

M.O., 2005-12**Order number V-1.1-2005-12 of the Minister of Finance dated 7 June 2005**

Securities Act
(R.S.Q., c. V-1.1; 2004, c. 37)

CONCERNING the Regulation to amend Regulation 54-101 respecting communication with beneficial owners of securities of a reporting issuer

WHEREAS the Securities Act (R.S.Q., c. V-1.1) has been amended by the chapter 37 of the statutes of 2004;

WHEREAS paragraphs 1, 8 and 34 of section 331.1 of the Securities Act stipulate that the Autorité des marchés financiers may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act stipulate that a draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section stipulate that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation;

WHEREAS sections 691 and 696 of chapter 45 of the statutes of 2002 stipulate, in particular, that sections 331.1 and 331.2 of the Securities Act are amended by replacing “Commission” wherever it appears by “Agency”, and making the necessary modifications;

WHEREAS sections 37 and 38 of chapter 37 of the statutes of 2004 stipulate, in particular, that sections 331.1 and 331.2 of the Securities Act are amended by replacing “Agency” wherever it appears by “Authority”;

WHEREAS the Regulation 54-101 respecting communication with beneficial owners of securities of a reporting issuer have been made by the Commission des valeurs mobilières du Québec on March 3, 2003 by the decision No. 2003-C-0082;

WHEREAS the draft Regulation to amend Regulation 54-101 respecting communication with beneficial owners of securities of a reporting issuer was published in the Supplement to the Bulletin concerning securities of the Agence nationale d’encadrement du secteur financier, volume 1, No. 43 of November 26, 2004;

WHEREAS on June 3, 2005, by the decision No. 2005-PDG-0156, the Authority made the Regulation to amend Regulation 54-101 respecting communication with beneficial owners of securities of a reporting issuer;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment the Regulation to amend Regulation 54-101 respecting communication with beneficial owners of securities of a reporting issuer appended hereto.

June 7, 2005

MICHEL AUDET,
Minister of Finance

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, s. 331.1, par. (1), (8) and (34);
2004, c. 37)

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

* Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer adopted on March 3, 2003 pursuant to decision No. 2003-C-0082 and published in the Supplement to the Bulletin of the Commission des valeurs mobilières du Québec, volume 34, No. 19 dated May 16, 2003 has not been amended since its adoption.

(a) by replacing, wherever they appear, the words “this Instrument” with the words “this Regulation”;

(b) by repealing the definition of “routine business”;

(c) by inserting the following after the definition of “send”:

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

“special resolution” for a meeting:

(a) has the same meaning given to the term “special resolution” under corporate law; or

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

(d) by replacing the definition of “legal proxy” with the following:

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

2. Subparagraph 2.2(2)(h) of the Regulation is replaced with the following:

“(h) whether the meeting is a special meeting.”.

3. Section 2.20 of the Regulation is amended:

(a) by inserting “in paragraph 2.1(b), or” after the word “prescribed”;

(b) by replacing the words “this Instrument” in paragraph (a) with the words “this Regulation”;

(c) by replacing the words “this Instrument” in paragraph (b) with the words “this Regulation”.

4. Section 3.2 of the Regulation is amended by inserting “if applicable,” at the beginning of subparagraph (b)iii.

5. Section 3.3 of the Regulation is amended:

(a) by replacing, wherever they appear, the words “this Instrument” with the words “this Regulation”;

(b) in paragraph (a) by adding the word “and” after the word “pertains;”;

(c) in paragraph (b):

i. by replacing subparagraph *ii* with the following:

“ii. If the client was deemed to have permitted the intermediary to disclose the client’s name and security holdings to the issuer of the security or other sender of material, the intermediary may choose to treat the client as a NOBO under this Regulation;”;

ii. in subparagraph *iv*:

A) by deleting the words “or if the intermediary was permitted not to provide that material to the client;”;

B) by replacing subparagraph A with the following:

“(A) proxy-related materials that are sent in connection with a securityholder meeting;”;

iii. by inserting the following after subparagraph *iv*:

“v. If the intermediary was permitted not to provide material relating to annual meetings of securityholders or audited financial statements, the client is considered to have declined under this Regulation to receive:

(A) proxy-related materials that are sent in connection with a securityholder meeting that is not a special meeting;

(B) financial statements and annual reports that are not part of proxy-related materials; and

(C) materials sent to securityholders that are not required by corporate or securities law to be sent to registered securityholders”;

iv. by replacing the numerical order of subparagraphs *v* and *vi* so they become subparagraphs *vi* and *vii* respectively;

(d) by repealing paragraph (c).

6. The Regulation is amended by inserting the following after section 4.7:

“4.8 Fees from Persons or Companies other than Reporting Issuers

A proximate intermediary that receives securityholder materials from a person or company that is not a reporting issuer for sending to beneficial owners is not required to send the securityholder materials to any beneficial owners or intermediaries that are clients of the proximate

intermediary unless the proximate intermediary receives reasonable assurance of payment for the delivery of the securityholder materials.”.

7. Section 6.2 of the Regulation is amended:

(a) by replacing subsection (1) with the following:

“(1) A person or company may take any action permitted under this Regulation to be taken by a reporting issuer and, in so doing, has all the rights, and is subject to all of the obligations, of a reporting issuer in connection with that action, unless this Regulation specifies a different right or obligation.”;

(b) by replacing the words “this Instrument” in subsection (2) with the words “this Regulation”;

(c) by replacing “section 2.18” in subsection (3) with “paragraphs 2.12(1)(a) and (b), sections 2.14 and 2.18”;

(d) by adding the following after subsection (5):

“(6) A person or company, other than a reporting issuer to which the request relates, that sends materials indirectly to beneficial owners shall pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners.”.

8. The title of Part 7 and section 7.1 of the Regulation are replaced with the following:

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

7.1 Use of NOBO List

No reporting issuer or other person or company shall use a NOBO list or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Regulation, except in connection with:

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

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

(c) an offer to acquire securities of the reporting issuer; or

(d) any other matter relating to the affairs of the reporting issuer.

7.2 Indirect Sending of Materials

No person or company other than the reporting issuer shall send any materials indirectly to beneficial owners of a reporting issuer under section 2.12 of this Regulation except in connection with:

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

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

(c) any other matter relating to the affairs of the reporting issuer.”.

9. Form 54-101F1 of the Regulation is amended:

(a) in the “Explanation to Clients” portion:

i. by replacing the second and third paragraphs under the heading “Disclosure of Beneficial Ownership Information” with the following:

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

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

ii. by replacing the third paragraph under the heading “Receiving Securityholder Materials” with the following:

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

(a) proxy-related materials, including annual reports and financial statements, that are sent in connection with a securityholder meeting;

(b) annual reports and financial statements that are not part of proxy-related materials; and

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

iii. by replacing “Either state” under the heading “Electronic Delivery of Documents” with the words “If applicable, either state” and replacing the words “the enclosed” with “an enclosed”;

(b) by replacing Part 2 of the “Client Response Form” with the following:

“PART 2 – Receiving Securityholder Materials

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

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

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

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

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

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

(a) by deleting the words “and whether only routine business is to be conducted at the meeting” in paragraph (a) of items 7.5 and 9.3 in Part 1;

(b) by replacing the words “the Instrument” at the end of item 6 in Part 2 with the words “the Regulation”.

11. Form 54-101F8 of the Regulation is amended by replacing the words “the beneficial owner of, and are entitled to vote, such securities” in the fourth paragraph with the words “the beneficial owner of those securities or a person designated by the beneficial owner to vote such securities, and that you are entitled to vote such securities”.

12. The Regulation is amended by replacing, wherever they appear, the words “this Instrument” with “this Regulation”, and making the necessary changes.

13. This Regulation comes into effect on June 30, 2005.

Notwithstanding the first paragraph, the provisions contained in Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer before the coming into force of these amendments apply to a reporting issuer that has filed a notice of a meeting and record date with the securities regulatory authority before June 30, 2005 even if such meeting takes place after such date.

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