Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

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

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

and

Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations

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

November 29, 2012

Introduction

We, the members of the Canadian Securities Administrators (**CSA**), are adopting amendments (the **Amendments**) intended to improve the process by which reporting issuers send proxy-related materials to and solicit proxies and voting instructions from registered holders and beneficial owners of their securities (the **Shareholder Voting Communication Process**).

The Amendments are set out in the following materials (the **Materials**), which are published with this notice:

- *Regulation to amend Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (**Regulation 54-101**) including the enactment of a new Form 54-101F10 *Undertaking*, and the following forms:
    - Form 54-101F2 *Request for Beneficial Ownership Information;*
    - Form 54-101F5 *Electronic Format for NOBO List;*
    - Form 54-101F6 *Request for Voting Instructions Made by Reporting Issuer;*
    - Form 54-101F7 *Request for Voting Instructions Made by Intermediary*
    - Form 54-101F9 *Undertaking*;
- *Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations* (**Regulation 51-102**) and Form 51-102F5 *Information Circular*; and

- changes to:
    - *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (**Policy Statement 54-101**); and
    - *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations* (**Policy Statement 51-102**).

The Materials are also available on the websites of CSA members, including the following:

- www.bcsc.bc.ca
- www.albertasecurities.com
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.msc.gov.mb.ca
- www.nbsc-cvmnb.ca
- www.gov.ns.ca/nssc
- www.sfsc.gov.sk.ca

In some jurisdictions, ministerial approvals are required for the implementation of the Amendments. Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **February 11, 2013**. However, please refer to **Effective Dates** for an explanation of the dates on which specific provisions of the Amendments will take effect.

Substance and Purpose

The most significant features of the Amendments 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.

Background

We published proposed versions of the Amendments on April 9, 2010 and again on June 17, 2011 (the **2011 Proposal**). For additional background and the summary of comments received during the first and second publication periods, please refer to the notices we published on April 9, 2010 and June 17, 2011.

Summary of Written Comments Received by the CSA

During the last comment period, we received submissions from eight commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex A of this notice as well as a summary of their comments, together with our responses.

Summary of Changes to the Proposed Regulation/Policy

The following outlines the main changes from the 2011 Proposal. As these changes are not material, we are not republishing the Amendments for a further comment period.

1. Notice-and-access (sections 2.7.1 to 2.7.8 of Regulation 54-101; sections 9.1.1 to 9.1.4 of Regulation 51-102)

Under notice-and-access, a reporting issuer can deliver proxy-related materials by:

- posting the relevant information circular (and if applicable, other proxy-related materials) on a website that is not SEDAR; and

- sending a notice informing beneficial owners that the proxy-related materials have been posted, and explaining how to access them.

We have made the following changes to the notice-and-access provisions.

(a) Record date for notice

In order to use notice-and-access, a reporting issuer must set the record date for notice of the meeting date to be at least 40 days before the meeting. The 2011 Proposal would have permitted the record date to be set between 30 to 60 days before the meeting. The change to at least 40 days is intended to provide sufficient time for the website posting and delivery requirements under notice-and-access. See Annex A, Comment 1(g) for a further discussion of this issue.

(b) Notice in advance of first use of notice-and-access

A reporting issuer must file a notification of meeting and record dates containing information about the meeting and its use of notice-and-access on SEDAR. Where the issuer is using notice-and-access for the first time, the notification must be filed at least 25 days before the record date for notice (i.e., at least 65 days before the date of the meeting). This requirement replaces the

proposed advance notice mechanism in the 2011 Proposal, which would require that a reporting issuer provide advance notice via a news release and a website posting 3 to 6 months before the expected date of the meeting. We believe this provides sufficient advance notice to shareholders. See Annex A, Comment 1(c) for a further discussion of this issue.

For meetings subsequent to the first meeting for which an issuer uses notice-and-access, the issuer can abridge the timeline for filing the notification of meeting and record dates to 3 business days before the record date for notice.

(c) Contents of notice package

Under notice-and-access, an issuer will send to shareholders a notice package that contains a notice and the relevant voting document (a form of proxy or voting instruction form as applicable).

(i) Notice

The notice must:

- contain basic information about the meeting and the matters to be voted on;
- explain how to obtain a paper copy of the information circular (and if applicable, annual financial statements and annual management discussion and analysis (**MD&A**)); and
- explain in plain language the notice-and-access process.

The 2011 Proposal as drafted contemplated that the notice-and-access explanation would be a separate document from the notice. The present requirement provides that the explanation will form part of the Notice. Note, however, that s.1.3 of Regulation 54-101 also is being amended to give issuers the flexibility to combine or substitute any form or document required by Regulation 54-101 with another form or document, provided the information required by Regulation 54-101 is included.[1]

We have also made changes to the information that must be included in the notice-and-access explanation:

- The explanation need only state an estimated date and time by which an issuer should receive a request for paper copies. The 2011 Proposal required a firm date and time to be specified.
- The explanation need only state the sections of the information circular where disclosure regarding each matter or group of related matters identified in the notice can be found. The 2011 Proposal required page numbers to be specified.

[1] The original s. 1.3 only applied to forms required by NI 54-101, and not documents generally.

(ii) Additional material

An issuer generally is prohibited from including material in the notice package other than the notice and the relevant voting document. However, an issuer can include financial statements which are to be approved at the meeting and MD&A related to such financial statements, which documents may be part of an annual report. Sections 2.7.1(2)(b) of Regulation 54-101 and 9.1.1(2)(b) of Regulation 51-102) have been modified from the 2011 Proposal to make this concept clearer.

(d) Sending of annual financial statements and MD&A as part of proxy-related materials

In the Notice accompanying the 2011 Proposal, we asked questions about how notice-and-access should interact with the sending of annual financial statements and annual MD&A. Having considered the issue, we think that an issuer should be able to use notice-and-access to send annual financial statements and annual MD&A pursuant to s. 4.6(5) of Regulation 51-102. Notice-and-access is consistent with the principles for electronic sending set out in National Policy 11-201 *Delivery of Documents by Electronic Means*. We therefore provide new policy guidance in Policy Statement 51-102 to that effect. The net effect is that an issuer can choose between:

- sending annual financial statements and annual MD&A pursuant to the annual request mechanism set out in s. 4.6(1) of Regulation 51-102; or

- sending annual financial statements and annual MD&A under s. 4.6(5) of Regulation 51-102, for which notice-and-access is an acceptable delivery method.

An issuer who chooses the second option and uses notice-and-access must modify the information in the notice required by s. 2.7.1(1) of Regulation 54-101 and s. 9.1.1(1) of Regulation 51-102 to refer to the annual financial statements and annual MD&A.

(e) Other significant features of notice-and-access

(i) Methods of sending notice package

A notice package can be sent by mail or, if prior consent has been obtained, electronically. In addition, if a service provider offers an e-delivery method (e.g., an email is sent with hyperlinks to all the proxy-related materials) that is distinct from notice-and-access and that is otherwise compliant with securities legislation, such delivery method can continue to be used in conjunction with notice-and-access.

(ii) Website posting

There are a number of requirements relating to the posting of proxy-related materials on the non-SEDAR website and these generally remain unchanged from the 2011 Proposal. One change is that proxy-related materials need only be posted for one year from the date of posting. This

harmonizes the posting period with the period for which a reporting issuer has an obligation to fulfill requests for paper copies of proxy-related materials in s. 2.7.1(1)(f)(ii) of Regulation 54-101.

(f) Use of notice-and-access for non-management solicitations

We have added a new s. 2.7.7 that is intended to clarify that notice-and-access can be used to deliver proxy-related materials to beneficial owners of a reporting issuer's securities in connection with a proxy solicitation that is not a solicitation by management of the reporting issuer.[2]

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

An intermediary or management of a reporting issuer, as applicable, who has voting authority over the securities owned by a beneficial owner, must appoint the beneficial owner or its nominee as a proxy holder with authority to vote on any matters that come before the meeting. We have modified the 2011 Proposal to clarify that the required grant of authority is subject to any prohibitions under corporate law. We also have removed the provision that a beneficial owner can instruct the intermediary or reporting issuer management, as applicable, to limit the voting authority. See Annex A, Comment 5 for a further discussion of these changes.

3. Enhanced disclosure of voting process (s. 2.16 of Regulation 54-101 and Item 4.3 of Form 51-102F5)

Issuers must provide enhanced disclosure of the voting process in the information circular. We have modified the 2011 Proposal so that where the reporting issuer does not intend to pay for intermediaries to deliver proxy-related materials to OBOs, the information circular must include a statement that the OBO may not receive proxy-related materials unless the OBO's intermediary assumes the costs of delivery.

4. NOBO list

A reporting issuer or other person may request a NOBO list without using a transfer agent. We have modified the 2011 Proposal to add a self-certification process, whereby the requester certifies in the Form 54-101F9 *Undertaking* that accompanies the request for a NOBO list that it has the technological capacity to receive the list.

5. Other changes

We have made additional changes to several Forms that were not part of the 2011 Proposal.

[2] The notice-and-access provisions in NI 51-102 contain an equivalent concept.

(a) Form 54-101F2 *Request for Beneficial Ownership Information*

The following changes are intended to improve the process for obtaining beneficial ownership information:

- adding the reporting issuer's French name, if applicable (Item 1);
- adding a contact person at the reporting issuer to deal with invoices, if different from the person who making the request (Item 2);
- having the reporting issuer explicitly state whether it wants securityholder materials to be sent electronically where consent has been obtained from beneficial owners (Items 6.7, 7.9, 8.5 and 9.7);
- having the reporting issuer explicitly state whether securityholder materials are to be sent to all beneficial owners of securities (including beneficial owners that have declined to receive them), only beneficial owners who have requested to receive all securityholder materials, or only beneficial owners who have requested to receive all securityholder materials or special meeting materials (Items 6.9, 7.11, 8.6 and 9.8); and
- where the reporting issuer wishes to use stratification, clarifying that a reporting issuer should discuss with the relevant intermediary what criteria the intermediary is able to apply (Items 7.12 and 9.9).

(b) Form 54-101F5 *Electronic Format for NOBO List*

We are replacing the existing form with a new one that includes a new field for stratification instructions (to the extent those have been obtained) under notice-and-access.

Effective Dates

The Amendments will come into force on February 11, 2013, subject to the following implementation dates:

- notice-and-access can only be used in respect of meetings that occur on or after March 1, 2013;
- a reporting issuer may request beneficial ownership information without using a transfer agent for the sole purpose of obtaining a NOBO list only on or after February 15, 2013;
- a person or company need only provide the new Form 54-101F10 *Undertaking* for a request to send materials indirectly to beneficial owners made on or after February 15, 2013;
- the new Part 7 of Regulation 54-101 only applies to NOBO lists requested on or after February 15, 2013 and requests to send materials indirectly to beneficial owners made on

or after February 15, 2013; and

- a reporting issuer may rely on the exemptions in sections 9.1.1 of Regulation 54-101 and 9.1.5 of Regulation 51-102 only in respect of a meeting that takes place on or after February 15, 2013.

Local Matters

An annex is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Questions

If you have any questions, please refer them to any of the following:

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ANNEX A

SUMMARY OF COMMENTS AND RESPONSES ON NOTICE AND REQUEST FOR COMMENT

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

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

Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations

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

This annex summarizes the written public comments we received on the 2011 Proposal. It also sets out our responses to those comments.

List of Parties Commenting on the 2011 Proposal

- Broadridge Financial Solutions, Inc.
- Canadian Bankers Association
- Computershare Trust Company of Canada, Computershare Investor Services Inc. and Georgeson Shareholder Communications (joint comment letter)
- Investment Industry Association of Canada
- Mouvement d'éducation et de défense des actionnaires
- National Bank of Canada
- Osler, Hoskin & Harcourt LLP
- Securities Transfer Association of Canada

1. Notice-and-access

(a) General comments on notice-and-access

We received a comment that notice-and-access should not be introduced without further study of the familiarity of shareholders with websites and appropriate regulations to facilitate their access and review of information circulars.

> *Response: Our view is that the notice-and-access provisions strike an appropriate balance between shareholder access to materials and a more streamlined delivery process. We will monitor the implementation of notice-and-access to assess the impact on shareholders.*

We also received several comment letters recommending that investment funds be

permitted to use notice-and-access.

Response: We are not prepared at this time to extend notice-and-access to investment funds without further study. We will consider this issue at a later date.

(b) Notice and permitted information in the notice package

We received a number of detailed comments on proposed s. 2.7.1 to 2.7.6 of Regulation 54-101, which set out the notice-and-access process. The main comments comprised the following recommendations:

- allowing or requiring all the requisite information to be provided in a single notice document, rather than a notice and a separate document explaining notice-and-access;
- removing the requirement to reference page numbers in the information circular;
- requiring a factual description of matters to be voted on only if the matter to be voted on is not otherwise fully described in the voting instruction form or proxy;
- removing the requirement to specify a date and time by which a request for a paper copy of the information circular must be received;
- removing the requirement for the reporting issuer to explain its reason for using notice-and-access;
- requiring the reporting issuer to disclose whether it is paying for intermediaries to forward proxy-related materials to OBOs.

Response: We generally have accepted most of the recommendations specified above, although in some cases we have made modifications to the specific alternatives proposed. We have, among other changes, amended s. 1.3 of Regulation 54-101 to clarify that any required document (and not just forms) that a person is required to send can be substituted for another form or document or combined with another form or document, so long as the form or document used requests or includes the same information contemplated by the required form or document.

However, we are not adopting the recommendation regarding disclosure of whether the reporting issuer is paying for intermediaries to forward proxy-related materials to OBOs. We do not think this information needs to be included in the notice, as it is already provided in the notification of

meeting and record dates which is filed on SEDAR. We strongly encourage all market participants to work together to develop industry best practices and standards for the notice to make it as user-friendly and consistent for investors as possible.

(c) Notice in advance of first use of notice-and-access

We received several comments that questioned the utility of the requirement in proposed s. 2.7.2 that a reporting issuer provide advance notice not more than 6 months and not less than 3 months before the first meeting for which notice-and-access would be used. Several alternatives were suggested, including that the notification of meeting and record dates required by s. 2.2 of Regulation 54-101 filed on SEDAR would be adequate. It was noted by one commenter that shareholders would be unlikely to act upon three months advance notice to educate themselves on notice-and-access; that the need for advance notice for a reporting issuer adopting notice-and-access for the first time would diminish as shareholders became increasing familiar with the process; and that the concept of an "expected date" for the meeting is an unworkable standard.

Response: We have adopted this recommendation. A reporting issuer that uses notice-and-access for the first time must file the notification of meeting and record dates, which includes information on whether the issuer will use notice-and-access, on SEDAR at least 25 days before the record date for notice, which in turn must be at least 40 days before the meeting. We think that this greater lead time will enable issuers using notice-and-access for the first time to more smoothly implement notice-and-access. We strongly encourage all market participants to work together to develop industry best practices and standards as notice-and-access is introduced for the first time.

(d) Consent to other delivery methods/Electronic delivery of notice package

We received several comments and questions regarding how notice-and-access will interact with the delivery of proxy-related materials, including annual financial statements and related MD&A.

Response: We have made a number of changes to address these comments. In particular, please see new s. 3.5(2) of Policy Statement 51-102, which clarifies that annual financial statements and related MD&A can be sent for purposes of s. 4.6(5) using notice-and-access.

Our understanding is that currently, the primary service provider for intermediaries has a separate e-delivery platform for delivering proxy-related materials which is intended to be distinct from the notice-and-access platform. The guidance clarifies that this type of separate e-

delivery platform can be used in conjunction with notice-and-access. In addition, the notice package can also be delivered electronically (subject to obtaining the beneficial owner's consent) if this delivery option is available.

(e) Standing instructions to receive paper copies of information circulars and/or annual financial statements and related MD&A

We received a comment proposing that changes be made to Form 54-101F1 *Client Response Form* to accommodate standing instructions, and requiring the provision of information on standing instructions in the explanation of notice-and-access required to be sent under s. 2.7.1. Another commenter also noted that some dealers expressed concern around implementation and management of a standing instruction database and that dealers wished to have the opportunity to consider and discuss the changes with regulators and service providers before stating a view.

We also received a comment that a reporting issuer should give effect to standing instructions it receives from registered shareholders whether or not it has taken steps to obtain standing instructions.

*Response: The intent of the provisions relating to standing instructions and intermediaries is to permit **but not require** intermediaries to obtain standing instructions on the inclusion of paper copies of the information circular and/or annual financial statements and related MD&A. It is ultimately the intermediaries' decision (in consultation with service providers) whether to implement operational procedures to obtain standing instructions, and whether, as a result, intermediaries will need to give additional information to clients in Form 54-101F1* Client Response Form *regarding provision of standing instructions.*

We have not adopted the recommendation that a reporting issuer give effect to standing instructions whether or not it has taken steps to obtain them. To require this would effectively require reporting issuers to implement and manage a database of standing instructions, and we do not think that this measure is warranted at this time.

(f) Stratification

One commenter cautioned that it may be necessary or advisable to limit the criteria applied to stratification and asked for clarification as to what other criteria for stratification it foresees as being acceptable.

*Response: The intent of the provisions relating to stratification is to permit **but not require** stratification to be used by, or available as an option to, reporting issuers and intermediaries. It is ultimately for*

reporting issuers and intermediaries (in consultation with the various service providers) to decide whether stratification is an appropriate and feasible feature for notice-and-access, subject to the guidance we have provided on the appropriate objectives for stratification. We do not propose to mandate specific permitted stratification criteria, although we will continue to monitor this issue. We strongly encourage market participants to develop best practices for stratification criteria should stratification be introduced as a feature of notice-and-access in the Canadian context. We note that stratification has been a feature of US notice-and-access for several years, and this experience may be helpful to market participants in developing stratification options and best practices.

(g) Record date for notice

A commenter noted that if the record date for notice was set at 30 days before the meeting date as currently permitted in s. 2.1 of Regulation 54-101, there would be operational challenges for all parties in the process to verify the record date information and send the requisite materials no more than 30 days before the meeting. The commenter requested that s. 2.1 be modified so that the record date for notice under notice-and-access leaves sufficient time for compliance with the posting and delivery requirements.

Response: We have adopted this recommendation.

(h) Collection of information on websites

One commenter noted that there may be some significant practical problems associated with permitting the collection of information on some securityholders (i.e. registered holders) and not others (i.e., beneficial owners) on the website to which proxy-related materials are posted.

Response: It is up to the reporting issuer using notice-and-access, in conjunction with relevant service providers, to determine how to comply with the restrictions on collecting information in a cost-effective manner.

(i) Availability of exemption to use US notice-and-access

A commenter submitted that any issuer that is mandatorily subject to Rule 14a-16 should be able to use US notice-and-access exclusively, and not have to comply with the Canadian notice-and-access requirements. Alternatively, it proposed that any disqualifying criteria from accessing the exemption should be tied solely to the trading volume of the issuer's securities in Canada relative to its trading volume in the United States. Finally, it also proposed that an SEC issuer that voluntarily complies with Rule 14a-16 despite being an exempt "foreign private issuer" under the SEC's rules should also be entitled to rely on the Canadian notice-and-access requirements exemption, subject to whatever disqualification

test based on connections to Canada is ultimately adopted.

> *Response: We are not adopting this recommendation at this time. Although the Shareholder Voting Communication Process in the United States and Canada are broadly similar, there are important differences. These include differences in the mechanisms by which a beneficial owner obtains authority to attend and vote at a meeting and differences in what documents are required to be sent as part of proxy-related materials. The Canadian notice-and-access procedures have been formulated to take these and other specific features of the Canadian Shareholder Voting Communication Process into account. We note that there are a number of exemptions from Canadian securities legislation that also apply to "SEC issuers".*

(j) Use of notice-and-access by third parties

A commenter requested clarification on the obligations and restrictions applicable to third parties in using notice-and-access, particularly in light of s. 6.2 of Regulation 54-101. For example, how would the restriction in s. 2.7.1(2) (requiring the reporting issuer to send a paper copy of the information circular if the notice-and-access package includes any particulars of any matter submitted to the meeting that go beyond what is permitted in s. 2.7.1) apply to third parties?

> *Response: We have added s. 2.7.7 to address this point. We note that notice-and-access is a delivery mechanism for proxy-related materials, and does not modify any existing legal obligations of third parties such as dissident shareholders in the Shareholder Voting Communication Process.*

(k) Miscellaneous comments

We received a number of other detailed drafting and technical comments and have adopted a number of them.

2. Sending "notice only" package when reporting issuer decides not to pay for delivery to OBOs

A commenter asked that we mandate that a reporting issuer who chooses not to pay for an intermediary to forward proxy-related materials to OBOs pay for the forwarding of a "notice only" package, defined as a package without a paper copy of an information circular.

> *Response: We are not adopting this suggestion at this time, and will consider this issue separately. We note that we would have no concerns if, where a reporting issuer chose not to pay, an intermediary voluntarily sent the "notice only" package to its beneficial owner clients.*

3. Indirect sending of securityholder materials by reporting issuer

A commenter took the view that removing the present s. 2.12(2) of Regulation 54-101 and instead providing guidance in Policy Statement 54-101 effectively permits an issuer to choose to deliver materials for forwarding to beneficial owners to any office of an intermediary, rather than to the designated agent of that intermediary. The commenter noted that this would impede timely delivery of materials to investors, add costs and reduce the overall efficiency of the delivery process. The commenter also requested that s. 2.12 be amended to clearly require that reporting issuers pay for delivery of material to intermediaries for forwarding.

> *Response: Our view is that the present s. 2.12(2)'s use of the word "may" can be interpreted as permitting, but not requiring a reporting issuer to deliver materials to the intermediary's agent. This was not the intent of the provision, which was to clarify that a reporting issuer would not have failed to comply with its obligations to send securityholder materials because it followed an intermediary's instruction to send the materials to the intermediary's third-party agent. We have added language to s. 2.7 of Policy Statement 54-101 to further clarify that we expect reporting issuers to send materials to the agent designated by the intermediary unless alternate arrangements have been made with that intermediary.*
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> *We think the wording of s. 2.12 (as amended) clearly states the reporting issuer's obligation to send a proximate intermediary the requisite number of sets of materials specified by the proximate intermediary. A reporting issuer that refuses to send these materials to a proximate intermediary is not complying with its obligations under this section. We have modified the guidance in s. 3.4.1(3) of Policy Statement 54-101 to further clarify this point.*

The same commenter took the view that an issuer should be obligated to deliver materials to all intermediaries in a foreign jurisdiction for forwarding to beneficial owners in that jurisdiction.

> *Response: Regulation 54-101 effectively only requires reporting issuers to send proxy-related materials to beneficial owners who hold their securities through intermediaries that are covered by the request for beneficial ownership information. Section 2.5(1) specifies that the request only applies to each proximate intermediary that is:*
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> *(a) identified by a depository (currently only CDS) as a participant in the depository holding securities that entitle the holder to receive notice of the meeting or to vote at the meeting; or*
>
> *(b) listed as an intermediary on the intermediary master list provided by a depository where the intermediary, or a nominee of the intermediary that is identified on the intermediary master list, is a registered holder*

of securities that entitle the holder to receive notice of the meeting or to vote at the meeting.

We are not adopting this recommendation at this time and will consider this issue separately. In the meantime, we strongly encourage reporting issuers to send proxy-related materials to any intermediary in a foreign jurisdiction who requests them on behalf of beneficial owners.

4. Requests for NOBO lists

A commenter raised a concern that proposed s. 2.5(4) requires an intermediary to make an assessment about whether a person requesting a NOBO list has the technological capacity to receive the list. The commenter also noted concerns on the part of dealers about their ability to assess the technological capacities of a wide variety of reporting issuers and third parties, and also about issues that could arise should an intermediary determine not to provide the list. The commenter proposed an alternative self-certification process, whereby the requester certifies as to its technological capacity to receive the list.

Response: We have adopted this recommendation and made changes to the undertaking in Form 54-101F9.

Another commenter recommended that s. 2.5 be amended to not require any request for beneficial ownership information to come through a transfer agent, regardless of whether the request is only for the limited purpose of requesting a NOBO list.

Response: We are not adopting this recommendation.

5. Appointing beneficial owner as proxy holder

A commenter was concerned that requiring a beneficial owner or its nominee appointed under s. 2.18(2) or s. 4.5(2) be given authority to attend, vote and otherwise act for and on behalf of management of the reporting issuer or intermediary (as applicable) could conflict with the laws applicable to certain, largely foreign companies which only permit proxyholders to vote on items set out in the information circular. The commenter also was concerned that requiring that this authority be limited if expressly instructed by a beneficial owner would be difficult to implement.

Response: We have modified the relevant sections to clarify that the required grant of authority is subject to any prohibitions under corporate law. We have removed the reference to express limitations on voting authority by beneficial owner. In our view, a beneficial owner that wishes to provide more limited voting authority can make appropriate arrangements with its appointee without necessarily involving

management of the reporting issuer or the intermediary (as applicable).

A commenter requested that proposed s. 2.18 be amended to permit management of the reporting issuer to use the power of substitution in the proxy they hold on behalf of NOBOs (where the reporting issuer is sending proxy-related materials directly to NOBOs) to send proxies instead of VIFs to NOBOs. Conversely, another commenter requested that s. 3.6 of Policy Statement 54-101 be amended to expressly state that sending proxies instead of VIFs is not permitted.

Response: We are not adopting either recommendation at this time. We will consider this issue at a later date. While we support in principle measures to simplify the voting process of all beneficial owners, we believe the process described above needs to be studied further in the context of the larger Shareholder Voting Communication Process before determining whether it is appropriate to codify it in Regulation 54-101.

6. Use of alternate forms

A commenter requested that s. 1.3 of Regulation 54-101 be expanded to a more general provision that allows participants to use forms and documents that are acceptable for the purposes of corporate statutes and for achieving the purpose of Regulation 54-101. The objective would be to prevent technical non-compliance with the Regulation from being a factor that could potentially invalidate the vote for the meeting under corporate statutes, if otherwise acceptable documentation exists to allow non-registered holders to exercise their rights to vote.

Response: We are not adopting this recommendation at this time. We will consider this issue at a later date. We believe the issue described above is an important one, but that it needs to be studied further in the context of the larger Shareholder Voting Communication Process before determining whether it is appropriate to make the requested changes to Regulation 54-101.

7. Reconciliation of positions

A commenter called for Regulation 54-101 to explicitly require intermediaries to:

- Reconcile the files of beneficial ownership data with their registered, depository and nominee positions;
- Give clear direction to the tabulator regarding through which depository, nominee or intermediary securities being voted are held;
- Ensure that any omnibus proxy required from an intermediary or depository through whom they hold shares is being filed; and

- Ensure that a restricted proxy is not issued by the intermediary without verifying that a position has not been voted.

Response: We are not adopting this recommendation at this time. We will consider this issue at a later date. We believe the issue of reconciliation of voting positions is an important one and needs to be studied further in the context of the larger Shareholder Voting Communication Process before determining whether it is appropriate to codify provisions affecting this issue in Regulation 54-101 and the form those provisions should take.