with acceptable accounting principles other than Canadian GAAP applicable to publicly accountable enterprises, then the issuer may interpret any reference in the Regulation to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in the other acceptable accounting principles.

(9) **Rate-regulated activities -** If a qualifying entity is relying on the exemption in paragraph 5.4(1)(a) of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*, then the qualifying entity may interpret any reference in the Regulation to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in Part V of the Handbook.

1.5 Plain Language Principles

You should apply plain language principles when you prepare your disclosure including:

- using short sentences
- using definite everyday language
- using the active voice
- avoiding superfluous words
- organizing the document in clear, concise sections, paragraphs and sentences
- avoiding jargon
- using personal pronouns to speak directly to the reader
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- not relying on boilerplate wording
- avoiding abstract terms by using more concrete terms or examples
- avoiding multiple negatives
- using technical terms only when necessary and explaining those terms
- using charts, tables and examples where it makes disclosure easier to understand.

Question and answer bullet point formats are consistent with the disclosure requirements of the Regulation.

1.6 Signature and Certificates

Reporting issuers are not required by the Regulation to sign or certify documents filed under the Regulation. Certification requirements apply to some documents under *Regulation 52-109 respecting Certification of Disclosure in Companies' Annual and Interim Filings*. Whether or not a document is signed or certified, it is an offence under securities legislation to make a false or misleading statement in any required document.

1.7 Audit Committees

Reporting issuers are reminded that their audit committees must fulfill their responsibilities set out in other securities legislation. For example, the responsibilities of audit committees are set out in *Regulation 52-110 respecting Audit Committees*.

1.8 Acceptable Accounting Principles and Auditing Standards

An issuer filing any of the following items under the Regulation must comply with *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*:

(a) financial statements;

(b) an operating statement for an oil and gas property as referred to in section 8.10 of the Regulation;

(c) summarized financial information, including the aggregated amounts of assets, liabilities, revenue and profit or loss of a business as referred to in section 8.6 of the Regulation; or

(d) financial information derived from a credit support issuer's financial statements as referred to in section 13.4 of the Regulation.

Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards sets out, among other things, the use of accounting principles other than Canadian GAAP applicable to publicly accountable enterprises or auditing standards other than Canadian GAAS in preparing or auditing financial statements.

1.9 Ordinary Course of Business

Whether a contract has been entered into in the ordinary course of business is a question of fact. It must be considered in the context of the reporting issuer's business and the industry in which it operates.

1.10 Material Deficiencies

After filing a document under the Regulation, a reporting issuer may determine that the document was materially deficient in some respect and, as a result, the filing does not comply with the requirements of the Regulation. In this situation, the reporting issuer is expected to comply with the Regulation by filing an amended version of the materially deficient document.

PART 2 FOREIGN ISSUERS AND INVESTMENT FUNDS

2.1 Foreign Issuers

Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers provides relief for foreign reporting issuers from certain continuous disclosure and other obligations, including certain obligations contained in the Regulation.

2.2 Investment Funds

Section 2.1 of the Regulation states that the Regulation does not apply to an investment fund. Investment funds should look to securities legislation of the local jurisdiction including *Regulation 81-106 respecting Investment Fund Continuous Disclosure* to find the continuous disclosure requirements applicable to them.

PART 3 FINANCIAL STATEMENTS

3.1 Financial Year

(1) **Length of Financial Year** – For the purposes of the Regulation, unless otherwise expressly provided, references to a financial year apply irrespective of the length of that year. The first financial year of a reporting issuer commences on the date of its incorporation or organization and ends at the close of that year.

(2) **Non-Standard Year** – An issuer with a non-standard year should advise the regulator or securities regulatory authority how it calculates its interim and annual periods before its first financial statements are due under the Regulation.

3.2 Audit of Comparative Annual Financial Statements

Section 4.1 of the Regulation requires a reporting issuer to file annual financial statements that include comparative information for the immediately preceding financial year and that are audited. The auditor's report must cover both the most recently completed financial year and the comparative period, except if the issuer changed its auditor during the periods presented in the annual financial statements and the new auditor has not audited the comparative period. In this situation, the auditor's report would normally refer to the predecessor auditor's report unless the predecessor auditor's report on the prior period's annual financial statements is reissued with the financial statements. This is consistent with Canadian Auditing Standard 710 *Comparative Information – Corresponding Figures and Comparative Financial Statements*.

3.3 Filing Deadline for Annual Financial Statements and Auditor's Report

Section 4.2 of the Regulation sets out filing deadlines for annual financial statements. While section 4.2 of the Regulation does not address the auditor's report date, reporting issuers are encouraged to file their annual financial statements as soon as practicable after the date of the auditor's report. The delivery obligations set out in section 4.6 of the Regulation are not tied to the filing of the annual financial statements.

3.4 Auditor Involvement with an Interim Financial Report

(1) The board of directors of a reporting issuer, in discharging its responsibilities for ensuring the reliability of an interim financial report, should consider engaging an external auditor to carry out a review of the interim financial report.

(2) Subsection 4.3(3) of the Regulation requires a reporting issuer to disclose if an auditor has not performed a review of the interim financial report, to disclose if an auditor was unable to complete a review and why, and to file a written report from the auditor if the auditor has performed a review and expressed a reservation in the auditor's interim review report. No positive statement is required when an auditor has performed a review and provided an unqualified communication. If an auditor was engaged to perform a review on an interim financial report applying review standards set out in the Handbook, and the auditor was unable to complete the review, the issuer's disclosure of the reasons why the auditor was unable to complete the review would normally include a discussion of

(a) inadequate internal control;

(b) a limitation on the scope of the auditor's work; or

(c) the failure of management to provide the auditor with the written representations the auditor believes are necessary.

(3) If a reporting issuer's annual financial statements are audited in accordance with Canadian GAAS, the terms "review" and "interim review report" used in subsection 4.3(3) of the Regulation refer to the auditor's review of, and report on, an interim financial report applying standards for a review of an interim financial report by the auditor as set out in the Handbook. However, if the reporting issuer's financial statements are audited in accordance with auditing standards other than Canadian GAAS, the corresponding review standards should be applied.

3.5 Delivery of Financial Statements

Section 4.6 of the Regulation requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities. The registered holders and beneficial owners may use the request form to request a copy of the reporting issuer's annual financial statements and related MD&A, an interim financial report and related MD&A, or both. In addition, instructions to receive the annual financial statements and related MD&A also constitute instructions to include a paper copy of the information circular where the reporting issuer uses notice-and-access.

Reporting issuers are only required to deliver financial statements and MD&A to the person that requests them. As a result, if a beneficial owner requests financial statements and MD&A through its intermediary, the issuer is only required to deliver the requested documents to the intermediary.

Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* in respect of the financial statements. However, failing to return the request form will not override any beneficial owner standing instructions under *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* to receive a paper copy of the information circular if the reporting issuer is using notice-and-access to deliver proxy-related materials.

The Regulation does not prescribe when the request form must be sent, or how it must be returned to the reporting issuer.

3.6 Comparative Interim Financial Information After Becoming a Reporting Issuer

Section 4.7(4) of the Regulation provides that a reporting issuer does not have to provide comparative financial information when it first becomes a reporting issuer if it complies with specific requirements. Section 4.10(3) of the Regulation provides a similar exemption for comparative financial information for a reverse takeover acquirer. These exemptions may, for example, apply to an issuer that was, before becoming a reporting issuer or before the reverse takeover, a private entity and that is unable to prepare the comparative financial information because it is impracticable to do so. The test of whether "to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2)" is objective, rather than subjective. Securities regulatory authorities are of the view that a reporting issuer can rely on the exemption only if it has made every reasonable effort to present prior-period information on a basis consistent with subsection 4.3(2) of the Regulation. We are of the view that an issuer should only rely on this exemption in unusual circumstances and generally not related solely to the cost or the time involved in preparing the financial statements.

3.7 Change in Year-End

Appendix A to this Policy Statement is a chart outlining the financial statement filing requirements under section 4.8 of the Regulation if a reporting issuer changes its financial year-end.

3.8 Reverse Takeovers

(1) Following a reverse takeover, although the reverse takeover acquiree is the reporting issuer, from an accounting perspective, the financial statements will be those of the reverse takeover acquirer. Those financial statements must be prepared and filed as if the reverse takeover acquirer had always been the reporting issuer.

(2) The reverse takeover acquiree must file its own financial statements required by sections 4.1 and 4.3 and the related MD&A for all interim and annual periods ending before the date of the reverse takeover, even if the filing deadline for those financial statements is after the date of the reverse takeover.

3.9 Change in Corporate Structure

(1) Section 4.9 of the Regulation requires a reporting issuer to file a notice if the issuer has been party to certain transactions. The reporting issuer may satisfy this requirement by filing a copy of its material change report or news release, provided that

(a) the material change report or news release contains all the information required in the notice; and

(b) the reporting issuer files the material change report or news release with the securities regulatory authority or regulator

(i) under the Change in Corporate Structure category on SEDAR, or

(ii) if the issuer is not an electronic filer, as a notice under section 4.9.

(2) If the transaction was a reverse takeover, the notice should state that fact and who the reverse takeover acquirer was.

(3) Under paragraph 4.9(h) of the Regulation, the issuer must state the periods of the interim financial reports and the annual financial statements it has to file for its first financial year. Issuers should explain how they determined the periods, particularly if section 4.7 of the Regulation applies.

3.10 Change of Auditor

The term “disagreement” defined in subsection 4.11(1) should be interpreted broadly. A disagreement may not involve an argument, but rather, a mere difference of opinion. Also, where a difference of opinion occurs that meets the criteria in item (b) of the definition of “disagreement”, and the issuer reluctantly accepts the auditor’s position in order to obtain an unqualified report, a reportable disagreement may still exist. The subsequent rendering of an unqualified report does not, by itself, remove the necessity for reporting a disagreement.

Subsection 4.11(5) of the Regulation requires a reporting issuer, upon a termination or resignation of its auditor, to prepare a change of auditor notice, have the audit committee or board of directors approve the notice, file the reporting package with the regulator or securities regulatory authority in each jurisdiction where it is a reporting issuer, and if there are any reportable events, issue and file a news release describing the information in the reporting package. Subsection 4.11(6) of the Regulation requires the reporting issuer to perform these procedures upon an appointment of a successor auditor. If a termination or resignation of a predecessor auditor and appointment of a successor auditor occur within a

short period of time, it may be possible for a reporting issuer to perform the procedures described above required by both subsections 4.11(5) and 4.11(6) concurrently and meet the timing requirements set out in those subsections. In other words, the reporting issuer would prepare only one comprehensive notice and reporting package.

PART 4 DISCLOSURE AND PRESENTATION OF FINANCIAL INFORMATION

4.1 Disclosure of Financial Information

(1) Subsection 4.5(1) of the Regulation requires that annual financial statements be approved by the board of directors before filing. Subsections 4.5(2) and 4.5(3) of the Regulation require that each interim financial report be approved by the board of directors or by the company's audit committee before filing. We believe that extracting information from financial statements that have not been approved as required by those provisions and releasing that information to the marketplace in a news release is inconsistent with the prior approval requirement. Also see National Policy 51-201 *Disclosure Standards*.

(2) Reporting issuers that intend to disclose financial information to the marketplace in a news release should consult *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*. We believe that disclosing financial information in a news release without disclosing the accounting principles used is inconsistent with the requirement in *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* to identify the accounting principles used in the financial statements.

4.2 Non-GAAP Financial Measures

Reporting issuers that intend to publish financial measures other than those prescribed by Canadian GAAP applicable to publicly accountable enterprises should refer to CSA Staff Notice 52-306 *Non-GAAP Financial Measures* for a discussion of staff expectations concerning the use of non-GAAP measures.

4.3 Presentation of Financial Information

Canadian GAAP applicable to publicly accountable enterprises provides an issuer two alternatives in presenting its income: (a) in one single statement of comprehensive income, or (b) in a statement of comprehensive income with a separate income statement. If an issuer presents its income using the second alternative, both statements must be filed to satisfy the requirements of this Regulation. (See subsections 4.1(3) and 4.3(2.1) of the Regulation).

PART 4A FORWARD-LOOKING INFORMATION

4A.1 Application

Section 4A.1 of the Regulation indicates that Part 4A applies to forward-looking information that is disclosed by a reporting issuer other than forward-looking information contained in oral statements. Reporting issuers should consider broadly the various instances of forward-looking information made available to the public in considering the scope of forward-looking information that is disclosed. This includes, but is not limited to:

- Information that a reporting issuer files with securities regulators
- Information contained in news releases issued by a reporting issuer
- Information published on a reporting issuer's website
- Information published in marketing materials or other similar materials prepared by a reporting issuer or distributed to the public by a reporting issuer.

4A.2 Reasonable Basis

Section 4A.2 of the Regulation requires a reporting issuer to have a reasonable basis for any forward-looking information it discloses. When interpreting "reasonable basis", reporting issuers should consider:

(a) the reasonableness of the assumptions underlying the forward-looking information; and

(b) the process followed in preparing and reviewing forward-looking information.

4A.3 Material Forward-Looking Information

Section 4A.3 and section 5.8 of the Regulation require a reporting issuer to include specified disclosure in material forward-looking information it discloses. Reporting issuers should exercise judgement when determining whether information is material. If a reasonable investor's decision whether or not to buy, sell or hold securities of the reporting issuer would be influenced or changed if the information were omitted or misstated, then the information is likely material.

Section 1.1 contains definitions of the terms "financial outlook" and "FOFI." We consider FOFI and most financial outlooks to be material forward-looking information. Examples of financial outlooks include expected revenue, profit or loss, earnings per share and R&D spending. A financial outlook relating to profit or loss is commonly referred to as "earnings guidance."

An example of forward-looking information that is not a financial outlook or FOFI would be an estimate of future store openings by an issuer in the retail industry. This type of information may or may not be material, depending on whether a reasonable investor's decision whether or not to buy, sell or hold securities of that issuer would be influenced or changed if the information were omitted or misstated.

4A.4 Location of Disclosure

Section 4A.3 of the Regulation requires that any material forward-looking information include specified disclosure. This disclosure should be presented in a manner that allows an investor who reads the document or other material containing the forward-looking information to be able to readily:

(a) understand that the forward-looking information is being provided in the document or other material;

(b) identify the forward-looking information; and

(c) inform himself or herself of the material assumptions underlying the forward-looking information and the material risk factors associated with the forward-looking information.

4A.5 Disclosure of Cautionary Language and Material Risk Factors

(1) Paragraph 4A.3(b) of the Regulation requires a reporting issuer to accompany any material forward-looking information with disclosure that cautions users that actual results may vary from the forward-looking information and identifies material risk factors that could cause material variation. The material risk factors identified in the cautionary language should be relevant to the forward-looking information and the disclosure should not be boilerplate in nature.

(2) The cautionary statements required by paragraph 4A.3(b) of the Regulation should identify significant and reasonably foreseeable factors that could reasonably be expected to

cause results to differ materially from those projected in the material forward-looking statement. Reporting issuers should not interpret this as requiring a reporting issuer to anticipate and discuss everything that could conceivably cause results to differ.

4A.6 Disclosure of Material Factors or Assumptions

Paragraph 4A.3(c) of the Regulation requires a reporting issuer to disclose the material factors or assumptions used to develop material forward-looking information. The factors or assumptions should be relevant to the forward-looking information. Disclosure of material factors or assumptions does not require an exhaustive statement of every factor or assumption applied – a materiality standard applies.

4A.7 Date of Assumptions

Management of a reporting issuer that discloses material forward-looking information should satisfy itself that the assumptions are appropriate as of the date management discloses the material forward-looking information even though the material forward-looking information may have been prepared at an earlier time, and may be based on information accumulated over a period of time.

4A.8 Time Period

Paragraph 4B.2(2)(a) of the Regulation requires a reporting issuer to limit the period covered by FOFI or a financial outlook to a period for which the information can be reasonably estimated. In many cases that time period will not go beyond the end of the reporting issuer's next fiscal year. Some of the factors a reporting issuer should consider include the reporting issuer's ability to make appropriate assumptions, the nature of the reporting issuer's industry, and the reporting issuer's operating cycle.

PART 5 MD&A

5.1 Delivery of MD&A

Reporting issuers are not required to send a request form to their securityholders under Part 5 of the Regulation. This is because the request form that must be delivered under section 4.6 of the Regulation relates to both a reporting issuer's financial statements, and the MD&A applicable to those financial statements.

5.2 Additional Information for Venture Issuers Without Significant Revenue

Section 5.3 of the Regulation requires certain venture issuers to provide in their annual or interim MD&A (unless the information is included in their annual financial statements or interim financial report), a breakdown of material costs whether expensed or recognized as assets. A component of cost is generally considered to be a material component if it exceeds the greater of

(a) 20% of the total amount of the class; and

(b) $25,000.

5.3 Disclosure of Outstanding Share Data

Section 5.4 of the Regulation requires disclosure of information relating to the outstanding securities of the reporting issuer as of the latest practicable date. The "latest practicable date" should be current, as close as possible, to the date of filing of the MD&A. Disclosing the number of securities outstanding at the period end is generally not sufficient to meet this requirement.

5.4 Additional Disclosure for Equity Investees

Section 5.7 of the Regulation requires issuers with significant equity investees to provide in their annual or interim MD&A (unless the information is included in their annual financial statements or interim financial report), summarized information about the equity investee. Generally, we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Part 8 using the financial statements of the equity investee and the issuer as at the issuer's financial year-end.

5.5 Previously Disclosed Material Forward-Looking Information

(1) Subsection 5.8(2) of the Regulation requires a reporting issuer to discuss certain events and circumstances that occurred during the period to which its MD&A relates. The events to be discussed are those that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete. This discussion is only required if the reporting issuer previously disclosed the forward-looking information to the public. Subsection 5.8(2) also requires a reporting issuer to discuss the expected differences.

For example, assume that a reporting issuer published FOFI for the current year assuming no change in the prime interest rate, but by the end of the second quarter the prime interest rate went up by 2%. In its MD&A for the second quarter, the reporting issuer should discuss the interest rate increase and its expected effect on results compared to those indicated in the FOFI.

A reporting issuer should consider whether the events and circumstances that trigger MD&A disclosure under subsection 5.8(2) of the Regulation might also trigger material change reporting requirements under Part 7 of the Regulation.

(2) Subsection 5.8(4) of the Regulation requires a reporting issuer to disclose and discuss material differences between actual results for the annual or interim period to which its MD&A relates and any FOFI or financial outlook for that period that the reporting issuer previously disclosed to the public. A reporting issuer should disclose and discuss material differences for material individual items included in the FOFI or financial outlook, including assumptions.

For example, if the actual dollar amount of revenue approximates forecasted revenue but the sales mix or sales volume differs materially from what the reporting issuer expected, the reporting issuer should explain the differences.

(3) Subsection 5.8(5) of the Regulation addresses a reporting issuer's decision to withdraw previously disclosed material forward-looking information. The subsection requires the reporting issuer to disclose that decision and discuss the events and circumstances that led the reporting issuer to the decision to withdraw the material forward-looking information, including a discussion of the assumptions included in the material forward-looking information that are no longer valid. A reporting issuer should consider whether the events and circumstances that trigger MD&A disclosure under subsection 5.8(5) of the Regulation might also trigger material change reporting requirements under Part 7 of the Regulation. We encourage all reporting issuers to promptly communicate to the market a decision to withdraw material forward-looking information, even if the material change reporting requirements are not triggered.

PART 6 AIF

6.1 Additional and Supporting Documentation

Any material incorporated by reference in an AIF is required to be filed with the AIF unless the material has been previously filed. When a reporting issuer using SEDAR files a previously unfiled document with its AIF, the reporting issuer should ensure that the document is filed under the appropriate SEDAR filing type and document type specifically

applicable to the document, rather than generic type “Documents Incorporated by Reference”. For example, a reporting issuer that has incorporated by reference an information circular in its AIF and has not previously filed the circular should file the circular under the “Management Proxy Materials” filing subtype and the “Management proxy/information circular” document type.

If the reporting issuer incorporates a document, or a portion of a document, by reference into its AIF, and that document, or that portion of the document, as applicable, incorporates another document by reference, the issuer must also file the underlying document with its AIF.

6.2 AIF Disclosure of Asset-backed Securities

(1) **Factors to consider** – Issuers that have distributed asset-backed securities under a prospectus are required to provide disclosure in their AIF under section 5.3 of Form 51-102F2. Issuers of asset-backed securities must determine which other prescribed disclosure is applicable and ought to be included in the AIF. Disclosure for a special purpose issuer of asset-backed securities will generally explain

- the nature, performance and servicing of the underlying pool of financial assets;

- the structure of the securities and dedicated cash flows; and

- any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment.

The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

An issuer of asset-backed securities should consider the following factors when preparing its AIF:

1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to securityholders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.

2. Disclosure about the business and affairs of the issuer should relate to the financial assets underlying the asset-backed securities.

3. Disclosure about the originator or the seller of the underlying financial assets will often be relevant to investors in the asset-backed securities particularly where the originator or seller has an on-going involvement with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor’s investment decision.

To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirement applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

Financial information respecting the pool of assets to be described and analyzed in the AIF will consist of information commonly set out in servicing reports prepared to describe the performance of the pool and the specific allocations of profit, loss and cash flows applicable to outstanding asset-backed securities made during the relevant period.

(2) **Underlying pool of assets** – Paragraph 5.3(2)(a) of Form 51-102F2 requires issuers of asset-backed securities that were distributed by way of prospectus to include financial disclosure relating to the composition of the underlying pool of financial assets, the cash flows from which service the asset-backed securities. Disclosure respecting the composition of the pool will vary depending upon the nature and number of the underlying financial assets. For example, in a geographically dispersed pool of financial assets, it may be appropriate to provide a summary disclosure based on the location of obligors. In the context of a revolving pool, it may be appropriate to provide details relating to aggregate outstanding balances during a year to illustrate historical fluctuations in asset origination due, for example, to seasonality. In pools of consumer debt obligations, it may be appropriate to provide a breakdown within ranges of amounts owing by obligors in order to illustrate limits on available credit extended.

PART 7 MATERIAL CHANGE REPORTS

7.1 Publication of News Release

Section 7.1 of the Regulation requires reporting issuers to immediately issue and file a news release disclosing the nature of a material change. This requirement is substantively the same as the material change reporting requirements in some securities legislation for the news release to be issued *forthwith*.

PART 8 BUSINESS ACQUISITION REPORTS

8.1 Obligations to File a Business Acquisition Report

(1) **Filing of a Material Change Report** – The requirement in the Regulation for a reporting issuer to file a business acquisition report is in addition to the reporting issuer's obligation to file a material change report, if the significant acquisition constitutes a material change.

(2) **Filing of a Business Acquisition Report by SEC Issuers** – If a document or a series of documents that an SEC issuer files with or furnishes to the SEC in connection with a business acquisition contains all of the information, including financial statements, required to be included in a business acquisition report under the Regulation, the SEC issuer may file a copy of the documents as its business acquisition report.

(3) **Financial Statement Disclosure of Significant Acquisitions** – Reporting issuers are reminded that *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* prescribes the accounting principles and auditing standards that must be used to prepare and audit the financial statements required by Part 8 of the Regulation.

(4) **Acquisition of a Business** – A reporting issuer that has made a significant acquisition must include in its business acquisition report certain financial statements of each business acquired. The term "business" should be evaluated in light of the facts and circumstances involved. We generally consider that a separate entity, a subsidiary or a division is a business and that in certain circumstances a smaller component of a company may also be a business, whether or not the business previously prepared financial statements. In determining whether an acquisition constitutes the acquisition of a business, a reporting issuer should consider the continuity of business operations, including the following factors:

(a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and

(b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the reporting issuer instead of remaining with the vendor after the acquisition.

(5) **Acquisition by a Subsidiary** – If a reporting issuer's subsidiary, which is also a reporting issuer, has acquired a business, both the parent and subsidiary must test the significance of the acquisition. Even if the subsidiary files a business acquisition report, the parent must also file a business acquisition report if the acquisition is also significant for the parent.

8.2 Significance Tests

(1) **Nature of Significance Tests** – Subsection 8.3(2) of the Regulation sets out the required significance tests for determining whether an acquisition of a business by a reporting issuer is a "significant acquisition". The first test measures the assets of the acquired business against the assets of the reporting issuer. The second test measures the reporting issuer's investments in and advances to the acquired business against the assets of the reporting issuer. The third test measures the specified profit or loss of the acquired business against the specified profit or loss of the reporting issuer. If any one of these three tests is satisfied at the prescribed level, the acquisition is considered "significant" to the reporting issuer. The test must be applied as at the acquisition date using the most recent audited annual financial statements of the reporting issuer and the business. These tests are similar to requirements of the SEC and provide issuers with certainty that if an acquisition is not significant at the acquisition date, then no business acquisition report will be required to be filed.

(2) **Business Using Accounting Principles Other Than Those Used by the Reporting Issuer** – Subsection 8.3(13) of the Regulation provides that, for the purposes of calculating the significance tests, the amounts used for the business or related businesses must, subject to subsection 8.3(13.1) of the Regulation, be based on the issuer's GAAP, and translated into the same presentation currency as that used in the reporting issuer's financial statements. This means that in some cases the amounts must be converted to the issuer's GAAP and translated into the same presentation currency as that used in the reporting issuer's financial statements.

Subsection 8.3(13.1) of the Regulation exempts venture issuers from the requirement in paragraph 8.3(13)(a) that, for the purposes of calculating the significance tests, the amounts used for the business or related businesses must be based on the issuer's GAAP, but only where the financial statements for the business or related businesses were prepared in accordance with Canadian GAAP applicable to private enterprises and certain other conditions are met.

Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards permits financial statements for a business or related businesses to be prepared in accordance with U.S. GAAP without reconciliation to the issuer's GAAP. This does not impact the application of paragraph 8.3(13)(a) of the Regulation. Thus, if the issuer's GAAP is not U.S. GAAP, paragraph 8.3(13)(a) of the Regulation requires, for the purposes of calculating the significance tests, that the amounts used for the business or related businesses be based on the issuer's GAAP.

Paragraph 8.3(13)(b) of the Regulation applies to all issuers and requires, for the purpose of calculating the significance tests, that the amounts used for the business or related businesses be translated into the same presentation currency as that used in the reporting issuer's financial statements.

(3) **Acquisition of a Previously Unaudited Business** – Subsections 8.3(2) and 8.3(4) of the Regulation require the significance of an acquisition to be determined using the most recent audited annual financial statements of the reporting issuer and the business acquired. However, if the annual financial statements of the business or related businesses for the

most recently completed financial year were not audited, subsection 8.3(14) of the Regulation permits use of the unaudited annual financial statements for the purpose of applying the significance tests. If the acquisition is determined to be significant, then the annual financial statements required by subsection 8.4(1) of the Regulation must be audited.

(3.1) **Application of Significance Tests for Business Combinations Achieved in Stages** – IFRS 3 *Business Combinations*, requires that when a business combination is achieved in stages the acquirer's previously held equity interest in the acquiree is remeasured at its acquisition date fair value with any resulting gain or loss recognized in profit or loss. The remeasurement of the previously held equity interest should not be included in the asset or the investment test and the resulting gain or loss from remeasurement should not be included in the profit or loss test. (See subsection 8.3(4.1) of the Regulation).

(4) **Application of Investment Test for Significance of an Acquisition** – One of the significance tests set out in subsections 8.3(2) and (4) of the Regulation is whether the reporting issuer's consolidated investments in and advances to the business or related businesses exceed a specified percentage of the consolidated assets of the reporting issuer. In applying this test, the "investments in" the business should be determined using the consideration transferred, measured in accordance with the issuer's GAAP, including any contingent consideration. In addition, any payments made in connection with the acquisition which would not constitute consideration transferred but which would not have been paid unless the acquisition had occurred, should be considered part of investments in and advances to the business for the purpose of applying the significance tests. Examples of such payments include loans, royalty agreements, lease agreements and agreements to provide a pre-determined amount of future services. For purposes of the investment test, "consideration transferred" should be adjusted to exclude the carrying value of assets transferred by the reporting issuer to the business or related businesses that will remain with the business or related businesses after the acquisition.

(5) **Application of the Significance Tests When the Financial Year Ends are Non-Coterminous** – Subsection 8.3(2) of the Regulation requires the significance of a business acquisition to be determined using the most recent audited annual financial statements of both the reporting issuer and the acquired business. For the purpose of applying the tests under this subsection, the year-ends of the reporting issuer and the acquired business need not be coterminous. Accordingly, neither the audited annual financial statements of the reporting issuer nor those of the business should be adjusted for the purposes of applying the significance tests. However, if the acquisition of a business is determined to be significant and pro forma income statements are required by subsection 8.4(5) of the Regulation and, if the business' year-end is more than 93 days before the reporting issuer's year-end, the business' reporting period required under paragraph 8.4(7)(c) of the Regulation should be adjusted to reduce the gap to 93 days or less. Refer to subsection 8.7(3) of this Policy Statement for further guidance.

8.3 Optional Significance Tests

(1) **Optional Significance Tests** – Decrease in Significance – If an acquisition is determined under subsection 8.3(2) of the Regulation to be significant, a reporting issuer has the option under subsections 8.3(3) and (4) of the Regulation of applying optional significance tests using more recent financial statements than those used for the required significance tests in subsection 8.3(2). The optional significance tests under subsections 8.3(3) and (4) have been included to recognize the possible growth of a reporting issuer between the date of its most recently completed year-end and the date of filing a business acquisition report and the corresponding potential decline in significance of the acquisition to the reporting issuer.

(2) **Availability of the Optional Significance Tests** – The optional significance tests permitted under subsections 8.3(4) and (6) of the Regulation are available to all reporting issuers. However, depending on how or when a reporting issuer integrates the acquired

business into its existing operations and the nature of post-acquisition financial records it maintains for the acquired business, it may not be possible for a reporting issuer to apply the optional significance test under subsection 8.3(6).

(3) **Optional Investment Test** – For the purpose of applying the optional investment test under paragraph 8.3(4)(b) of the Regulation, the reporting issuer's investments in and advances to the business should be as at the acquisition date and not as at the date of the reporting issuer's financial statements used to determine its consolidated assets for the optional investment test.

(4) **Optional Profit or Loss Test based on Pro Forma Information** – A reporting issuer may apply the optional profit or loss test in subsection 8.3(11.1) of the Regulation based on more recent pro forma consolidated specified profit or loss. By permitting reporting issuers to base the optional profit or loss test on pro forma consolidated specified profit or loss, this test recognizes the possible growth of a reporting issuer as a result of acquisitions completed between its most recently completed year end and the date of filing a business acquisition report and the corresponding potential decline in significance of the acquisition to the reporting issuer.

8.4 Financial Statements of Related Businesses

Subsection 8.4(8) of the Regulation requires that if a reporting issuer includes in its business acquisition report financial statements for more than one related business, separate financial statements must be presented for each business except for the periods during which the businesses were under common control or management, in which case the reporting issuer may present the financial statements on a combined basis. Although one or more of the related businesses may be insignificant relative to the others, separate financial statements of each business for the same number of periods required must be presented. Relief from the requirement to include financial statements of the least significant related business or businesses may be granted depending on the facts and circumstances.

8.5 Application of the Significance Tests for Multiple Investments in the Same Business

Subsection 8.3(11) of the Regulation explains how the significance test should be applied when the reporting issuer has made multiple investments in the same business. If the reporting issuer acquired an interest in the business in a previous year and that interest is reflected in the most recent audited annual financial statements of the reporting issuer filed, then the issuer should determine the significance of only the incremental investment in the business which is not reflected in the reporting issuer's most recent audited annual financial statements filed.

8.6 Preparation of Divisional and Carve-out Financial Statements

(1) **Interpretations** – In this section of this Policy Statement, unless otherwise stated,

(a) a reference to "a business" includes a division or some lesser component of another business acquired by a reporting issuer that constitutes a significant acquisition; and

(b) the term "parent" refers to the vendor from whom the reporting issuer purchased a business.

(2) **Acquisition of a Division** – As discussed in subsection 8.1(4) of this Policy Statement, the acquisition of a division of a business and in certain circumstances, a lesser component of a person , may constitute an acquisition of a business for purposes of the Regulation, whether or not the subject of the acquisition previously prepared financial statements. To determine the significance of the acquisition and comply with the requirements for financial statements in a business acquisition report under Part 8 of the Regulation, financial statements for the business must be prepared. This section provides guidance on preparing these financial statements.

(3) **Divisional and Carve-Out Financial Statements** – The terms "divisional" and "carve-out" financial statements are often used interchangeably although a distinction is possible. Some companies maintain separate financial records and financial statements for a business activity or unit that is operated as a division. Financial statements prepared from these financial records are often referred to as "divisional" financial statements. In other circumstances, no separate financial records for a business activity are maintained; they are simply consolidated with the parent's records. In these cases, if the parent's financial records are sufficiently detailed, it is possible to extract or "carve-out" the information specific to the business activity in order to prepare separate financial statements of that business. Financial statements prepared in this manner are commonly referred to as "carve-out" financial statements. The guidance in this section applies to the preparation of both divisional and carve-out financial statements unless otherwise stated.

(4) **Preparation of Divisional and Carve-Out Financial Statements**

(a) When complete financial records of the business acquired have been maintained, those records should be used for preparing and auditing the financial statements of the business. For the purposes of this section, it is presumed that the parent maintains separate financial records for its divisions.

(b) When complete financial records of the business acquired do not exist, carve-out financial statements must be prepared in accordance with subsection 3.11(6) of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*.

(5) **Statements of Assets Acquired, Liabilities Assumed and Statements of Operations** – When it is impracticable to prepare carve-out financial statements of a business, a reporting issuer may be required to include in its business acquisition report an audited statement of assets acquired and liabilities assumed and a statement of operations of the business. The statement of operations should exclude only those indirect operating costs not directly attributable to the business, such as corporate overhead. If indirect operating costs were previously allocated to the business and there is a reasonable basis of allocation, they should not be excluded.

8.7 Preparation of Pro Forma Financial Statements Giving Effect to Significant Acquisitions

(1) **Objective and Basis of Preparation** – The objective of pro forma financial statements is to illustrate the impact of a transaction on a reporting issuer's financial position and financial performance by adjusting the historical financial statements of the reporting issuer to give effect to the transaction. Accordingly, the pro forma financial statements should be prepared on the basis of the reporting issuer's financial statements as already filed. No adjustment should be made to eliminate discontinued operations.

(2) **Pro Forma Statement of Financial Position** – Subsection 8.4(5) of the Regulation does not require a pro forma statement of financial position to be prepared to give effect to significant acquisitions that are reflected in the reporting issuer's most recent annual or interim statement of financial position filed under the Regulation.

(3) **Non-coterminous Year-ends** – Where the financial year-end of a business differs from the reporting issuer's year-end by more than 93 days, paragraph 8.4(7)(c) requires a statement of comprehensive income for the business to be constructed for a period of 12 consecutive months. For example, if the constructed reporting period is 12 months and ends on June 30, the 12 months should commence on July 1 of the immediately preceding year; it should not begin on March 1st of the immediately preceding year with three of the following 15 months omitted, such as the period from October 1 to December 31, since this would not be a consecutive 12 month period.

(4) **Effective Date of Adjustments** – For the pro forma income statements included in a business acquisition report, the acquisition and the adjustments should be computed as if

the acquisition had occurred at the beginning of the reporting issuer's most recently completed financial year and carried through the most recent interim period presented, if any. However, one exception to the preceding is that adjustments related to the allocation of the purchase price, including the amortization of fair value increments and intangibles, should be based on the acquisition date amounts of assets acquired and liabilities assumed as if the acquisition occurred on the date of the reporting issuer's most recent statement of financial position filed.

(5) **Acceptable Adjustments** – Pro forma adjustments are generally limited to the following two types of adjustments required by paragraph 8.4(7)(b) of the Regulation:

(a) those directly attributable to the specific acquisition transaction for which there are firm commitments and for which the complete financial effects are objectively determinable, and

(b) adjustments to conform amounts for the business or related businesses to the issuer's accounting policies.

If financial statements for a business or related businesses are prepared in accordance with accounting principles that differ from the issuer's GAAP and the financial statements do not include a reconciliation to the issuer's GAAP, pro forma adjustments as described in item (b) above will often be necessary. For example, financial statements for a business or related businesses may be prepared in accordance with U.S. GAAP, or in the case of a venture issuer, in accordance with Canadian GAAP applicable to private enterprises, in each case without a reconciliation to the issuer's GAAP. Even if financial statements for a business or related businesses are prepared in accordance with the issuer's GAAP, pro forma adjustments as described in item (b) may be necessary to conform amounts for the business or related businesses to the issuer's accounting policies, including, for example, the issuer's revenue recognition policy where the revenue recognition policy of the business or related businesses differs from the issuer's policy.

If the presentation currency used in financial statements for a business or related businesses differs from the presentation currency used in the issuer's financial statements, the pro forma financial statements must present amounts for the business or related businesses in the presentation currency of the issuer's financial statements. The pro forma financial statements should explain any adjustments to conform presentation currency.

(6) **Multiple Acquisitions** – If a reporting issuer has completed multiple acquisitions then, under subsection 8.4(5) of the Regulation, the pro forma financial statements must give effect to each acquisition completed since the beginning of the most recently completed financial year. The pro forma adjustments may be grouped by line item on the face of the pro forma financial statements provided the details for each transaction are disclosed in the notes.

(7) **Pro Forma Financial Statements Based on an Earlier Interim Financial Report** – The pro forma financial statements are prepared on the basis of the financial statements included in the business acquisition report. As a result, if the reporting issuer relies on subsection 8.4(4) of the Regulation to include financial statements for an earlier interim period of the acquired business than would otherwise be required under subsection (3), the issuer uses its comparable interim period to prepare the pro forma financial statements.

(8) **Indirect Acquisitions** – Under the securities legislation of certain jurisdictions, it is generally an offence to make a statement in a document that is required to be filed under securities legislation, and that does not state a fact that is necessary to make the statement not misleading. When a reporting issuer acquires a business that has itself recently acquired another business or related businesses (an "indirect acquisition"), the reporting issuer should consider whether it needs to provide disclosure of the indirect acquisition in the business acquisition report, including historical financial statements, and whether the omission of these financial statements would cause the business acquisition report to be

misleading, untrue or substantially incomplete. In making this determination, the reporting issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 8.3 of the Regulation when the reporting issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business, and

- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the reporting issuer is acquiring.

(9) **Pro Forma Financial Statements where Financial Statements of a Business or Related Businesses are Prepared using Accounting Principles that Differ from the Issuer's GAAP** – Section 3.11 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* permits reporting issuers to include in a business acquisition report financial statements of a business or related businesses prepared in accordance with U.S. GAAP and without a reconciliation to the issuer's GAAP. That section also permits, subject to specified conditions, a venture issuer to include in a business acquisition report financial statements of a business or related businesses prepared in accordance with Canadian GAAP applicable to private enterprises and without a reconciliation to the issuer's GAAP. However, section 3.14 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* requires that pro forma financial statements be presented using accounting principles that are permitted by the issuer's GAAP and would apply to the information presented in the pro forma financial statements if that information were included in the issuer's financial statements for the same time period as that of the pro forma financial statements. As well, subsection 8.4(7) of the Regulation requires pro forma financial statements to include a description of the underlying assumptions on which the pro forma financial statements are prepared, cross-referenced to each related pro forma adjustment. Therefore, the pro forma financial statements must describe the adjustments presented in the pro forma income statement relating to the business or related businesses to adjust amounts to the issuer's GAAP and accounting policies.

The pro forma statement of financial position should present the following information:

(i) the statement of financial position of the reporting issuer,

(ii) the statement of financial position of the business or related businesses,

(iii) pro forma adjustments attributable to each significant acquisition that reflect the reporting issuer's accounting for the acquisition and include new values for the business' assets and liabilities, and

(iv) a pro forma statement of financial position combining items (i) through (iii).

The pro forma income statement should present the following information:

(i) the income statement of the reporting issuer,

(ii) the income statement of the business or related businesses,

(iii) pro forma adjustments attributable to each significant acquisition and other adjustments relating to the business or related businesses to conform amounts to the issuer's GAAP and accounting policies, and

(iv) a pro forma income statement combining items (i) through (iii).

8.7.1 Financial Year End Changed

If the transition year of the acquired business is less than 9 months, the issuer may be required to include financial statements for the transition year of the acquired business in addition to financial statements for the two financial years required by subsection 8.4(1) of the Regulation. The transition year may or may not be audited, but at minimum, the most recently completed financial year must be audited in accordance with subsection 8.4(2).

8.8 Relief from the Requirement to Audit Operating Statements of an Oil and Gas Property

The securities regulatory authority or regulator may exempt a reporting issuer from the requirement to audit the operating statements referred to in section 8.10 of the Regulation if, during the 12 months preceding the acquisition date, the average daily production of the property is less than 20% of the total average daily production of the vendor for the same or similar periods, and

(a) the reporting issuer provides written submissions prior to the deadline for filing the business acquisition report which establishes to the satisfaction of the appropriate regulator, that despite reasonable efforts during the purchase negotiations, the reporting issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property;

(b) the purchase agreement includes representations and warranties by the vendor that the amounts presented in the operating statement agree to the vendor's books and records; and

(c) the reporting issuer discloses in the business acquisition report its inability to obtain an audited operating statement, the reasons therefor, the fact that the representations and warranties referred to in paragraph (b) have been obtained, and a statement that the results presented in the operating statement may have been materially different if the statement had been audited.

For the purpose of determining average daily production when production includes both oil and natural gas, production may be expressed in barrels of oil equivalent using the conversion ratio of 6000 cubic feet of gas to one barrel of oil.

8.9 Exemptions From Requirement for Financial Statements in a Business Acquisition Report

(1) **Exemptions** – We are of the view that relief from the financial statement requirements of Part 8 of the Regulation should be granted only in unusual circumstances and generally not related solely to cost or the time involved in preparing and auditing the financial statements. Reporting issuers seeking relief from the financial statement or audit requirements of Part 8 must apply for the relief before the filing deadline for the business acquisition report and before the closing date of the transaction, if applicable. Reporting issuers are reminded that many securities regulatory authorities and regulators do not have the power to grant retroactive relief.

(2) **Conditions to Exemptions** – If relief is granted from the requirements of Part 8 of the Regulation to include audited annual financial statements of an acquired business or related businesses, conditions will likely be imposed, such as a requirement to include audited divisional or partial statements of comprehensive income or divisional statements of cash flows, or an audited statement of operations.

(3) **Exemption from Comparatives if Financial Statements Not Previously Prepared** – Section 8.9 of the Regulation provides that a reporting issuer does not have to provide comparative financial information for an acquired business in a business acquisition report if it complies with specific requirements. This exemption may, for example, apply to an acquired business that was, before the acquisition, a private entity and

that the reporting issuer is unable to prepare the comparative financial information for because it is impracticable to do so.

(4) Relief may be granted from the requirement to include certain financial statements of an acquired business or related businesses in a business acquisition report in some situations that may include the following:

(a) the business's historical accounting records have been destroyed and cannot be reconstructed. In this case, as a condition of granting the exemption, the reporting issuer may be requested by the securities regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the business acquisition report is required to be filed, that the reporting issuer made every reasonable effort to obtain copies of, or reconstruct the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful; and

(ii) disclose in the business acquisition report the fact that the historical accounting records have been destroyed and cannot be reconstructed; or

(b) the business has recently emerged from bankruptcy and current management of the business and the reporting issuer is denied access to the historical accounting records necessary to audit the financial statements. In this case, as a condition of granting the exemption, the reporting issuer may be requested by the securities regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the business acquisition report is required to be filed that the reporting issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to prepare and audit the financial statements but that such efforts were unsuccessful; and

(ii) disclose in the business acquisition report the fact that the business has recently emerged from bankruptcy and current management of the business and the reporting issuer are denied access to the historical accounting records.

8.10 Audits and Auditor Review of Financial Statements of an Acquired Business

(1) **Unaudited Comparatives in Annual Financial Statements of an Acquired Business** –Subsection 8.4(1) requires a reporting issuer to include comparative financial information of the business in the business acquisition report. This comparative financial information may be unaudited.

(2) **Auditor Review of an Interim Financial Report of an Acquired Business** – An issuer does not have to engage an auditor to review the interim financial report of an acquired business included in a business acquisition report. However, if the issuer later incorporates the business acquisition report into a prospectus, the interim financial report will have to be reviewed in accordance with the requirements relating to financial statements included in a prospectus.

PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS

9.1 Beneficial Owners of Securities

Reporting issuers are reminded that *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* prescribes certain procedures relating to the delivery of materials, including forms of proxy, to beneficial owners of securities and related matters. It also prescribes certain disclosure that must be included in the proxy-related materials sent to beneficial owners.

9.2 Prospectus-level Disclosure in Certain Information Circulars

Section 14.2 of Form 51-102F5 *Information Circular* requires an issuer to provide prospectus-level disclosure about certain entities if securityholder approval is required in respect of a significant acquisition under which securities of the acquired business are being exchanged for the issuer's securities or in respect of a restructuring transaction under which securities are to be changed, exchanged, issued or distributed.

Section 14.2 provides that the disclosure must be the disclosure (including financial statements) prescribed by the form of prospectus that the entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction.

For example, if disclosure was required in an information circular of Company A for both Company A (an issuer that was only eligible to file a long form prospectus) and Company B (an issuer that was eligible to file a short form prospectus), the disclosure for Company A would be that required by the long form prospectus rules and the disclosure for Company B would be that required by the short form prospectus rules. Any information incorporated by reference in the information circular of Company A would have to comply with paragraph (c) of Part 1 of Form 51-102F5 and be filed under Company A's profile on SEDAR.

9.3 Proxy Solicitations Made to the Public by Broadcast, Speech or Publication

Subsection 9.2(4) of the Regulation provides an exemption from the proxy solicitation and information circular requirements for certain proxy solicitations made to the public by broadcast, speech or publication. The exemption permits securityholders to solicit proxies by public means, including a speech or broadcast, through a newspaper advertisement or over the Internet (provided that the solicitation contains certain information and that information is filed on SEDAR).

The exemption will only apply if the proxy solicitation is made to the public. Securities regulatory authorities generally consider a solicitation to be made to the public if it is disseminated in a manner calculated to effectively reach the marketplace. A solicitation to the public would generally include a solicitation that is made by:

(a) a speech in a public forum; or

(b) a press release, a statement or an advertisement provided through a broadcast medium or by a telephone conference call or electronic or other communication facility generally available to the public, or appearing in a newspaper, a magazine, a website or other publication generally available to the public.

A proxy solicitation to the public would generally not include a solicitation made by phone, mail or email to only a select group of securityholders of a reporting issuer.

PART 10 ELECTRONIC DELIVERY OF DOCUMENTS

10.1 Electronic Delivery of Documents

Generally, any documents required to be sent under the Regulation may be sent by electronic delivery, as long as such delivery is consistent with the guidance in National Policy 11-201 *Electronic Delivery of Documents.* However, if a reporting issuer is using notice-and-access to deliver proxy-related materials, it should refer to the specific guidance in section 10.3 of the Policy.

10.2 Delivery of Proxy-Related Materials

(1) This section provides guidance on delivery of proxy-related materials. Reporting issuers should also review any other applicable legislation, such as corporate legislation.

(2) Paper copies of proxy-related materials must be sent using prepaid mail, courier or an equivalent delivery method. An equivalent delivery method is any delivery method where the registered holder receives paper copies in a similar time frame as prepaid mail or courier. For example, a reporting issuer that sponsors an employee share purchase plan could arrange for the proximate intermediary to deliver proxy-related materials to registered holder employees through the reporting issuer's internal mail system.

10.3 Notice-and-access

(1) The Regulation permits a reporting issuer to use notice-and-access to send proxy-related materials to registered holders.

Prior to using notice-and-access for the first time, a reporting issuer must provide advance notice as specified in section 9.1.2 of the Regulation. We also encourage issuers to consider what additional methods of advance notice are appropriate. For example, an issuer could consider a special purpose mailing to its retail registered holders in advance of the first meeting for which notice-and-access is used.

(2) Subparagraph 9.1.1(1)(a)(i) of the Regulation requires the registered holder to be sent a notice containing required information about the meeting. With respect to matters to be voted on at the meeting, the notice must only contain a factual description of each matter or group of related matters identified in the form of proxy. We expect that reporting issuers who use notice-and-access will state each matter or group of related matters in the proxy in a reasonably clear and user-friendly manner. For example, it would not be appropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular, e.g., "To vote For or Against the resolution in Schedule A of management's information circular".

Subparagraph 9.1.1(1)(a)(ii) of the Regulation requires the registered holder be sent a plain language document that explains notice-and-access. This document can also be used to explain other aspects of the proxy voting process to registered holders. However, this document should not contain any substantive discussion of the matters to be considered at the meeting.

(3) Paragraph 9.1.1(1)(b) of the Regulation requires the registered holder to be sent as part of the notice package the form of proxy.

(4) Paragraph 9.1.1(1)(c) of the Regulation requires that the registered holder of voting securities be sent the notice package by prepaid mail, courier or the equivalent. In the case of a solicitation by reporting issuer management, the notice package must be sent at least 30 days before the date fixed for the meeting

(5) Paragraph 9.1.1(1)(d) of the Regulation requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) of *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* at least 30 days before the date fixed for the meeting. This is intended to broadly communicate to the reporting issuer's registered holders that the reporting issuer is using notice-and-access.

(6) Paragraph 9.1.1(1)(e) of the Regulation requires the information circular and other proxy-related materials to be filed on SEDAR and posted on a website other than SEDAR. The non-SEDAR website can be the website of the person soliciting proxies (e.g., the reporting issuer's website) or the website of a service provider.

(7) Paragraph 9.1.1(1)(f) of the Regulation requires the person soliciting proxies to establish a toll-free telephone number for the registered holder to request a paper copy of the information circular. A person soliciting proxies may choose to, but is not required to, provide additional methods for requesting a paper copy of the information circular. If a person soliciting proxies does so, it must still comply with the fulfillment timelines in paragraph 9.1.1(1)(g) of the Regulation.

(8) Subsection 9.1.3(2) of the Regulation is intended to allow registered holders to access the posted proxy-related materials in a user-friendly manner. For example, requiring the registered holder to navigate through several web pages to access the proxy-related materials would not be user-friendly. Providing the registered holder with the specific URL where the documents are posted would be more user-friendly. We encourage reporting issuers and their service providers to develop best practices in this regard.

(9) Where a reporting issuer uses notice-and-access, it generally must send the same basic notice package to all registered holders. However, the following are exceptions to this general principle:

- Section 9.1.4 of the Regulation provides that where a reporting issuer uses notice-and-access, a registered holder still can be sent proxy-related materials using an alternate method to which the registered holder has previously consented. For example, service providers acting on behalf of reporting issuers may have previously obtained (and continue to obtain) consents from shareholders for proxy-related materials to be sent by email. This delivery method would still be available.

- Section 9.1.5 of the Regulation permits a reporting issuer to obtain standing instructions from a registered holder to be sent a paper copy of the information circular in all cases where the reporting issuer uses notice-and-access. Where such standing instructions have been obtained, the notice package for the registered holder will contain a paper copy of the information circular.

- Section 4.6 of the Regulation establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. A request for annual financial statements and annual MD&A will also constitute a request that the notice package for the registered holder contain a paper copy of the information circular.

The addition of a paper information circular to the notice package sent to some registered holders is referred to as "stratification" and is a term defined in section 1.1 of the Regulation.

We do not mandate the use of stratification, other than to the extent it is necessary to comply with standing instructions or annual requests for paper copies of information circulars that reporting issuers or intermediaries have chosen to obtain from registered holders or beneficial owners. We expect that any additional stratification criteria will develop and evolve through market demand and practice. However, we expect that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions does so in order to enhance effective communication, and not to disenfranchise shareholders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a copy of the information circular.

PART 11 ADDITIONAL DISCLOSURE REQUIREMENTS

11.1 Additional Filing Requirements

Paragraph 11.1(1)(b) of the Regulation requires a document to be filed only if it contains information that has not been included in disclosure already filed by the reporting issuer. For example, if a reporting issuer has filed a material change report under the Regulation and the Form 8-K filed by the reporting issuer with the SEC discloses the same

information, whether in the same or a different format, there is no requirement to file the Form 8-K under the Regulation.

11.2 Re-filing Documents or Re-stating Financial Information

If a reporting issuer decides to re-file a document, or re-state financial information for comparative periods in financial statements for reasons other than retroactive application of a change in an accounting standard or policy or a new accounting standard, and the re-filed or re-stated information is likely to differ materially from the information originally filed, the issuer should disclose in the news release required by section 11.5 of the Regulation when it makes that decision

(a) the facts underlying the changes,

(b) the general impact of the changes on previously filed information, and

(c) the steps the issuer would take before filing an amended document, or filing re-stated financial information, if the issuer is not filing amended information immediately.

PART 12 FILING OF CERTAIN DOCUMENTS

12.1 Statutory or Regulatory Instruments

Paragraph 12.1(1)(a) of the Regulation requires reporting issuers to file copies of their articles of incorporation, amalgamation, continuation or any other constating or establishing documents, unless the document is a statutory or regulatory instrument. This carve out for a statutory or regulatory instrument is very narrow. For example, the carve out would apply to Schedule I or Schedule II banks under the *Bank Act*, whose charter is the *Bank Act*. It would not apply when only the form of the constating document is prescribed under statute or regulation, such as articles under the *Canada Business Corporations Act.*

12.2 Contracts that Affect the Rights or Obligations of Securityholders

Paragraph 12.1(1)(e) of the Regulation requires reporting issuers to file copies of contracts that can reasonably be regarded as materially affecting the rights of their securityholders generally. A warrant indenture is one example of this type of contract. We would expect that contracts entered into in the ordinary course of business would not usually affect the rights of securityholders generally, and so would not have to be filed under this paragraph.

12.3 Material Contracts

(1) **Definition** – Under subsection 1.1(1) of the Regulation, a material contract is defined as a contract that a reporting issuer or any of its subsidiaries is a party to, that is material to the reporting issuer. A material contract generally includes a schedule, side letter or exhibit referred to in the material contract and any amendment to the material contract. The redaction and omission provisions in subsections 12.2(3) and (4) of the Regulation apply to these schedules, side letters, exhibits or amendments.

(2) **Filing Requirements** – Subject to the exceptions in paragraphs 12.2(2)(a) through (f) of the Regulation, subsection 12.2(2) of the Regulation provides an exemption from the filing requirement for a material contract entered into in the ordinary course of business. Whether a reporting issuer entered into a contract in the ordinary course of business is a question of fact that the reporting issuer should consider in the context of its business and industry.

Paragraphs 12.2(2)(a) through (f) of the Regulation describe specific types of material contracts that are not eligible for the ordinary course of business exemption. Accordingly, if subsection 12.2(1) of the Regulation requires a reporting issuer to file a material contract of a type described in these paragraphs, the reporting issuer must file that

material contract even if the reporting issuer entered into it in the ordinary course of business.

(3) **Contract of Employment** – Paragraph 12.2(2)(a) of the Regulation provides that a material contract with certain individuals is not eligible for the ordinary course of business exemption, unless it is a "contract of employment". One way for reporting issuers to determine whether a contract is a contract of employment is to consider whether the contract contains payment or other provisions that are required disclosure under Form 51-102F6 as if the individual were a named executive officer or director of the reporting issuer.

(4) **External Management and External Administration Agreements** – Under paragraph 12.2(2)(e) of the Regulation, external management and external administration agreements are not eligible for the ordinary course of business exemption. External management and external administration agreements include agreements between the reporting issuer and a third party, the reporting issuer's parent entity, or an affiliate of the reporting issuer, under which the latter provides management or other administrative services to the reporting issuer.

(5) **Material Contracts on which the Reporting Issuer's Business is Substantially Dependent** – Paragraph 12.2(1)(f) of the Regulation provides that a material contract on which the "reporting issuer's business is substantially dependent" is not eligible for the ordinary course of business exemption. Generally, a contract on which the reporting issuer's business is substantially dependent is a contract so significant that the reporting issuer's business depends on the continuance of the contract. Some examples of this type of contract include:

(a) a financing or credit agreement providing a majority of the reporting issuer's capital requirements for which alternative financing is not readily available at comparable terms;

(b) a contract calling for the acquisition or sale of substantially all of the reporting issuer's property, plant and equipment, long-lived assets, or total assets; and

(c) an option, joint venture, purchase or other agreement relating to a mining or oil and gas property that represents a majority of the reporting issuer's business.

(6) **Confidentiality Provisions** – Under subsection 12.2(3) of the Regulation, a reporting issuer may omit or redact a provision of a material contract that is required to be filed if an executive officer of the reporting issuer has reasonable grounds to believe that disclosure of the omitted or redacted provision would violate a confidentiality provision. A provision of the type described in paragraphs 12.2(4)(a), (b) or (c) of the Regulation may not be omitted or redacted even if disclosure would violate a confidentiality provision, including a blanket confidentiality provision covering the entire material contract.

When negotiating material contracts with third parties, reporting issuers should consider their disclosure obligations under securities legislation. A regulator or securities regulatory authority may consider granting an exemption to permit a provision of the type listed in subsection 12.2(4) of the Regulation to be redacted if:

(a) the disclosure of that provision would violate a confidentiality provision; and

(b) the material contract was negotiated before the adoption of the exceptions in subsection 12.2(4) of the Regulation.

The regulator may consider the following factors, among others, in deciding whether to grant an exemption:

(c) whether an executive officer of the reporting issuer reasonably believes that the disclosure of the provisions would be prejudicial to the interests of the reporting issuer; and

(d) whether the reporting issuer is unable to obtain a waiver of the confidentiality provision from the other party.

(7) **Disclosure Seriously Prejudicial to Interests of Reporting Issuer** – Under subsection 12.2(3) of the Regulation, a reporting issuer may omit or redact certain provisions of a material contract that is required to be filed if an executive officer of the reporting issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the reporting issuer. One example of disclosure that may be seriously prejudicial to the interests of the reporting issuer is disclosure of information in violation of applicable Canadian privacy legislation. However, in situations where securities legislation requires disclosure of the particular type of information, applicable privacy legislation generally provides an exemption for the disclosure. Generally, disclosure of information that a reporting issuer or other party has already publicly disclosed is not seriously prejudicial to the interests of the reporting issuer.

(8) **Terms Necessary for Understanding Impact on Business of Reporting Issuer** – A reporting issuer may not omit or redact a provision of a type described in paragraph 12.2(4)(a), (b), or (c) of the Regulation. Paragraph 12.2(4)(c) of the Regulation provides that a reporting issuer may not omit or redact "terms necessary for understanding the impact of the material contract on the business of the reporting issuer". Terms that may be necessary for understanding the impact of the material contract on the business of the reporting issuer include the following:

(a) the duration and nature of a patent, trademark, license, franchise, concession, or similar agreement;

(b) disclosure about related party transactions; and

(c) contingency, indemnification, anti-assignability, take-or-pay clauses, or change-of-control clauses.

(9) **Summary of Omitted or Redacted Provisions** – Under subsection 12.2(5) of the Regulation, a reporting issuer must include a description of the type of information that has been omitted or redacted in the copy of the material contract filed by the reporting issuer. A brief one-sentence description immediately following the omitted or redacted information is generally sufficient.

PART 13 EXEMPTIONS

13.1 Prior Exemptions and Waivers

Section 13.2 of the Regulation essentially allows a reporting issuer, in certain circumstances, to continue to rely upon an exemption or waiver from continuous disclosure obligations obtained prior to the Regulation coming into force if the exemption or waiver relates to a substantially similar provision in the Regulation and the reporting issuer provides written notice to the securities regulatory authority or regulator of its reliance on such exemption or waiver. Upon receipt of such notice, the securities regulatory authority or regulator, as the case may be, will review it to determine if the provision of the Regulation referred to in the notice is substantially similar to the provision from which the prior exemption or waiver was granted. The written notice should be sent to each jurisdiction where the prior exemption or waiver is relied upon. Contact addresses for these notices are:

Alberta Securities Commission
4th Floor
300 – 5th Avenue S.W.
Calgary, Alberta
T2P 3C4
Attention: Director, Corporate Finance

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Attention: Financial Reporting

Manitoba Securities Commission
500 - 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5
Attention: Corporate Finance

New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, N.B.
E2L 2J2
Attention: Corporate Finance

Securities Commission of Newfoundland and Labrador
P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's, NFLD
A1B 4J6
Attention: Director of Securities

Department of Justice, Northwest Territories
Securities Office
P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Superintendent of Securities

Nova Scotia Securities Commission
2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, Nova Scotia B3J 3J9
Attention: Corporate Finance

Department of Justice, Nunavut
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Superintendent of Securities

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Manager, Team 3, Corporate Finance

Registrar of Securities, Prince Edward Island
P.O. Box 2000
95 Rochford Street, 5th Floor,
Charlottetown, PEI
C1A 7N8
Attention: Registrar of Securities

Autorité des marchés financiers
800 Square Victoria, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Attention: Direction des marchés des capitaux

Saskatchewan Financial Services Commission – Securities Division
Suite 601
1919 Saskatchewan Drive
Regina, SK S4P 4H2
Attention: Deputy Director, Corporate Finance

Superintendent of Securities, Government of Yukon
Corporate Affairs J-9
P.O. Box 2703
Whitehorse, Yukon
Y1A 5H3
Attention: Superintendent of Securities

PART 14 TRANSITION

14.1 Transition – Application of Amendments

The amendments to the Regulation and this Policy Statement which came into effect on January 1, 2011 only apply to documents required to be prepared, filed, delivered or sent under the Regulation for periods relating to financial years beginning on or after January 1, 2011.

APPENDIX A
EXAMPLES OF FILING REQUIREMENTS FOR CHANGES IN THE YEAR END

The following examples assume the old financial year ended on December 31, 20X0

Transition Year	Comparative Annual Financial Statements to Transition Year	New Financial Year	Comparative Annual Financial Statements to New Financial Year	Interim Periods for Transition Year	Comparative Interim Periods to Interim Periods in Transition Year	Interim Periods for New Financial Year	Comparative Interim Periods to Interim Periods in New Financial Year
Financial year end changed by up to 3 months							
2 months ended 2/28/X1	12 months ended 12/31/X0	2/28/X2	2 months ended 2/28/X1 and 12 months ended 12/31/X0*	Not applicable	Not applicable	3 months ended 5/31/X1 6 months ended 8/31/X1 9 months ended 11/30/X1	3 months ended 6/30/X0 6 months ended 9/30/X0 9 months ended 12/31/X0
Or							
14 months ended 2/28/X2	12 months ended 12/31/X0	2/28/X3	14 months ended 2/28/X2	3 months ended 3/31/X1 6 months ended 6/30/X1 9 months ended 9/30/X1 12 months ended 12/31/X1	3 months ended 3/31/X0 6 months ended 6/30/X0 9 months ended 9/30/X0 12 months ended 12/31/X0	3 months ended 5/31/X2 6 months ended 8/31/X2 9 months ended 11/30/X2	3 months ended 6/30/X1 6 months ended 9/30/X1 9 months ended 12/31/X1
				or			
				2 months ended 2/28/X1 5 months ended 5/31/X1 8 months ended 8/31/X1 11 months ended 11/30/X1	3 months ended 3/31/X0 6 months ended 6/30/X0 9 months ended 9/30/X0 12 months ended 12/31/X0	3 months ended 5/31/X2 6 months ended 8/31/X2 9 months ended 11/30/X2	3 months ended 6/30/X1 6 months ended 9/30/X1 9 months ended 12/31/X1
Financial year end changed by 4 to 6 months							
6 months ended 6/30/X1	12 months ended 12/31/X0	6/30/X2	6 months ended 6/30/X1 and 12 months ended 12/31/X0*	3 months ended 3/31/X1	3 months ended 3/31/X0	3 months ended 9/30/X1 6 months ended 12/31/X1 9 months ended 3/31/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 9 months ended 3/31/X1
Financial year end changed by 7 or 8 months							
7 months ended 7/31/X1	12 months ended 12/31/X0	7/31/X2	7 months ended 7/31/X1 and 12 months ended 12/31/X0*	3 months ended 3/31/X1	3 months ended 3/31/X0	3 months ended 10/31/X1 6 months ended 1/31/X2 9 months ended 4/30/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 9 months ended 3/31/X1
				Or			
				4 months ended 4/30/X1	3 months ended 3/31/X0	3 months ended 10/31/X1 6 months ended 1/31/X2 9 months ended 4/30/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 10 months ended 4/30/X1
Financial year end changed by 9 to 11 months							
10 months ended 10/31/X1	12 months ended 12/31/X0	10/31/X2	10 months ended 10/31/X1	3 months ended 3/31/X1 6 months ended 6/30/X1	3 months ended 3/31/X0 6 months ended 6/30/X0	3 months ended 1/31/X2 6 months ended 4/30/X2 9 months ended 7/31/X2	3 months ended 12/31/X0 6 months ended 3/31/X1 9 months ended 6/30/X1
				or			
				4 months ended 4/30/X1 7 months ended 7/31/X1	3 months ended 3/31/X0 6 months ended 6/30/X0	3 months ended 1/31/X2 6 months ended 4/30/X2 9 months ended 7/31/X2	3 months ended 12/31/X0 6 months ended 3/31/X1 9 months ended 6/30/X1

* Statement of financial position required only at the transition year end date

POLICY STATEMENT TO REGULATION 51-102 RESPECTING CONTINUOUS DISCLOSURE OBLIGATIONS

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose

(1) *Regulation 51-102 respecting Continuous Disclosure Obligations* (the "Regulation") sets out disclosure requirements for all issuers, other than investment funds, that are reporting issuers in one or more jurisdictions in Canada.

(2) The purpose of this Policy Statement is to help you understand how the provincial and territorial regulatory authorities interpret or apply certain provisions of the Regulation. This Policy Statement includes explanations, discussion and examples of various parts of the Regulation.

1.2 Filing Obligations

(1) Reporting issuers must file continuous disclosure documents under the Regulation only in the local jurisdictions in which they are a reporting issuer.

(2) In some circumstances, the Regulation permits an issuer to satisfy a filing requirement by filing a different document instead. If an issuer is relying on one of these sections, the issuer must file the substitute document in the appropriate filing category and type on SEDAR. For example, an exchangeable share issuer relying on section 13.3(2) that must file a copy of its parent issuer's annual financial statements~~,~~ must file those financial statements under the exchangeable share issuer's SEDAR profile in the "Annual Financial Statement" filing type.

1.3 Corporate Law Requirements

Reporting issuers are reminded that they may be subject to requirements of corporate law that address matters similar to those addressed by the Regulation, and which may impose additional or more onerous requirements. For example, applicable corporate law may require the delivery of annual financial ~~reports~~statements to shareholders or may require the board of directors to approve interim financial reports.

1.4 Definitions

(1) **General** – Many of the terms for which the Regulation or Forms prescribed by the Regulation provide definitions are defined somewhat differently in the applicable securities legislation of several local jurisdictions. A term used in the Regulation and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires.

For instance, the terms "form of proxy", "material change", "proxy", and "recognized quotation and trade reporting system" are defined in local securities legislation of most jurisdictions. The provincial and territorial regulatory authorities consider the meanings given to these terms in securities legislation to be substantially similar to the definitions set out in the Regulation.

(2) **Asset-backed security** – Section 1.8 of Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions provides guidance for the definition of "asset-backed security".

(3) **Directors and Executive Officers** – Where the Regulation or any of the Forms use the term "directors" or "executive officers", a reporting issuer that is not a corporation must refer to the definitions in securities legislation of "director". The definition of "director"

typically includes a person acting in a capacity similar to that of a director of a company. Therefore, non-corporate issuers must determine in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with the Regulation and the Forms. Further, in considering paragraph (c) of the definition of "executive officer", we would consider an individual that is employed by an entity separate from the reporting issuer, but that performs a policy-making function in respect of the reporting issuer through that separate entity or otherwise, to fit within this definition.

Similarly, the terms chief executive officer and chief financial officer should be read to include the individuals who have the responsibilities normally associated with these positions or act in a similar capacity. This determination should be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

(4) **Investment Fund** – Generally, the definition of "investment fund" would not include a trust or other entity that issues securities which entitle the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

(5) **Reverse Takeover** – The definition of reverse takeover includes reverse acquisitions as defined or interpreted in Canadian GAAP applicable to publicly accountable enterprises and any other transaction in which an issuer issues enough voting securities as consideration for the acquisition of an entity such that control of the issuer passes to the securityholders of the acquired entity (such as a Qualifying Transaction, as that term is defined in the TSX Venture Exchange policies). In a reverse acquisition, although legally the entity (the legal parent) that issued the securities is regarded as the parent, the entity (the legal subsidiary) whose former securityholders now control the combined entity is treated as the acquirer for accounting purposes. As a result, for accounting purposes, the issuing entity (the legal parent) is deemed to be a continuation of the acquirer and the acquirer is deemed to have acquired control of the assets and business of the issuing entity in consideration for the issue of capital.

(6) **Restructuring transaction** – A "restructuring transaction" includes a transaction in which a reporting issuer acquires assets, which may include assets that constitute a business, and issues securities resulting in

- new securityholders owning or controlling more than 50% of the reporting issuer's outstanding voting securities, and

- a new control person, or new control group.

The acquisition and issuance may be in a single transaction, or a series of transactions. To be a "series of transactions", the transactions must be related to each other.

The phrase "new securityholders" includes both beneficial owners who did not hold any of the reporting issuer's securities before the restructuring transaction, and beneficial owners that held some securities in the reporting issuer before the transaction, but who now, as a result of the transaction, own more than 50% of the outstanding voting securities.

(7) **Accounting terms** – The Regulation uses accounting terms that are defined or used in Canadian GAAP applicable to publicly accountable enterprises. In certain cases, some of those terms are defined differently in securities legislation. In deciding which meaning applies, you should consider that *Regulation 14-101 respecting Definitions* provides that a term used in the Regulation and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure; or (b) the context otherwise requires.

For example, the term “associate” is defined in local securities statutes and Canadian GAAP applicable to publicly accountable enterprises. Securities regulatory authorities are of the view that the references to the term “associate” in the Regulation and its forms (e.g., item 7.1(g) of Form 51-102F5 *Information Circular*) should be given the meaning of the term under local securities statutes since the context does not indicate that the accounting meaning of the term should be used.

(8) **Acceptable accounting principles other than Canadian GAAP applicable to publicly accountable enterprises** – If an issuer is permitted under *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* to file financial statements in accordance with acceptable accounting principles other than Canadian GAAP applicable to publicly accountable enterprises, then the issuer may interpret any reference in the Regulation to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in the other acceptable accounting principles.

(9) **Rate-regulated activities** – If a qualifying entity is relying on the exemption in paragraph 5.4(1)(a) of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*, then the qualifying entity may interpret any reference in the Regulation to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in Part V of the Handbook.

1.5 Plain Language Principles

You should apply plain language principles when you prepare your disclosure including:

- using short sentences
- using definite everyday language
- using the active voice
- avoiding superfluous words
- organizing the document in clear, concise sections, paragraphs and sentences
- avoiding jargon
- using personal pronouns to speak directly to the reader
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- not relying on boilerplate wording
- avoiding abstract terms by using more concrete terms or examples
- avoiding multiple negatives
- using technical terms only when necessary and explaining those terms
- using charts, tables and examples where it makes disclosure easier to understand.

Question and answer bullet point formats are consistent with the disclosure requirements of the Regulation.

1.6 Signature and Certificates

Reporting issuers are not required by the Regulation to sign or certify documents filed under the Regulation. Certification requirements apply to some documents under *Regulation 52-109 respecting Certification of Disclosure in Companies' Annual and Interim Filings*. Whether or not a document is signed or certified, it is an offence under securities legislation to make a false or misleading statement in any required document.

1.7 Audit Committees

Reporting issuers are reminded that their audit committees must fulfill their responsibilities set out in other securities legislation. For example, the responsibilities of audit committees are set out in *Regulation 52-110 respecting Audit Committees*.

1.8 Acceptable Accounting Principles and Auditing Standards

An issuer filing any of the following items under the Regulation must comply with *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*:

(a) financial statements;

(b) an operating statement for an oil and gas property as referred to in section 8.10 of the Regulation;

(c) summarized financial information, including the aggregated amounts of assets, liabilities, revenue and profit or loss of a business as referred to in section 8.6 of the Regulation; or

(d) financial information derived from a credit support issuer's financial statements as referred to in section 13.4 of the Regulation.

Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards sets out, among other things, the use of accounting principles other than Canadian GAAP applicable to publicly accountable enterprises or auditing standards other than Canadian GAAS in preparing or auditing financial statements.

1.9 Ordinary Course of Business

Whether a contract has been entered into in the ordinary course of business is a question of fact. It must be considered in the context of the reporting issuer's business and the industry in which it operates.

1.10 Material Deficiencies

After filing a document under the Regulation, a reporting issuer may determine that the document was materially deficient in some respect and, as a result, the filing does not comply with the requirements of the Regulation. In this situation, the reporting issuer is expected to comply with the Regulation by filing an amended version of the materially deficient document.

PART 2 FOREIGN ISSUERS AND INVESTMENT FUNDS

2.1 Foreign Issuers

Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers provides relief for foreign reporting issuers from certain continuous disclosure and other obligations, including certain obligations contained in the Regulation.

2.2 Investment Funds

Section 2.1 of the Regulation states that the Regulation does not apply to an investment fund. Investment funds should look to securities legislation of the local jurisdiction including *Regulation 81-106 respecting Investment Fund Continuous Disclosure* to find the continuous disclosure requirements applicable to them.

PART 3 FINANCIAL STATEMENTS

3.1 Financial Year

(1) **Length of Financial Year** – For the purposes of the Regulation, unless otherwise expressly provided, references to a financial year apply irrespective of the length of that year. The first financial year of a reporting issuer commences on the date of its incorporation or organization and ends at the close of that year.

(2) **Non-Standard Year** – An issuer with a non-standard year should advise the regulator or securities regulatory authority how it calculates its interim and annual periods before its first financial statements are due under the Regulation.

3.2 Audit of Comparative Annual Financial Statements

Section 4.1 of the Regulation requires a reporting issuer to file annual financial statements that include comparative information for the immediately preceding financial year and that are audited. The auditor's report must cover both the most recently completed financial year and the comparative period, except if the issuer changed its auditor during the periods presented in the annual financial statements and the new auditor has not audited the comparative period. In this situation, the auditor's report would normally refer to the predecessor auditor's report unless the predecessor auditor's report on the prior period's annual financial statements is reissued with the financial statements. This is consistent with Canadian Auditing Standard 710 *Comparative Information – Corresponding Figures and Comparative Financial Statements*.

3.3 Filing Deadline for Annual Financial Statements and Auditor's Report

Section 4.2 of the Regulation sets out filing deadlines for annual financial statements. While section 4.2 of the Regulation does not address the auditor's report date, reporting issuers are encouraged to file their annual financial statements as soon as practicable after the date of the auditor's report. The delivery obligations set out in section 4.6 of the Regulation are not tied to the filing of the annual financial statements.

3.4 Auditor Involvement with an Interim Financial Report

(1) The board of directors of a reporting issuer, in discharging its responsibilities for ensuring the reliability of an interim financial report, should consider engaging an external auditor to carry out a review of the interim financial report.

(2) Subsection 4.3(3) of the Regulation requires a reporting issuer to disclose if an auditor has not performed a review of the interim financial report, to disclose if an auditor was unable to complete a review and why, and to file a written report from the auditor if the auditor has performed a review and expressed a reservation in the auditor's interim review report. No positive statement is required when an auditor has performed a review and provided an unqualified communication. If an auditor was engaged to perform a review on an interim financial report applying review standards set out in the Handbook, and the auditor was unable to complete the review, the issuer's disclosure of the reasons why the auditor was unable to complete the review would normally include a discussion of

(a) inadequate internal control;

(b) a limitation on the scope of the auditor's work; or

(c) the failure of management to provide the auditor with the written representations the auditor believes are necessary.

(3) If a reporting issuer's annual financial statements are audited in accordance with Canadian GAAS, the terms "review" and "interim review report" used in subsection 4.3(3) of the Regulation refer to the auditor's review of, and report on, an interim financial report applying standards for a review of an interim financial report by the auditor as set out in the Handbook. However, if the reporting issuer's financial statements are audited in accordance with auditing standards other than Canadian GAAS, the corresponding review standards should be applied.

3.5 Delivery of Financial Statements

Section 4.6 of the Regulation requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities. The registered holders and beneficial owners may use the request form to request a copy of the reporting issuer's annual financial statements and related MD&A, an interim financial report and related MD&A, or both. In addition, instructions to receive the annual financial statements and related MD&A also constitute instructions to include a paper copy of the information circular where the reporting issuer uses notice-and-access.

Reporting issuers are only required to deliver financial statements and MD&A to the person that requests them. As a result, if a beneficial owner requests financial statements and MD&A through its intermediary, the issuer is only required to deliver the requested documents to the intermediary.

Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* in respect of the financial statements. However, failing to return the request form will not override any beneficial owner standing instructions under *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* to receive a paper copy of the information circular if the reporting issuer is using notice-and-access to deliver proxy-related materials.

The Regulation does not prescribe when the request form must be sent, or how it must be returned to the reporting issuer.

3.6 Comparative Interim Financial Information After Becoming a Reporting Issuer

Section 4.7(4) of the Regulation provides that a reporting issuer does not have to provide comparative financial information when it first becomes a reporting issuer if it complies with specific requirements. Section 4.10(3) of the Regulation provides a similar exemption for comparative financial information for a reverse takeover acquirer. These exemptions may, for example, apply to an issuer that was, before becoming a reporting issuer or before the reverse takeover, a private entity and that is unable to prepare the comparative financial information because it is impracticable to do so. The test of whether "to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2)" is objective, rather than subjective. Securities regulatory authorities are of the view that a reporting issuer can rely on the exemption only if it has made every reasonable effort to present prior-period information on a basis consistent with subsection 4.3(2) of the Regulation. We are of the view that an issuer should only rely on this exemption in unusual circumstances and generally not related solely to the cost or the time involved in preparing the financial statements.

3.7 Change in Year-End

Appendix A to this Policy Statement is a chart outlining the financial statement filing requirements under section 4.8 of the Regulation if a reporting issuer changes its financial year-end.

3.8 Reverse Takeovers

(1) Following a reverse takeover, although the reverse takeover acquiree is the reporting issuer, from an accounting perspective, the financial statements will be those of the reverse takeover acquirer. Those financial statements must be prepared and filed as if the reverse takeover acquirer had always been the reporting issuer.

(2) The reverse takeover acquiree must file its own financial statements required by sections 4.1 and 4.3 and the related MD&A for all interim and annual periods ending before the date of the reverse takeover, even if the filing deadline for those financial statements is after the date of the reverse takeover.

3.9 Change in Corporate Structure

(1) Section 4.9 of the Regulation requires a reporting issuer to file a notice if the issuer has been party to certain transactions. The reporting issuer may satisfy this requirement by filing a copy of its material change report or news release, provided that

(a) the material change report or news release contains all the information required in the notice; and

(b) the reporting issuer files the material change report or news release with the securities regulatory authority or regulator

(i) under the Change in Corporate Structure category on SEDAR, or

(ii) if the issuer is not an electronic filer, as a notice under section 4.9.

(2) If the transaction was a reverse takeover, the notice should state that fact and who the reverse takeover acquirer was.

(3) Under paragraph 4.9(h) of the Regulation, the issuer must state the periods of the interim financial reports and the annual financial statements it has to file for its first financial year. Issuers should explain how they determined the periods, particularly if section 4.7 of the Regulation applies.

3.10 Change of Auditor

The term “disagreement” defined in subsection 4.11(1) should be interpreted broadly. A disagreement may not involve an argument, but rather, a mere difference of opinion. Also, where a difference of opinion occurs that meets the criteria in item (b) of the definition of “disagreement”, and the issuer reluctantly accepts the auditor’s position in order to obtain an unqualified report, a reportable disagreement may still exist. The subsequent rendering of an unqualified report does not, by itself, remove the necessity for reporting a disagreement.

Subsection 4.11(5) of the Regulation requires a reporting issuer, upon a termination or resignation of its auditor, to prepare a change of auditor notice, have the audit committee or board of directors approve the notice, file the reporting package with the regulator or securities regulatory authority in each jurisdiction where it is a reporting issuer, and if there are any reportable events, issue and file a news release describing the information in the reporting package. Subsection 4.11(6) of the Regulation requires the reporting issuer to perform these procedures upon an appointment of a successor auditor. If a termination or resignation of a ~~former~~predecessor auditor and appointment of a successor auditor occur

within a short period of time, it may be possible for a reporting issuer to perform the procedures described above required by both subsections 4.11(5) and 4.11(6) concurrently and meet the timing requirements set out in those subsections. In other words, the reporting issuer would prepare only one comprehensive notice and reporting package.

PART 4 DISCLOSURE AND PRESENTATION OF FINANCIAL INFORMATION

4.1 Disclosure of Financial Information

(1) Subsection 4.5(1) of the Regulation requires that annual financial statements be approved by the board of directors before filing. Subsections 4.5(2) and 4.5(3) of the Regulation require that each interim financial report be approved by the board of directors or by the company's audit committee before filing. We believe that extracting information from financial statements that have not been approved as required by those provisions and releasing that information to the marketplace in a news release is inconsistent with the prior approval requirement. Also see National Policy 51-201 *Disclosure Standards*.

(2) Reporting issuers that intend to disclose financial information to the marketplace in a news release should consult *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*. We believe that disclosing financial information in a news release without disclosing the accounting principles used is inconsistent with the requirement in *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* to identify the accounting principles used in the financial statements.

4.2 Non-GAAP Financial Measures

Reporting issuers that intend to publish financial measures other than those prescribed by Canadian GAAP applicable to publicly accountable enterprises should refer to CSA Staff Notice 52-306 *Non-GAAP Financial Measures* for a discussion of staff expectations concerning the use of non-GAAP measures.

4.3 Presentation of Financial Information

Canadian GAAP applicable to publicly accountable enterprises provides an issuer two alternatives in presenting its income: (a) in one single statement of comprehensive income, or (b) in a statement of comprehensive income with a separate income statement. If an issuer presents its income using the second alternative, both statements must be filed to satisfy the requirements of this Regulation. (See subsections 4.1(3) and 4.3(2.1) of the Regulation).

PART 4A FORWARD-LOOKING INFORMATION

4A.1 Application

Section 4A.1 of the Regulation indicates that Part 4A applies to forward-looking information that is disclosed by a reporting issuer other than forward-looking information contained in oral statements. Reporting issuers should consider broadly the various instances of forward-looking information made available to the public in considering the scope of forward-looking information that is disclosed. This includes, but is not limited to:

- Information that a reporting issuer files with securities regulators
- Information contained in news releases issued by a reporting issuer
- Information published on a reporting issuer's website
- Information published in marketing materials or other similar materials prepared by a reporting issuer or distributed to the public by a reporting issuer.

4A.2 Reasonable Basis

Section 4A.2 of the Regulation requires a reporting issuer to have a reasonable basis for any forward-looking information it discloses. When interpreting "reasonable basis", reporting issuers should consider:

(a) the reasonableness of the assumptions underlying the forward-looking information; and

(b) the process followed in preparing and reviewing forward-looking information.

4A.3 Material Forward-Looking Information

Section 4A.3 and section 5.8 of the Regulation require a reporting issuer to include specified disclosure in material forward-looking information it discloses. Reporting issuers should exercise judgement when determining whether information is material. If a reasonable investor's decision whether or not to buy, sell or hold securities of the reporting issuer would be influenced or changed if the information were omitted or misstated, then the information is likely material.

Section 1.1 contains definitions of the terms "financial outlook" and "FOFI"." We consider FOFI and most financial outlooks to be material forward-looking information. Examples of financial outlooks include expected revenue, profit or loss, earnings per share and R&D spending. A financial outlook relating to profit or loss is commonly referred to as "earnings guidance"."

An example of forward-looking information that is not a financial outlook or FOFI would be an estimate of future store openings by an issuer in the retail industry. This type of information may or may not be material, depending on whether a reasonable investor's decision whether or not to buy, sell or hold securities of that issuer would be influenced or changed if the information were omitted or misstated.

4A.4 Location of Disclosure

Section 4A.3 of the Regulation requires that any material forward-looking information include specified disclosure. This disclosure should be presented in a manner that allows an investor who reads the document or other material containing the forward-looking information to be able to readily:

(a) understand that the forward-looking information is being provided in the document or other material;

(b) identify the forward-looking information; and

(c) inform himself or herself of the material assumptions underlying the forward-looking information and the material risk factors associated with the forward-looking information.

4A.5 Disclosure of Cautionary Language and Material Risk Factors

(1) Paragraph 4A.3(b) of the Regulation requires a reporting issuer to accompany any material forward-looking information with disclosure that cautions users that actual results may vary from the forward-looking information and identifies material risk factors that could cause material variation. The material risk factors identified in the cautionary language should be relevant to the forward-looking information and the disclosure should not be boilerplate in nature.

(2) The cautionary statements required by paragraph 4A.3(b) of the Regulation should identify significant and reasonably foreseeable factors that could reasonably be expected to

cause results to differ materially from those projected in the material forward-looking statement. Reporting issuers should not interpret this as requiring a reporting issuer to anticipate and discuss everything that could conceivably cause results to differ.

4A.6 Disclosure of Material Factors or Assumptions

Paragraph 4A.3(c) of the Regulation requires a reporting issuer to disclose the material factors or assumptions used to develop material forward-looking information. The factors or assumptions should be relevant to the forward-looking information. Disclosure of material factors or assumptions does not require an exhaustive statement of every factor or assumption applied – a materiality standard applies.

4A.7 Date of Assumptions

Management of a reporting issuer that discloses material forward-looking information should satisfy itself that the assumptions are appropriate as of the date management discloses the material forward-looking information even though the material forward-looking information may have been prepared at an earlier time, and may be based on information accumulated over a period of time.

4A.8 Time Period

Paragraph 4B.2(2)(a) of the Regulation requires a reporting issuer to limit the period covered by FOFI or a financial outlook to a period for which the information can be reasonably estimated. In many cases that time period will not go beyond the end of the reporting issuer's next fiscal year. Some of the factors a reporting issuer should consider include the reporting issuer's ability to make appropriate assumptions, the nature of the reporting issuer's industry, and the reporting issuer's operating cycle.

~~**4A.9 *(Repealed).***~~

PART 5 MD&A

5.1 Delivery of MD&A

Reporting issuers are not required to send a request form to their securityholders under Part 5 of the Regulation. This is because the request form that must be delivered under section 4.6 of the Regulation relates to both a reporting issuer's financial statements, and the MD&A applicable to those financial statements.

5.2 Additional Information for Venture Issuers Without Significant Revenue

Section 5.3 of the Regulation requires certain venture issuers to provide in their annual or interim MD&A (unless the information is included in their annual financial statements or interim financial report), a breakdown of material costs whether expensed or recognized as assets. A component of cost is generally considered to be a material component if it exceeds the greater of

(a) 20% of the total amount of the class; and

(b) $25,000.

5.3 Disclosure of Outstanding Share Data

Section 5.4 of the Regulation requires disclosure of information relating to the outstanding securities of the reporting issuer as of the latest practicable date. The "latest practicable date" should be current, as close as possible, to the date of filing of the MD&A. Disclosing the number of securities outstanding at the period end is generally not sufficient to meet this requirement.

5.4 Additional Disclosure for Equity Investees

Section 5.7 of the Regulation requires issuers with significant equity investees to provide in their annual or interim MD&A (unless the information is included in their annual financial statements or interim financial report), summarized information about the equity investee. Generally, we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Part 8 using the financial statements of the equity investee and the issuer as at the issuer's financial year -end.

5.5 Previously ~~disclosed material forward-looking information~~ Disclosed Material Forward-Looking Information

(1) Subsection 5.8(2) of the Regulation requires a reporting issuer to discuss certain events and circumstances that occurred during the period to which its MD&A relates. The events to be discussed are those that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete. This discussion is only required if the reporting issuer previously disclosed the forward-looking information to the public. Subsection 5.8(2) also requires a reporting issuer to discuss the expected differences.

For example, assume that a reporting issuer published FOFI for the current year assuming no change in the prime interest rate, but by the end of the second quarter the prime interest rate went up by 2%. In its MD&A for the second quarter, the reporting issuer should discuss the interest rate increase and its expected effect on results compared to those indicated in the FOFI.

A reporting issuer should consider whether the events and circumstances that trigger MD&A disclosure under subsection 5.8(2) of the Regulation might also trigger material change reporting requirements under Part 7 of the Regulation.

(2) Subsection 5.8(4) of the Regulation requires a reporting issuer to disclose and discuss material differences between actual results for the annual or interim period to which its MD&A relates and any FOFI or financial outlook for that period that the reporting issuer previously disclosed to the public. A reporting issuer should disclose and discuss material differences for material individual items included in the FOFI or financial outlook, including assumptions.

For example, if the actual dollar amount of revenue approximates forecasted revenue but the sales mix or sales volume differs materially from what the reporting issuer expected, the reporting issuer should explain the differences.

(3) Subsection 5.8(5) of the Regulation addresses a reporting issuer's decision to withdraw previously disclosed material forward-looking information. The subsection requires the reporting issuer to disclose that decision and discuss the events and circumstances that led the reporting issuer to the decision to withdraw the material forward-looking information, including a discussion of the assumptions included in the material forward-looking information that are no longer valid. A reporting issuer should consider whether the events and circumstances that trigger MD&A disclosure under subsection 5.8(5) of the Regulation might also trigger material change reporting requirements under Part 7 of the Regulation. We encourage all reporting issuers to promptly communicate to the market a decision to withdraw material forward-looking information, even if the material change reporting requirements are not triggered.

PART 6 AIF

6.1 Additional and Supporting Documentation

Any material incorporated by reference in an AIF is required to be filed with the AIF unless the material has been previously filed. When a reporting issuer using SEDAR files a previously unfiled document with its AIF, the reporting issuer should ensure that the

document is filed under the appropriate SEDAR filing type and document type specifically applicable to the document, rather than generic type “Documents Incorporated by Reference”. For example, a reporting issuer that has incorporated by reference an information circular in its AIF and has not previously filed the circular should file the circular under the “Management Proxy Materials” filing subtype and the “Management proxy/information circular” document type.

If the reporting issuer incorporates a document, or a portion of a document, by reference into its AIF, and that document, or that portion of the document, as applicable, incorporates another document by reference, the issuer must also file the underlying document with its AIF.

6.2 AIF Disclosure of Asset-backed Securities

(1) **Factors to consider** – Issuers that have distributed asset-backed securities under a prospectus are required to provide disclosure in their AIF under section 5.3 of Form 51-102F2. Issuers of asset-backed securities must determine which other prescribed disclosure is applicable and ought to be included in the AIF. Disclosure for a special purpose issuer of asset-backed securities will generally explain

- the nature, performance and servicing of the underlying pool of financial assets;

- the structure of the securities and dedicated cash flows; and

- any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment.

The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

An issuer of asset-backed securities should consider the following factors when preparing its AIF:

1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to securityholders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.

2. Disclosure about the business and affairs of the issuer should relate to the financial assets underlying the asset-backed securities.

3. Disclosure about the originator or the seller of the underlying financial assets will often be relevant to investors in the asset-backed securities particularly where the originator or seller has an on-going involvement with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor’s investment decision.

To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirement applicable to the originator or

seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

Financial information respecting the pool of assets to be described and analyzed in the AIF will consist of information commonly set out in servicing reports prepared to describe the performance of the pool and the specific allocations of profit, loss and cash flows applicable to outstanding asset-backed securities made during the relevant period.

(2) **Underlying pool of assets** – Paragraph 5.3(2)(a) of Form 51-102F2 requires issuers of asset-backed securities that were distributed by way of prospectus to include financial disclosure relating to the composition of the underlying pool of financial assets, the cash flows from which service the asset-backed securities. Disclosure respecting the composition of the pool will vary depending upon the nature and number of the underlying financial assets. For example, in a geographically dispersed pool of financial assets, it may be appropriate to provide a summary disclosure based on the location of obligors. In the context of a revolving pool, it may be appropriate to provide details relating to aggregate outstanding balances during a year to illustrate historical fluctuations in asset origination due, for example, to seasonality. In pools of consumer debt obligations, it may be appropriate to provide a breakdown within ranges of amounts owing by obligors in order to illustrate limits on available credit extended.

PART 7 MATERIAL CHANGE REPORTS

7.1 Publication of News Release

Section 7.1 of the Regulation requires reporting issuers to immediately issue and file a news release disclosing the nature of a material change. This requirement is substantively the same as the material change reporting requirements in some securities legislation for the news release to be issued *forthwith*.

PART 8 BUSINESS ACQUISITION REPORTS

8.1 Obligations to File a Business Acquisition Report

(1) **Filing of a Material Change Report** – The requirement in the Regulation for a reporting issuer to file a business acquisition report is in addition to the reporting issuer's obligation to file a material change report, if the significant acquisition constitutes a material change.

(2) **Filing of a Business Acquisition Report by SEC Issuers** – If a document or a series of documents that an SEC issuer files with or furnishes to the SEC in connection with a business acquisition contains all of the information, including financial statements, required to be included in a business acquisition report under the Regulation, the SEC issuer may file a copy of the documents as its business acquisition report.

(3) **Financial Statement Disclosure of Significant Acquisitions** – Reporting issuers are reminded that *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* prescribes the accounting principles and auditing standards that must be used to prepare and audit the financial statements required by Part 8 of the Regulation.

(4) **Acquisition of a Business** – A reporting issuer that has made a significant acquisition must include in its business acquisition report certain financial statements of each business acquired. The term "business" should be evaluated in light of the facts and circumstances involved. We generally consider that a separate entity, a subsidiary or a division is a business and that in certain circumstances a smaller component of a company may also be a business, whether or not the business previously prepared financial statements. In determining whether an acquisition constitutes the acquisition of a business, a reporting issuer should consider the continuity of business operations, including the following factors:

(a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and

(b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the reporting issuer instead of remaining with the vendor after the acquisition.

(5) **Acquisition by a Subsidiary** – If a reporting issuer's subsidiary, which is also a reporting issuer, has acquired a business, both the parent and subsidiary must test the significance of the acquisition. Even if the subsidiary files a business acquisition report, the parent must also file a business acquisition report if the acquisition is also significant for the parent.

8.2 Significance Tests

(1) **Nature of Significance Tests** – Subsection 8.3(2) of the Regulation sets out the required significance tests for determining whether an acquisition of a business by a reporting issuer is a "significant acquisition". The first test measures the assets of the acquired business against the assets of the reporting issuer. The second test measures the reporting issuer's investments in and advances to the acquired business against the assets of the reporting issuer. The third test measures the specified profit or loss of the acquired business against the specified profit or loss of the reporting issuer. If any one of these three tests is satisfied at the prescribed level, the acquisition is considered "significant" to the reporting issuer. The test must be applied as at the acquisition date using the most recent audited annual financial statements of the reporting issuer and the business. These tests are similar to requirements of the SEC and provide issuers with certainty that if an acquisition is not significant at the acquisition date, then no business acquisition report will be required to be filed.

(2) **Business Using Accounting Principles Other Than Those Used by the Reporting Issuer** – Subsection 8.3(13) of the Regulation provides that, for the purposes of calculating the significance tests, the amounts used for the business or related businesses must, subject to subsection 8.3(13.1) of the Regulation, be based on the issuer's GAAP, and translated into the same presentation currency as that used in the reporting issuer's financial statements. This means that in some cases the amounts must be converted to the issuer's GAAP and translated into the same presentation currency as that used in the reporting issuer's financial statements.

Subsection 8.3(13.1) of the Regulation exempts venture issuers from the requirement in paragraph 8.3(13)(a) that, for the purposes of calculating the significance tests, the amounts used for the business or related businesses must be based on the issuer's GAAP, but only where the financial statements for the business or related businesses were prepared in accordance with Canadian GAAP applicable to private enterprises and certain other conditions are met.

Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards permits financial statements for a business or related businesses to be prepared in accordance with U.S. GAAP without reconciliation to the issuer's GAAP. This does not impact the application of paragraph 8.3(13)(a) of the Regulation. Thus, if the issuer's GAAP is not U.S. GAAP, paragraph 8.3(13)(a) of the Regulation requires, for the purposes of calculating the significance tests, that the amounts used for the business or related businesses be based on the issuer's GAAP.

Paragraph 8.3(13)(b) of the Regulation applies to all issuers and requires, for the purpose of calculating the significance tests, that the amounts used for the business or related businesses be translated into the same presentation currency as that used in the reporting issuer's financial statements.

(3) **Acquisition of a Previously Unaudited Business** – Subsections 8.3(2) and 8.3(4) of the Regulation require the significance of an acquisition to be determined using the most

recent audited annual financial statements of the reporting issuer and the business acquired. However, if the annual financial statements of the business or related businesses for the most recently completed financial year were not audited, subsection 8.3(14) of the Regulation permits use of the unaudited annual financial statements for the purpose of applying the significance tests. If the acquisition is determined to be significant, then the annual financial statements required by subsection 8.4(1) of the Regulation must be audited.

(3.1) **Application of Significance Tests for Business Combinations Achieved in Stages** – IFRS 3 *Business Combinations*, requires that when a business combination is achieved in stages the acquirer's previously held equity interest in the acquiree is remeasured at its acquisition date fair value with any resulting gain or loss recognized in profit or loss. The remeasurement of the previously held equity interest should not be included in the asset or the investment test and the resulting gain or loss from remeasurement should not be included in the profit or loss test. (See subsection 8.3(4.1) of the Regulation).

(4) **Application of Investment Test for Significance of an Acquisition** – One of the significance tests set out in subsections 8.3(2) and (4) of the Regulation is whether the reporting issuer's consolidated investments in and advances to the business or related businesses exceed a specified percentage of the consolidated assets of the reporting issuer. In applying this test, the "investments in" the business should be determined using the consideration transferred, measured in accordance with the issuer's GAAP, including any contingent consideration. In addition, any payments made in connection with the acquisition which would not constitute consideration transferred but which would not have been paid unless the acquisition had occurred, should be considered part of investments in and advances to the business for the purpose of applying the significance tests. Examples of such payments include loans, royalty agreements, lease agreements and agreements to provide a pre-determined amount of future services. For purposes of the investment test, "consideration transferred" should be adjusted to exclude the carrying value of assets transferred by the reporting issuer to the business or related businesses that will remain with the business or related businesses after the acquisition.

(5) **Application of the Significance Tests When the Financial Year Ends are Non-Coterminous** – Subsection 8.3(2) of the Regulation requires the significance of a business acquisition to be determined using the most recent audited annual financial statements of both the reporting issuer and the acquired business. For the purpose of applying the tests under this subsection, the year-ends of the reporting issuer and the acquired business need not be coterminous. Accordingly, neither the audited annual financial statements of the reporting issuer nor those of the business should be adjusted for the purposes of applying the significance tests. However, if the acquisition of a business is determined to be significant and pro forma income statements are required by subsection 8.4(5) of the Regulation and, if the business' year-end is more than 93 days before the reporting issuer's year-end, the business' reporting period required under paragraph 8.4(7)(c) of the Regulation should be adjusted to reduce the gap to 93 days or less. Refer to subsection 8.7(3) of this Policy Statement for further guidance.

8.3 Optional Significance Tests

(1) **Optional Significance Tests** – Decrease in Significance – If an acquisition is determined under subsection 8.3(2) of the Regulation to be significant, a reporting issuer has the option under subsections 8.3(3) and (4) of the Regulation of applying optional significance tests using more recent financial statements than those used for the required significance tests in subsection 8.3(2). The optional significance tests under subsections 8.3(3) and (4) have been included to recognize the possible growth of a reporting issuer between the date of its most recently completed year-end and the date of filing a business acquisition report and the corresponding potential decline in significance of the acquisition to the reporting issuer.

(2) **Availability of the Optional Significance Tests** – The optional significance tests permitted under subsections 8.3(4) and (6) of the Regulation are available to all reporting issuers. However, depending on how or when a reporting issuer integrates the acquired business into its existing operations and the nature of post-acquisition financial records it maintains for the acquired business, it may not be possible for a reporting issuer to apply the optional significance test under subsection 8.3(6).

(3) **Optional Investment Test** – For the purpose of applying the optional investment test under paragraph 8.3(4)(b) of the Regulation, the reporting issuer's investments in and advances to the business should be as at the acquisition date and not as at the date of the reporting issuer's financial statements used to determine its consolidated assets for the optional investment test.

(4) **Optional Profit or Loss Test based on Pro Forma Information** – A reporting issuer may apply the optional profit or loss test in subsection 8.3(11.1) of the Regulation based on more recent pro forma consolidated specified profit or loss. By permitting reporting issuers to base the optional profit or loss test on pro forma consolidated specified profit or loss, this test recognizes the possible growth of a reporting issuer as a result of acquisitions completed between its most recently completed year end and the date of filing a business acquisition report and the corresponding potential decline in significance of the acquisition to the reporting issuer.

8.4 Financial Statements of Related Businesses

Subsection 8.4(8) of the Regulation requires that if a reporting issuer includes in its business acquisition report financial statements for more than one related business, separate financial statements must be presented for each business except for the periods during which the businesses were under common control or management, in which case the reporting issuer may present the financial statements on a combined basis. Although one or more of the related businesses may be insignificant relative to the others, separate financial statements of each business for the same number of periods required must be presented. Relief from the requirement to include financial statements of the least significant related business or businesses may be granted depending on the facts and circumstances.

8.5 Application of the Significance Tests for Multiple Investments in the Same Business

Subsection 8.3(11) of the Regulation explains how the significance test should be applied when the reporting issuer has made multiple investments in the same business. If the reporting issuer acquired an interest in the business in a previous year and that interest is reflected in the most recent audited annual financial statements of the reporting issuer filed, then the issuer should determine the significance of only the incremental investment in the business which is not reflected in the reporting issuer's most recent audited annual financial statements filed.

8.6 Preparation of Divisional and Carve-out Financial Statements

(1) **Interpretations** – In this section of this Policy Statement, unless otherwise stated,

(a) a reference to "a business" includes a division or some lesser component of another business acquired by a reporting issuer that constitutes a significant acquisition; and

(b) the term "parent" refers to the vendor from whom the reporting issuer purchased a business.

(2) **Acquisition of a Division** – As discussed in subsection 8.1(4) of this Policy Statement, the acquisition of a division of a business and in certain circumstances, a lesser component of a person , may constitute an acquisition of a business for purposes of the Regulation, whether or not the subject of the acquisition previously prepared financial statements. To determine the significance of the acquisition and comply with the

requirements for financial statements in a business acquisition report under Part 8 of the Regulation, financial statements for the business must be prepared. This section provides guidance on preparing these financial statements.

(3) **Divisional and Carve-Out Financial Statements** – The terms "divisional" and "carve-out" financial statements are often used interchangeably although a distinction is possible. Some companies maintain separate financial records and financial statements for a business activity or unit that is operated as a division. Financial statements prepared from these financial records are often referred to as "divisional" financial statements. In other circumstances, no separate financial records for a business activity are maintained; they are simply consolidated with the parent's records. In these cases, if the parent's financial records are sufficiently detailed, it is possible to extract or "carve-out" the information specific to the business activity in order to prepare separate financial statements of that business. Financial statements prepared in this manner are commonly referred to as "carve-out" financial statements. The guidance in this section applies to the preparation of both divisional and carve-out financial statements unless otherwise stated.

(4) **Preparation of Divisional and Carve-Out Financial Statements**

(a) When complete financial records of the business acquired have been maintained, those records should be used for preparing and auditing the financial statements of the business. For the purposes of this section, it is presumed that the parent maintains separate financial records for its divisions.

(b) When complete financial records of the business acquired do not exist, carve-out financial statements must be prepared in accordance with subsection 3.11(6) of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*.

(5) **Statements of Assets Acquired, Liabilities Assumed and Statements of Operations** – When it is impracticable to prepare carve-out financial statements of a business, a reporting issuer may be required to include in its business acquisition report an audited statement of assets acquired and liabilities assumed and a statement of operations of the business. The statement of operations should exclude only those indirect operating costs not directly attributable to the business, such as corporate overhead. If indirect operating costs were previously allocated to the business and there is a reasonable basis of allocation, they should not be excluded.

8.7 Preparation of Pro Forma Financial Statements Giving Effect to Significant Acquisitions

(1) **Objective and Basis of Preparation** – The objective of pro forma financial statements is to illustrate the impact of a transaction on a reporting issuer's financial position and financial performance by adjusting the historical financial statements of the reporting issuer to give effect to the transaction. Accordingly, the pro forma financial statements should be prepared on the basis of the reporting issuer's financial statements as already filed. No adjustment should be made to eliminate discontinued operations.

(2) **Pro Forma Statement of Financial Position** – Subsection 8.4(5) of the Regulation does not require a pro forma statement of financial position to be prepared to give effect to significant acquisitions that are reflected in the reporting issuer's most recent annual or interim statement of financial position filed under the Regulation.

(3) **Non-coterminous Year-ends** – Where the financial year-end of a business differs from the reporting issuer's year-end by more than 93 days, paragraph 8.4(7)(c) requires a statement of comprehensive income for the business to be constructed for a period of 12 consecutive months. For example, if the constructed reporting period is 12 months and ends on June 30, the 12 months should commence on July 1 of the immediately preceding year; it should not begin on March 1st of the immediately preceding year with three of the following 15 months omitted, such as the period from October 1 to December 31, since this would not be a consecutive 12 month period.

(4) **Effective Date of Adjustments** – For the pro forma income statements included in a business acquisition report, the acquisition and the adjustments should be computed as if the acquisition had occurred at the beginning of the reporting issuer's most recently completed financial year and carried through the most recent interim period presented, if any. However, one exception to the preceding is that adjustments related to the allocation of the purchase price, including the amortization of fair value increments and intangibles, should be based on the acquisition date amounts of assets acquired and liabilities assumed as if the acquisition occurred on the date of the reporting issuer's most recent statement of financial position filed.

(5) **Acceptable Adjustments** – Pro forma adjustments are generally limited to the following two types of adjustments required by paragraph 8.4(7)(b) of the Regulation:

(a) those directly attributable to the specific acquisition transaction for which there are firm commitments and for which the complete financial effects are objectively determinable, and

(b) adjustments to conform amounts for the business or related businesses to the issuer's accounting policies.

If financial statements for a business or related businesses are prepared in accordance with accounting principles that differ from the issuer's GAAP and the financial statements do not include a reconciliation to the issuer's GAAP, pro forma adjustments as described in item (b) above will often be necessary. For example, financial statements for a business or related businesses may be prepared in accordance with U.S. GAAP, or in the case of a venture issuer, in accordance with Canadian GAAP applicable to private enterprises, in each case without a reconciliation to the issuer's GAAP. Even if financial statements for a business or related businesses are prepared in accordance with the issuer's GAAP, pro forma adjustments as described in item (b) may be necessary to conform amounts for the business or related businesses to the issuer's accounting policies, including, for example, the issuer's revenue recognition policy where the revenue recognition policy of the business or related businesses differs from the issuer's policy.

If the presentation currency used in financial statements for a business or related businesses differs from the presentation currency used in the issuer's financial statements, the pro forma financial statements must present amounts for the business or related businesses in the presentation currency of the issuer's financial statements. The pro forma financial statements should explain any adjustments to conform presentation currency.

(6) **Multiple Acquisitions** – If a reporting issuer has completed multiple acquisitions then, under subsection 8.4(5) of the Regulation, the pro forma financial statements must give effect to each acquisition completed since the beginning of the most recently completed financial year. The pro forma adjustments may be grouped by line item on the face of the pro forma financial statements provided the details for each transaction are disclosed in the notes.

(7) **Pro Forma Financial Statements Based on an Earlier Interim Financial Report** – The pro forma financial statements are prepared on the basis of the financial statements included in the business acquisition report. As a result, if the reporting issuer relies on subsection 8.4(4) of the Regulation to include financial statements for an earlier interim period of the acquired business than would otherwise be required under subsection (3), the issuer uses its comparable interim period to prepare the pro forma financial statements.

(8) **Indirect Acquisitions** – Under the securities legislation of certain jurisdictions, it is generally an offence to make a statement in a document that is required to be filed under securities legislation, and that does not state a fact that is necessary to make the statement not misleading. When a reporting issuer acquires a business that has itself recently acquired another business or related businesses (an "indirect acquisition"), the reporting issuer should consider whether it needs to provide disclosure of the indirect acquisition in the

business acquisition report, including historical financial statements, and whether the omission of these financial statements would cause the business acquisition report to be misleading, untrue or substantially incomplete. In making this determination, the reporting issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 8.3 of the Regulation when the reporting issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business, and

- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the reporting issuer is acquiring.

(9) **Pro Forma Financial Statements where Financial Statements of a Business or Related Businesses are Prepared using Accounting Principles that Differ from the Issuer's GAAP** — Section 3.11 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* permits reporting issuers to include in a business acquisition report financial statements of a business or related businesses prepared in accordance with U.S. GAAP and without a reconciliation to the issuer's GAAP. That section also permits, subject to specified conditions, a venture issuer to include in a business acquisition report financial statements of a business or related businesses prepared in accordance with Canadian GAAP applicable to private enterprises and without a reconciliation to the issuer's GAAP. However, section 3.14 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* requires that pro forma financial statements be presented using accounting principles that are permitted by the issuer's GAAP and would apply to the information presented in the pro forma financial statements if that information were included in the issuer's financial statements for the same time period as that of the pro forma financial statements. As well, subsection 8.4(7) of the Regulation requires pro forma financial statements to include a description of the underlying assumptions on which the pro forma financial statements are prepared, cross-referenced to each related pro forma adjustment. Therefore, the pro forma financial statements must describe the adjustments presented in the pro forma income statement relating to the business or related businesses to adjust amounts to the issuer's GAAP and accounting policies.

The pro forma statement of financial position should present the following information:

(i) the statement of financial position of the reporting issuer;

(ii) the statement of financial position of the business or related businesses;

(iii) pro forma adjustments attributable to each significant acquisition that reflect the reporting issuer's accounting for the acquisition and include new values for the business' assets and liabilities; and

(iv) a pro forma statement of financial position combining items (i) through (iii).

The pro forma income statement should present the following information:

(i) the income statement of the reporting issuer;

(ii) the income statement of the business or related businesses;

(iii) pro forma adjustments attributable to each significant acquisition and other adjustments relating to the business or related businesses to conform amounts to the issuer's GAAP and accounting policies; and

(iv) a pro forma income statement combining items (i) through (iii) .

8.7.1 Financial Year End Changed

If the transition year of the acquired business is less than 9 months, the issuer may be required to include financial statements for the transition year of the acquired business in addition to financial statements for the two financial years required by subsection 8.4(1) of the Regulation. The transition year may or may not be audited, but at minimum, the most recently completed financial year must be audited in accordance with subsection 8.4(2).

8.8 Relief from the Requirement to Audit Operating Statements of an Oil and Gas Property

The securities regulatory authority or regulator may exempt a reporting issuer from the requirement to audit the operating statements referred to in section 8.10 of the Regulation if, during the 12 months preceding the acquisition date, the average daily production of the property is less than 20% of the total average daily production of the vendor for the same or similar periods, and

(a) the reporting issuer provides written submissions prior to the deadline for filing the business acquisition report which establishes to the satisfaction of the appropriate regulator, that despite reasonable efforts during the purchase negotiations, the reporting issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property;

(b) the purchase agreement includes representations and warranties by the vendor that the amounts presented in the operating statement agree to the vendor's books and records; and

(c) the reporting issuer discloses in the business acquisition report its inability to obtain an audited operating statement, the reasons therefor, the fact that the representations and warranties referred to in paragraph (b) have been obtained, and a statement that the results presented in the operating statement may have been materially different if the statement had been audited.

For the purpose of determining average daily production when production includes both oil and natural gas, production may be expressed in barrels of oil equivalent using the conversion ratio of 6000 cubic feet of gas to one barrel of oil.

8.9 Exemptions From Requirement for Financial Statements in a Business Acquisition Report

(1) **Exemptions** – We are of the view that relief from the financial statement requirements of Part 8 of the Regulation should be granted only in unusual circumstances and generally not related solely to cost or the time involved in preparing and auditing the financial statements. Reporting issuers seeking relief from the financial statement or audit requirements of Part 8 must apply for the relief before the filing deadline for the business acquisition report and before the closing date of the transaction, if applicable. Reporting issuers are reminded that many securities regulatory authorities and regulators do not have the power to grant retroactive relief.

(2) **Conditions to Exemptions** – If relief is granted from the requirements of Part 8 of the Regulation to include audited annual financial statements of an acquired business or related businesses, conditions will likely be imposed, such as a requirement to include audited divisional or partial statements of comprehensive income or divisional statements of cash flows, or an audited statement of operations.

(3) **Exemption from Comparatives if Financial Statements Not Previously Prepared** – Section 8.9 of the Regulation provides that a reporting issuer does not have to provide comparative financial information for an acquired business in a business acquisition report if it complies with specific requirements. This exemption may, for example, apply to an acquired business that was, before the acquisition, a private entity and

that the reporting issuer is unable to prepare the comparative financial information for because it is impracticable to do so.

(4) Relief may be granted from the requirement to include certain financial statements of an acquired business or related businesses in a business acquisition report in some situations that may include the following:

(a) the business's historical accounting records have been destroyed and cannot be reconstructed. In this case, as a condition of granting the exemption, the reporting issuer may be requested by the securities regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the business acquisition report is required to be filed, that the reporting issuer made every reasonable effort to obtain copies of, or reconstruct the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful; and

(ii) disclose in the business acquisition report the fact that the historical accounting records have been destroyed and cannot be reconstructed; or

(b) the business has recently emerged from bankruptcy and current management of the business and the reporting issuer is denied access to the historical accounting records necessary to audit the financial statements. In this case, as a condition of granting the exemption, the reporting issuer may be requested by the securities regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the business acquisition report is required to be filed that the reporting issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to prepare and audit the financial statements but that such efforts were unsuccessful; and

(ii) disclose in the business acquisition report the fact that the business has recently emerged from bankruptcy and current management of the business and the reporting issuer are denied access to the historical accounting records.

8.10 Audits and Auditor Review of Financial Statements of an Acquired Business

(1) **Unaudited Comparatives in Annual Financial Statements of an Acquired Business** – Subsection 8.4(1) requires a reporting issuer to include comparative financial information of the business in the business acquisition report. This comparative financial information may be unaudited.

(2) **Auditor Review of an Interim Financial Report of an Acquired Business** – An issuer does not have to engage an auditor to review the interim financial report of an acquired business included in a business acquisition report. However, if the issuer later incorporates the business acquisition report into a prospectus, the interim financial report will have to be reviewed in accordance with the requirements relating to financial statements included in a prospectus.

PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS

9.1 Beneficial Owners of Securities

Reporting issuers are reminded that *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* prescribes certain procedures relating to the delivery of materials, including forms of proxy, to beneficial owners of securities and related matters. It also prescribes certain disclosure that must be included in the proxy-related materials sent to beneficial owners.

9.2 Prospectus-level Disclosure in Certain Information Circulars

Section 14.2 of Form 51-102F5 *Information Circular* requires an issuer to provide prospectus-level disclosure about certain entities if securityholder approval is required in respect of a significant acquisition under which securities of the acquired business are being exchanged for the issuer's securities or in respect of a restructuring transaction under which securities are to be changed, exchanged, issued or distributed.

Section 14.2 provides that the disclosure must be the disclosure (including financial statements) prescribed by the form of prospectus that the entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction.

For example, if disclosure was required in an information circular of Company A for both Company A (an issuer that was only eligible to file a long form prospectus) and Company B (an issuer that was eligible to file a short form prospectus), the disclosure for Company A would be that required by the long form prospectus rules and the disclosure for Company B would be that required by the short form prospectus rules. Any information incorporated by reference in the information circular of Company A would have to comply with paragraph (c) of Part 1 of Form 51-102F5 and be filed under Company A's profile on SEDAR.

9.3 Proxy Solicitations Made to the Public by Broadcast, Speech or Publication

Subsection 9.2(4) of the Regulation provides an exemption from the proxy solicitation and information circular requirements for certain proxy solicitations made to the public by broadcast, speech or publication. The exemption permits securityholders to solicit proxies by public means, including a speech or broadcast, through a newspaper advertisement or over the Internet (provided that the solicitation contains certain information and that information is filed on SEDAR).

The exemption will only apply if the proxy solicitation is made to the public. Securities regulatory authorities generally consider a solicitation to be made to the public if it is disseminated in a manner calculated to effectively reach the marketplace. A solicitation to the public would generally include a solicitation that is made by:

(a) a speech in a public forum; or

(b) a press release, a statement or an advertisement provided through a broadcast medium or by a telephone conference call or electronic or other communication facility generally available to the public, or appearing in a newspaper, a magazine, a website or other publication generally available to the public.

A proxy solicitation to the public would generally not include a solicitation made by phone, mail or email to only a select group of securityholders of a reporting issuer.

PART 10 ELECTRONIC DELIVERY OF DOCUMENTS

10.1 Electronic Delivery of Documents

~~Any~~Generally, any documents required to be sent under the Regulation may be sent by electronic delivery, as long as such delivery is ~~made in compliance with *Notice 11-201 relating to the Delivery of Documents by Electronic Means*, in Québec, and National Policy 11-201, *Delivery of Documents by Electronic Means*, in the rest of Canada.~~ consistent with the guidance in National Policy 11-201 *Electronic Delivery of Documents*. However, if a reporting issuer is using notice-and-access to deliver proxy-related materials, it should refer to the specific guidance in section 10.3 of the Policy.

10.2 Delivery of Proxy-Related Materials

(1) This section provides guidance on delivery of proxy-related materials. Reporting issuers should also review any other applicable legislation, such as corporate legislation.

(2) Paper copies of proxy-related materials must be sent using prepaid mail, courier or an equivalent delivery method. An equivalent delivery method is any delivery method where the registered holder receives paper copies in a similar time frame as prepaid mail or courier. For example, a reporting issuer that sponsors an employee share purchase plan could arrange for the proximate intermediary to deliver proxy-related materials to registered holder employees through the reporting issuer's internal mail system.

10.3 Notice-and-access

(1) The Regulation permits a reporting issuer to use notice-and-access to send proxy-related materials to registered holders.

Prior to using notice-and-access for the first time, a reporting issuer must provide advance notice as specified in section 9.1.2 of the Regulation. We also encourage issuers to consider what additional methods of advance notice are appropriate. For example, an issuer could consider a special purpose mailing to its retail registered holders in advance of the first meeting for which notice-and-access is used.

(2) Subparagraph 9.1.1(1)(a)(i) of the Regulation requires the registered holder to be sent a notice containing required information about the meeting. With respect to matters to be voted on at the meeting, the notice must only contain a factual description of each matter or group of related matters identified in the form of proxy. We expect that reporting issuers who use notice-and-access will state each matter or group of related matters in the proxy in a reasonably clear and user-friendly manner. For example, it would not be appropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular, e.g., "To vote For or Against the resolution in Schedule A of management's information circular".

Subparagraph 9.1.1(1)(a)(ii) of the Regulation requires the registered holder be sent a plain language document that explains notice-and-access. This document can also be used to explain other aspects of the proxy voting process to registered holders. However, this document should not contain any substantive discussion of the matters to be considered at the meeting.

(3) Paragraph 9.1.1(1)(b) of the Regulation requires the registered holder to be sent as part of the notice package the form of proxy.

(4) Paragraph 9.1.1(1)(c) of the Regulation requires that the registered holder of voting securities be sent the notice package by prepaid mail, courier or the equivalent. In the case of a solicitation by reporting issuer management, the notice package must be sent at least 30 days before the date fixed for the meeting

(5) Paragraph 9.1.1(1)(d) of the Regulation requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) of *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* at least 30 days before the date fixed for the meeting. This is intended to broadly communicate to the reporting issuer's registered holders that the reporting issuer is using notice-and-access.

(6) Paragraph 9.1.1(1)(e) of the Regulation requires the information circular and other proxy-related materials to be filed on SEDAR and posted on a website other than SEDAR. The non-SEDAR website can be the website of the person soliciting proxies (e.g., the reporting issuer's website) or the website of a service provider.

(7) Paragraph 9.1.1(1)(f) of the Regulation requires the person soliciting proxies to establish a toll-free telephone number for the registered holder to request a paper copy of the information circular. A person soliciting proxies may choose to, but is not required to, provide additional methods for requesting a paper copy of the information circular. If a person soliciting proxies does so, it must still comply with the fulfillment timelines in paragraph 9.1.1(1)(g) of the Regulation.

(8) Subsection 9.1.3(2) of the Regulation is intended to allow registered holders to access the posted proxy-related materials in a user-friendly manner. For example, requiring the registered holder to navigate through several web pages to access the proxy-related materials would not be user-friendly. Providing the registered holder with the specific URL where the documents are posted would be more user-friendly. We encourage reporting issuers and their service providers to develop best practices in this regard.

(9) Where a reporting issuer uses notice-and-access, it generally must send the same basic notice package to all registered holders. However, the following are exceptions to this general principle:

- Section 9.1.4 of the Regulation provides that where a reporting issuer uses notice-and-access, a registered holder still can be sent proxy-related materials using an alternate method to which the registered holder has previously consented. For example, service providers acting on behalf of reporting issuers may have previously obtained (and continue to obtain) consents from shareholders for proxy-related materials to be sent by email. This delivery method would still be available.

- Section 9.1.5 of the Regulation permits a reporting issuer to obtain standing instructions from a registered holder to be sent a paper copy of the information circular in all cases where the reporting issuer uses notice-and-access. Where such standing instructions have been obtained, the notice package for the registered holder will contain a paper copy of the information circular.

- Section 4.6 of the Regulation establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. A request for annual financial statements and annual MD&A will also constitute a request that the notice package for the registered holder contain a paper copy of the information circular.

The addition of a paper information circular to the notice package sent to some registered holders is referred to as "stratification" and is a term defined in section 1.1 of the Regulation.

We do not mandate the use of stratification, other than to the extent it is necessary to comply with standing instructions or annual requests for paper copies of information circulars that reporting issuers or intermediaries have chosen to obtain from registered holders or beneficial owners. We expect that any additional stratification criteria will develop and evolve through market demand and practice. However, we expect that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions does so in order to enhance effective communication, and not to disenfranchise shareholders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a copy of the information circular.

PART 11 ADDITIONAL DISCLOSURE REQUIREMENTS

11.1 Additional Filing Requirements

Paragraph 11.1(1)(b) of the Regulation requires a document to be filed only if it contains information that has not been included in disclosure already filed by the reporting issuer. For example, if a reporting issuer has filed a material change report under the Regulation and the Form 8-K filed by the reporting issuer with the SEC discloses the same

information, whether in the same or a different format, there is no requirement to file the Form 8-K under the Regulation.

11.2 Re-filing Documents or Re-stating Financial Information

If a reporting issuer decides to re-file a document, or re-state financial information for comparative periods in financial statements for reasons other than retroactive application of a change in an accounting standard or policy or a new accounting standard, and the re-filed or re-stated information is likely to differ materially from the information originally filed, the issuer should disclose in the news release required by section 11.5 of the Regulation when it makes that decision

(a) the facts underlying the changes,

(b) the general impact of the changes on previously filed information, and

(c) the steps the issuer would take before filing an amended document, or filing re-stated financial information, if the issuer is not filing amended information immediately.

PART 12 FILING OF CERTAIN DOCUMENTS

12.1 Statutory or Regulatory Instruments

Paragraph 12.1(1)(a) of the Regulation requires reporting issuers to file copies of their articles of incorporation, amalgamation, continuation or any other constating or establishing documents, unless the document is a statutory or regulatory instrument. This carve out for a statutory or regulatory instrument is very narrow. For example, the carve out would apply to Schedule I or Schedule II banks under the *Bank Act*, whose charter is the *Bank Act*. It would not apply when only the form of the constating document is prescribed under statute or regulation, such as articles under the *Canada Business Corporations Act.*

12.2 Contracts that Affect the Rights or Obligations of Securityholders

Paragraph 12.1(1)(e) of the Regulation requires reporting issuers to file copies of contracts that can reasonably be regarded as materially affecting the rights of their securityholders generally. A warrant indenture is one example of this type of contract. We would expect that contracts entered into in the ordinary course of business would not usually affect the rights of securityholders generally, and so would not have to be filed under this paragraph.

12.3 Material Contracts

(1) **Definition** – Under subsection ~~1~~1.1(1) of the Regulation, a material contract is defined as a contract that a reporting issuer or any of its subsidiaries is a party to, that is material to the reporting issuer. A material contract generally includes a schedule, side letter or exhibit referred to in the material contract and any amendment to the material contract. The redaction and omission provisions in subsections 12.2(3) and (4) of the Regulation apply to these schedules, side letters, exhibits or amendments.

(2) **Filing Requirements** – Subject to the exceptions in paragraphs 12.2(2)(a) through (f) of the Regulation, subsection 12.2(2) of the Regulation provides an exemption from the filing requirement for a material contract entered into in the ordinary course of business. Whether a reporting issuer entered into a contract in the ordinary course of business is a question of fact that the reporting issuer should consider in the context of its business and industry.

Paragraphs 12.2(2)(a) through (f) of the Regulation describe specific types of material contracts that are not eligible for the ordinary course of business exemption. Accordingly, if subsection 12.2(1) of the Regulation requires a reporting issuer to file a material contract of a type described in these paragraphs, the reporting issuer must file that

material contract even if the reporting issuer entered into it in the ordinary course of business.

(3) **Contract of Employment** – Paragraph 12.2(2)(a) of the Regulation provides that a material contract with certain individuals is not eligible for the ordinary course of business exemption, unless it is a "contract of employment". One way for reporting issuers to determine whether a contract is a contract of employment is to consider whether the contract contains payment or other provisions that are required disclosure under Form 51-102F6 as if the individual were a named executive officer or director of the reporting issuer.

(4) **External Management and External Administration Agreements** – Under paragraph 12.2(2)(e) of the Regulation, external management and external administration agreements are not eligible for the ordinary course of business exemption. External management and external administration agreements include agreements between the reporting issuer and a third party, the reporting issuer's parent entity, or an affiliate of the reporting issuer, under which the latter provides management or other administrative services to the reporting issuer.

(5) **Material Contracts on which the Reporting Issuer's Business is Substantially Dependent** – Paragraph 12.2(1)(f) of the Regulation provides that a material contract on which the "reporting issuer's business is substantially dependent" is not eligible for the ordinary course of business exemption. Generally, a contract on which the reporting issuer's business is substantially dependent is a contract so significant that the reporting issuer's business depends on the continuance of the contract. Some examples of this type of contract include:

(a) a financing or credit agreement providing a majority of the reporting issuer's capital requirements for which alternative financing is not readily available at comparable terms;

(b) a contract calling for the acquisition or sale of substantially all of the reporting issuer's property, plant and equipment, long-lived assets, or total assets; and

(c) an option, joint venture, purchase or other agreement relating to a mining or oil and gas property that represents a majority of the reporting issuer's business.

(6) **Confidentiality Provisions** – Under subsection 12.2(3) of the Regulation, a reporting issuer may omit or redact a provision of a material contract that is required to be filed if an executive officer of the reporting issuer has reasonable grounds to believe that disclosure of the omitted or redacted provision would violate a confidentiality provision. A provision of the type described in paragraphs 12.2(4)(a), (b) or (c) of the Regulation may ~~4~~ not be omitted or redacted even if disclosure would violate a confidentiality provision, including a blanket confidentiality provision covering the entire material contract.

When negotiating material contracts with third parties, reporting issuers should consider their disclosure obligations under securities legislation. A regulator or securities regulatory authority may consider granting an exemption to permit a provision of the type listed in subsection 12.2(4) of the Regulation to be redacted if:

(a) the disclosure of that provision would violate a confidentiality provision; and

(b) the material contract was negotiated before the adoption of the exceptions in subsection 12.2(4) of the Regulation.

The regulator may consider the following factors, among others, in deciding whether to grant an exemption:

(c) whether an executive officer of the reporting issuer reasonably believes that the disclosure of the provisions would be prejudicial to the interests of the reporting issuer; and

(d) whether the reporting issuer is unable to obtain a waiver of the confidentiality provision from the other party.

(7) **Disclosure Seriously Prejudicial to Interests of Reporting Issuer** – Under subsection 12.2(3) of the Regulation, a reporting issuer may omit or redact certain provisions of a material contract that is required to be filed if an executive officer of the reporting issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the reporting issuer. One example of disclosure that may be seriously prejudicial to the interests of the reporting issuer is disclosure of information in violation of applicable Canadian privacy legislation. However, in situations where securities legislation requires disclosure of the particular type of information, applicable privacy legislation generally provides an exemption for the disclosure. Generally, disclosure of information that a reporting issuer or other party has already publicly disclosed is not seriously prejudicial to the interests of the reporting issuer.

(8) **Terms Necessary for Understanding Impact on Business of Reporting Issuer** – A reporting issuer may not omit or redact a provision of a type described in paragraph 12.2(4)(a), (b), or (c) of the Regulation. Paragraph 12.2(4)(c) of the Regulation provides that a reporting issuer may not omit or redact ~~a~~ "terms necessary for understanding the impact of the material contract on the business of the reporting issuer". Terms that may be necessary for understanding the impact of the material contract on the business of the reporting issuer include the following:

(a) the duration and nature of a patent, trademark, license, franchise, concession, or similar agreement;

(b) disclosure about related party transactions; and

(c) contingency, indemnification, anti-assignability, take-or-pay clauses, or change-of-control clauses.

(9) **Summary of Omitted or Redacted Provisions** – Under subsection 12.2(5) of the Regulation, a reporting issuer must include a description of the type of information that has been omitted or redacted in the copy of the material contract filed by the reporting issuer. A brief one-sentence description immediately following the omitted or redacted information is generally sufficient.

PART 13 EXEMPTIONS

13.1 Prior Exemptions and Waivers

Section 13.2 of the Regulation essentially allows a reporting issuer, in certain circumstances, to continue to rely upon an exemption or waiver from continuous disclosure obligations obtained prior to the Regulation coming into force if the exemption or waiver relates to a substantially similar provision in the Regulation and the reporting issuer provides written notice to the securities regulatory authority or regulator of its reliance on such exemption or waiver. Upon receipt of such notice, the securities regulatory authority or regulator, as the case may be, will review it to determine if the provision of the Regulation referred to in the notice is substantially similar to the provision from which the prior exemption or waiver was granted. The written notice should be sent to each jurisdiction where the prior exemption or waiver is relied upon. Contact addresses for these notices are:

Alberta Securities Commission
4th Floor
300 – 5th Avenue S.W.
Calgary, Alberta
T2P 3C4
Attention: Director, Corporate Finance

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Attention: Financial Reporting

Manitoba Securities ~~Commisson~~Commission
500 ~~–~~ 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5
Attention: Corporate Finance

New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, N.B.
E2L 2J2
Attention: Corporate Finance

Securities Commission of Newfoundland and Labrador
P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's, NFLD
A1B 4J6
Attention: Director of Securities

Department of Justice, Northwest Territories
Securities Office
P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Superintendent of Securities

Nova Scotia Securities Commission
2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, Nova Scotia B3J 3J9
Attention: Corporate Finance

Department of Justice, Nunavut
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Superintendent of Securities

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Manager, Team 3, Corporate Finance

Registrar of Securities, Prince Edward Island
P.O. Box 2000
95 Rochford Street, 5th Floor,
Charlottetown, PEI
C1A 7N8
Attention: Registrar of Securities

Autorité des marchés financiers
800 Square Victoria, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Attention: Direction des marchés des capitaux

Saskatchewan Financial Services Commission – Securities Division
Suite 601
1919 Saskatchewan Drive
Regina, SK S4P 4H2
Attention: Deputy Director, Corporate Finance

Superintendent of Securities, Government of Yukon
Corporate Affairs J-9
P.O. Box 2703
Whitehorse, Yukon
Y1A 5H3
Attention: Superintendent of Securities

PART 14 TRANSITION

14.1 Transition – Application of Amendments

The amendments to the Regulation and this Policy Statement which came into effect on January 1, 2011 only apply to documents required to be prepared, filed, delivered or sent under the Regulation for periods relating to financial years beginning on or after January 1, 2011.

APPENDIX A
EXAMPLES OF FILING REQUIREMENTS FOR CHANGES IN THE YEAR END

The following examples assume the old financial year ended on December 31, 20X0

Transition Year	Comparative Annual Financial Statements to Transition Year	New Financial Year	Comparative Annual Financial Statements to New Financial Year	Interim Periods for Transition Year	Comparative Interim Periods to Interim Periods in Transition Year	Interim Periods for New Financial Year	Comparative Interim Periods to Interim Periods in New Financial Year
Financial year end changed by up to 3 months							
2 months ended 2/28/X1	12 months ended 12/31/X0	2/28/X2	2 months ended 2/28/X1 and 12 months ended 12/31/X0*	Not applicable	Not applicable	3 months ended 5/31/X1 6 months ended 8/31/X1 9 months ended 11/30/X1	3 months ended 6/30/X0 6 months ended 9/30/X0 9 months ended 12/31/X0
Or							
14 months ended 2/28/X2	12 months ended 12/31/X0	2/28/X3	14 months ended 2/28/X2	3 months ended 3/31/X1 6 months ended 6/30/X1 9 months ended 9/30/X1 12 months ended 12/31/X1	3 months ended 3/31/X0 6 months ended 6/30/X0 9 months ended 9/30/X0 12 months ended 12/31/X0	3 months ended 5/31/X2 6 months ended 8/31/X2 9 months ended 11/30/X2	3 months ended 6/30/X1 6 months ended 9/30/X1 9 months ended 12/31/X1
				or			
				2 months ended 2/28/X1 5 months ended 5/31/X1 8 months ended 8/31/X1 11 months ended 11/30/X1	3 months ended 3/31/X0 6 months ended 6/30/X0 9 months ended 9/30/X0 12 months ended 12/31/X0	3 months ended 5/31/X2 6 months ended 8/31/X2 9 months ended 11/30/X2	3 months ended 6/30/X1 6 months ended 9/30/X1 9 months ended 12/31/X1
Financial year end changed by 4 to 6 months							
6 months ended 6/30/X1	12 months ended 12/31/X0	6/30/X2	6 months ended 6/30/X1 and 12 months ended 12/31/X0*	3 months ended 3/31/X1	3 months ended 3/31/X0	3 months ended 9/30/X1 6 months ended 12/31/X1 9 months ended 3/31/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 9 months ended 3/31/X1
Financial year end changed by 7 or 8 months							
7 months ended 7/31/X1	12 months ended 12/31/X0	7/31/X2	7 months ended 7/31/X1 and 12 months ended 12/31/X0*	3 months ended 3/31/X1	3 months ended 3/31/X0	3 months ended 10/31/X1 6 months ended 1/31/X2 9 months ended 4/30/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 9 months ended 3/31/X1
				Or			
				4 months ended 4/30/X1	3 months ended 3/31/X0	3 months ended 10/31/X1 6 months ended 1/31/X2 9 months ended 4/30/X2	3 months ended 9/30/X0 6 months ended 12/31/X0 10 months ended 4/30/X1
Financial year end changed by 9 to 11 months							
10 months ended 10/31/X1	12 months ended 12/31/X0	10/31/X2	10 months ended 10/31/X1	3 months ended 3/31/X1 6 months ended 6/30/X1	3 months ended 3/31/X0 6 months ended 6/30/X0	3 months ended 1/31/X2 6 months ended 4/30/X2 9 months ended 7/31/X2	3 months ended 12/31/X0 6 months ended 3/31/X1 9 months ended 6/30/X1
				or			
				4 months ended 4/30/X1 7 months ended 7/31/X1	3 months ended 3/31/X0 6 months ended 6/30/X0	3 months ended 1/31/X2 6 months ended 4/30/X2 9 months ended 7/31/X2	3 months ended 12/31/X0 6 months ended 3/31/X1 9 months ended 6/30/X1

* Statement of financial position required only at the transition year end date