

REGULATION AMENDING REGULATION 81-106 RESPECTING INVESTMENT FUND CONTINUOUS DISCLOSURE

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (2), (3), (4.1), (8), (20), (30) and (34))

1. Section 1.1 of Regulation 81-106 respecting Investment Fund Continuous Disclosure (chapter V-1.1, r. 42) is amended:

(1) by inserting, after the definition of the expression “financial statements”, the following:

““information circular” means a completed Form 51-102F5 Information Circular of Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V.1.1, r. 24);”;

(2) by inserting, after the definition of the expression “interim period”, the following:

““intermediary” has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (chapter V-1.1, r. 29);”;

(3) by inserting, after the definition of the expression “material contract”, the following:

““meeting” when used alone in relation to an investment fund means a meeting of securityholders of the investment fund;”;

(4) by inserting, after the definition of the expression “net asset value”, the following:

““NOBO” has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;”;

(5) by inserting, after the definition of the expression “non-redeemable investment fund”, the following:

““notice-and-access” means the delivery procedures referred to in section 12.2.1;

““notification of meeting and record dates” has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;

““proximate intermediary” has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;

““proxy-related materials” means securityholder material relating to a meeting that a person that solicits proxies is required under corporate law or securities legislation to send to a registered holder or beneficial owner of the securities of an investment fund;”;

(6) by inserting, after the definition of the expression “scholarship plan”, the following:

““securityholder materials” means materials that are sent to registered holders or beneficial owners of securities of an investment fund;

““send” includes to deliver or forward or arrange to deliver or forward, by any means;”;

(7) by inserting, after the definition of the expression “statement of changes in financial position”, the following:

““stratification” means procedures whereby a paper copy of the information circular and, if applicable, the financial statements of the investment fund, are included with the documents required to be sent to registered holders or beneficial owners under section 12.2.1;”.

2. Section 12.1 of the Regulation is replaced with the following:

“12.1. Application and definitions

(1) This Part applies to an investment fund that is a reporting issuer.

(2) In this Part, “securityholder” has the same meaning as in section 1.1 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (chapter V-1.1, r. 29).”.

3. The Regulation is amended by inserting, after section 12.2, the following:

“12.2.1. Notice-and-Access

A person that solicits proxies from a registered holder or beneficial owner, as the case may be, of securities of an investment fund under subsection 12.2(2) and section 2.7 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (chapter V-1.1, r. 29), must not use notice-and-access to send proxy-related materials to the registered holder or beneficial owner unless all of the following apply:

(a) the registered holder or beneficial owner is sent a notice that contains only the following information:

(i) the date, time and location of the meeting;

(ii) a description of each matter or group of related matters identified in the form of proxy to be voted on unless that information is already included in the form of proxy, or the Form 54-101F6 or Form 54-101F7 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer, that is being sent to the registered holder or beneficial owner, under paragraph (b);

(iii) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;

(iv) a reminder to review the information circular before voting;

(v) an explanation of how to obtain a paper copy of the information circular and, if applicable, the financial statements of the investment fund, from the person soliciting proxies;

(vi) a plain-language explanation of notice-and-access that includes all of the following information:

(A) if stratification is used, a list of the types of registered holders or beneficial owners who will receive paper copies of the information circular and, if applicable, the financial statements of the investment fund;

(B) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the financial statements of the investment fund, is to be received in order for the registered holder or beneficial owner to receive the paper copy in advance of any deadline for the submission of the proxy or the voting instructions for the meeting, and the date of the meeting;

(C) an explanation of how the registered holder or beneficial owner is to return the proxy or the voting instructions, including any deadline for return of the proxy or the voting instructions;

(D) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the notice can be found;

(E) a toll-free telephone number the registered holder or beneficial owner can call to get information about notice-and-access;

(b) by prepaid mail, courier or the equivalent,

(i) the registered holder is sent the notice and a form of proxy for use at the meeting at least 30 days before the date of the meeting, and

(ii) the beneficial owner is sent the notice and a Form 54-101F6 or Form 54-101F7, using the procedures referred to in section 2.9 or 2.12 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;

(c) the proxy-related materials are sent at least 30 days and at most 50 days before the meeting;

(d) if proxy-related materials are sent directly to a NOBO using notice-and-access, the notice and, if applicable, any paper copies of information circulars and financial statements, are sent at least 30 days before the date of the meeting;

(e) if proxy-related materials are sent indirectly to a beneficial owner using notice-and-access, the notice and, if applicable, any paper copies of information circulars and financial statements are sent to the proximate intermediary,

(i) at least 3 business days before the 30th day before the date of 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, and

(ii) at least 4 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary using any other type of prepaid mail;

(f) in the case of a solicitation by or on behalf of management of the investment fund, or where another person soliciting proxies has requisitioned a meeting, the notification of meeting and record dates is filed on SEDAR, on the same date that the notification of meeting and record dates is sent pursuant to subsection 2.2(1) of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;

(g) public electronic access to the information circular and the notice, as well as the form of proxy in the case of the registered holder, is provided on or before the date that the notice is sent to the registered holder or beneficial owner, in the following manner:

(i) the documents are filed on SEDAR;

(ii) the documents are posted for no less than one year on

(A) the investment fund's designated website in the case of a solicitation by or on behalf of management of the investment fund, and

(B) a website other than the website for SEDAR, in the case of a solicitation by or on behalf of any other person;

(h) a toll-free telephone number is provided for use by the registered holder or beneficial owner to request a paper copy of the information circular and, if applicable, the financial statements of the investment fund, at any time

(i) from the date that the notice is sent to the registered holder or beneficial owner, and

(ii) up to and including the date of the meeting, determined after taking into account any adjournment or postponement of the meeting;

(i) if a request for a paper copy of the information circular and, if applicable, the financial statements of the investment fund, is received through the toll-free telephone number provided in the notice or by any other means, a paper copy of the document requested is sent free of charge by the person soliciting proxies to the registered holder or beneficial owner at the address specified in the request,

(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, and

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

(j) the notice is only accompanied by

(i) a form of proxy, Form 54-101F6 or Form 54-101F7 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer,

(ii) if applicable, the financial statements of the investment fund to be presented at the meeting, and

(iii) if the meeting is to approve a reorganization of the investment fund with another investment fund, as contemplated by paragraph 5.1(1)(f) of Regulation 81-102 respecting Investment Funds (chapter V-1.1, r. 39), the Form 81-101F3 of Regulation 81-101 respecting Mutual Fund Prospectus Disclosure (chapter V-1.1, r. 38) or Form 41-101F4 of Regulation 41-101 respecting General Prospectus Requirements (chapter V-1.1, r. 14) for the continuing investment fund;

(k) the notice is only combined, in a single document, with a form of proxy, Form 54-101F6 or Form 54-101F7 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer, or is not combined with any other document;

(l) the information circular discloses that proxy-related materials are being sent to registered holders or beneficial owners of the investment fund 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 and, if applicable, the financial statements of the investment fund;

(m) delivery of the information circular and, if applicable, the financial statements of the investment fund, to a registered holder or beneficial owner if a paper copy of such material is requested by the registered holder or beneficial owner following receipt of the notice, is paid by the manager of the investment fund or other person soliciting proxies that is not the investment fund.

“12.2.2. Restrictions on information gathering

(1) A person using notice-and-access that receives a request for a paper copy of the information circular or, if applicable, the financial statements of the investment fund through the toll-free number provided in the notice or by any other means, must not do any of the following:

(a) ask for any information about the requester, other than the name and address to which the information circular and, if applicable, the financial statements are to be sent;

(b) disclose or use the name or address of the requester for any purpose other than sending the information circular and the financial statements of the investment fund.

(2) A person that posts proxy-related materials pursuant to subparagraph 12.2.1(1)(g)(ii) must not collect information that can be used to identify a person who has accessed the non-SEDAR website address where the proxy-related materials are posted.

“12.2.3. Posting materials on non-SEDAR website

(1) A person that posts proxy-related materials pursuant to subparagraph 12.2.1(1)(g)(ii) must also post on the website all of the following:

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

(b) any written communications the person has made available to the public regarding each matter or group of matters to be voted on at the meeting, whether or not they were sent to registered holders or beneficial owners.

(2) A person that posts proxy-related materials pursuant to subparagraph 12.2.1(1)(g)(ii) must do so in a manner and format that would permit an individual with a reasonable level of computer skill and knowledge to easily do any of the following:

(a) access, read and search the materials;

(b) download and print the materials.

“12.2.4. Record date for notice of meeting, abridgement of time and notification of meeting date and record date

A person using notice-and-access, in the case of a solicitation by or on behalf of management of the investment fund, or where another person has requisitioned a meeting, must do all of the following:

(a) despite paragraph 2.1(b) of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (chapter V-1.1, r. 29), set or requisition a record date for notice of the meeting that is no fewer than 40 days before the date of the meeting;

(b) in addition to the requirements of section 2.20 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer, not abridge the time prescribed in paragraph 2.1(b), subsection 2.2(1) or subsection 2.5(1) of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer, unless the person

(i) sets a record date for notice of the meeting that is no fewer than 40 days before the date of the meeting, and

(ii) sends the notification of meeting and record dates provided pursuant to section 2.2 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer at least 3 business days before the record date for notice of the meeting;

(c) specify in the notification of meeting and record dates provided pursuant to section 2.2 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer that proxy-related materials are being sent to registered holders or beneficial owners using notice-and-access.

“12.2.5. Consent to other delivery methods

For greater certainty, section 12.2.1 does not do any of the following:

(a) prevent a registered holder or beneficial owner from consenting to the use of other delivery methods to send proxy-related materials;

(b) terminate or modify a consent that a registered holder or beneficial owner previously gave to a person regarding the use of other delivery methods to send proxy-related materials;

(c) prevent a person that solicits proxies, an intermediary or another person, from sending proxy-related materials using a delivery method to which a registered holder or beneficial owner has consented prior to the coming into effect of this Part.

“12.2.6. Instructions to receive paper copies

(1) Despite section 12.2.1, an investment fund or its manager or management may obtain standing instructions from a registered holder, and an intermediary may obtain standing instructions from its client that is a beneficial owner, of securities of the investment fund, that a paper copy of the information circular and, if applicable, the financial statements of the investment fund, be sent to the registered holder or beneficial owner in all cases when using notice-and-access in respect of a meeting of the investment fund.

(2) If an investment fund, its manager or management has obtained standing instructions from a registered holder under subsection (1), the investment fund or its manager or management must do all of the following:

(a) include with the notice any paper copies of information circulars and, if applicable, financial statements of the investment fund, required to comply with the standing instructions obtained under subsection (1);

(b) include with the notice a description, or otherwise inform the registered holder, of the means by which the registered holder may revoke the registered holder’s standing instructions.

(3) 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 investment fund or its manager or management is sending proxy-related materials directly under section 2.9 of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (chapter V-1.1, r. 29), indicate in the NOBO list provided to the investment fund or its manager or management, those NOBOs who have provided standing instructions under subsection (1) as at the date the NOBO list is generated;

(b) if the intermediary is sending proxy-related materials to a beneficial owner on behalf of an investment fund or its manager or management using notice-and-access, request appropriate quantities of paper copies of the information circular and, if applicable, the financial statements of the investment fund, from the investment fund or its manager or management, for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;

(c) include with the notice a description, or otherwise inform the beneficial owner of, the means by which the beneficial owner may revoke the beneficial owner’s standing instructions.

“12.2.7. Compliance with Regulation 51-102 respecting Continuous Disclosure Obligations and Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer

A person that solicits proxies must comply with all of the following as if the terms notice-and-access and stratification were adopted from this Regulation:

(a) Items 7.12 and 9.9 of Form 54-101F2 Request for Beneficial Ownership Information of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer (chapter V-1.1, r. 29);

(b) Form 54-101F5 Electronic Format of Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer for NOBO List.”

4. Section 12.3 of the Regulation is amended by replacing, wherever it appears in the French text, the word “porteur” with the words “porteur de titres”, and making the necessary grammatical adaptations.

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

AMENDMENTS TO POLICY STATEMENT TO REGULATION 81-106 RESPECTING INVESTMENT FUND CONTINUOUS DISCLOSURE

1. *Policy Statement to Regulation 81-106 respecting Investment Fund Continuous Disclosure* is amended by adding, after section 8.1, the following:

“8.2. Notice-and-Access

(1) In the Regulation and this Policy Statement, references to registered holders and beneficial owners should be read to correspond with references to forms of proxy or voting instruction forms, as appropriate.

We expect that persons that solicit proxies will only use notice-and-access for a particular meeting where they have concluded it is appropriate and consistent with the purposes of notice-and-access to do so, taking into account factors such as

- the purpose of the meeting,
- whether a better participation rate would be obtained by sending the information circular with the other proxy-related materials, and
- whether notice-and-access resulted in material declines in beneficial owner voting rates in prior meetings where notice-and-access was used.

(2) With respect to matters to be voted on at the meeting, the notice must only contain a description of each matter or group of related matters identified in the form of proxy, unless that information is already included in the form of proxy or voting instruction form. We expect that persons who use notice-and-access will state each matter or group of related matters in the form of proxy or voting instruction form in a reasonably clear and user-friendly manner. For example, it would be inappropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular as follows: “To vote For or Against the resolution in Schedule A of the management information circular”.

The plain-language explanation of notice-and-access required in the notice can also address other aspects of the proxy voting process. However, there should not be any substantive discussion of the matters to be considered at the meeting.

(3) Paragraph 12.2.1(h) requires establishment of a toll-free telephone number for the registered holder or beneficial owner to request a paper copy of the information circular. A person soliciting proxies may choose, but is not required, to provide additional methods for requesting a paper copy of the information circular. If persons soliciting proxies do so, they must still comply with the fulfillment timelines in paragraph 12.2.1(i).

(4) Section 12.2.2 is intended to restrict intentional information gathering about registered holders or beneficial owners who make requests for paper copies of information circulars or access the non-SEDAR website.

(5) Section 12.2.3 is intended to allow registered holders and beneficial owners to access the posted proxy-related materials in a user-friendly manner. For example, requiring the registered holder or beneficial owner to navigate through several web pages to access the proxy-related materials, even within the same website, would not be user-friendly. Providing the registered holder or beneficial owner with the specific URL where the documents are posted would be more user-friendly. We encourage persons soliciting proxies and their service providers to develop best practices in this regard.

(6) We expect that where stratification is used for purposes other than complying with registered holder or beneficial owner instructions, it is used to enhance effective communication, and not if it would potentially disenfranchise registered holders or beneficial owners.

(7) Section 12.2.5 permits other delivery methods, such as electronic means, to be used to send proxy-related materials if the consent of the registered holder or beneficial owner has been obtained.

(8) *National Policy 11-201 respecting Electronic Delivery of Documents* (Decision 2011-PDG-0183, 2011-11-17) discusses the sending of materials by electronic means. The guidelines set out in *National Policy 11-201 respecting Electronic Delivery of Documents*, particularly the suggestion that consent be obtained to an electronic transmission of a document, are applicable to documents sent under the Regulation.

(9) Whether persons soliciting proxies may do so in compliance with foreign notice-and-access rules is not contemplated.

(10) A single investor may hold securities of the same class or series 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.

(11) References to notice-and-access in all of the following provisions of *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (Decision 2012-PDG-0235) should be read as if the term notice-and-access was adopted from this Regulation, in addition to any other required adaptations:

- subsection 3.1(1);
- subsection 3.4.1(2);
- section 5.1.”.