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notice

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Implementation of National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer

On July 1, 2002 National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer (the “Instrument”) comes into force. However, the Instrument contains transitional provisions outlined below which will delay the implementation of some of the requirements.

The Instrument replaces National Policy Statement No. 41 Shareholder Communication (“NP41”). The Instrument continues to affirm the intent of NP41, which is to establish an obligation on reporting issuers to send proxy-related materials to the beneficial owners of securities who are not registered holders of its securities, to provide a procedure for the sending of proxy-related materials and other securityholder materials to beneficial owners, and, to impose obligations on various parties in the securityholder communication process.

There are some significant changes contained in the Instrument from NP41:

- i) Procedures have been included to permit reporting issuers to obtain a list of beneficial owners of their securities who do not object to the disclosure of their names and other information to reporting issuers (called “non-objecting beneficial owners” or “NOBOs”). This will permit reporting issuers to send securityholder materials directly to NOBOs. Reporting issuers may also choose to continue to distribute materials to NOBOs indirectly through intermediaries (i.e. investment dealers).
- ii) The scope of materials that a beneficial owner may decline to receive has been narrowed from NP41. Under the Instrument, a beneficial owner can decline to receive proxy-related materials for meetings at which only routine business is to be conducted or non-proxy-related materials not required by law to be sent to registered holders.

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- iii) Reporting issuers that send securityholder materials indirectly to beneficial owners who object to disclosure of their names and other information to reporting issuers (called “objecting beneficial owners” or “OBOs”) may no longer bear the costs associated with the sending of materials by intermediaries to OBOs. The Instrument is now silent on who bears the costs of confidentiality and permits the market to determine how the costs of delivery to OBOs will be borne where the matter is not addressed by local rule.
 - iv) The Instrument recognizes that securities may be held through a multi-layered structure, in which there may be several layers of intermediaries between a registered holder and a beneficial owner. The Instrument allows a reporting issuer to deal only with the intermediary that is shown on the register or that is a participant in a depository.
 - v) NOBO lists can be used by reporting issuers and other persons or companies for any matter relating to the affairs of the reporting issuer, subject to specified terms and conditions similar to those imposed by Canadian corporate law for the use of shareholder lists.
 - vi) Any person or company has the same rights as a reporting issuer and may take any action permitted under the Instrument that may be taken by a reporting issuer. As a result, third parties have the same rights as a reporting issuer in requesting searches and arranging for the delivery of materials to securityholders.
 - vii) The search fee payable by reporting issuers to intermediaries for responding to requests for beneficial ownership and the fee for delivery of materials to beneficial owners is not specified. The fees in both cases are required to be reasonable.
 - viii) The time period between the record date for notice of a meeting and the meeting date has been reduced.
 - ix) The deadline for a reporting issuer to deliver proxy-related materials in bulk to intermediaries has been reduced.
 - x) Prior to holding securities on behalf of a new client, the Instrument requires that an intermediary obtain proxy instructions from that client.
 - xi) Materials may now be sent to beneficial owners by any means, including electronic delivery if consent has been first obtained. Under NP41, delivery was required by means of prepaid first class mail.
 - xii) The requirement in NP41 for an annual renewal of shareholder instructions has been removed from the Instrument.

These changes are not comprehensive. Members will need to review the Instrument and the accompanying Companion Policy and Forms.

The implementation of the provisions of the Instrument related to furnishing NOBO lists and the use of NOBO lists by reporting issuers to send proxy-related materials directly to NOBOs has been staged in order to enable market participants to identify and resolve any potential difficulties that may be encountered in establishing the necessary systems and administrative infrastructure.

The transitional provisions in the Instrument provide that NOBO lists will not be required to be furnished before September 1, 2002 and that proxy-related materials for a meeting to be held before September 1, 2004 may only be sent under the Instrument to NOBOs indirectly through the intermediaries holding on behalf of the NOBOs.

The CSA have stated that if, during the period of staged implementation, it becomes apparent to the CSA that the use by reporting issuers of NOBO lists to send proxy-related materials to NOBOs should be accelerated or delayed, the CSA reserves the ability to respond by way of appropriate amendments to the Instrument.

The Instrument also sets out transitional procedures with respect to obtaining instructions from beneficial owners. Members are required to provide new clients with a mandated set of instructions and a client response form that asks the client if they wish to be a NOBO or OBO and what kinds of documents they wish to receive. Revised forms are required to communicate with clients for the purposes of the Instrument. With respect to existing clients, Members may seek new instructions now or may rely on choices made by the client under NP41. However, Members are required to obtain new instructions from these clients before January 1, 2004. This change has been made to ensure that the Instrument conforms with section 30 of the *Personal Information Protection and Electronic Documents Act* (Canada) which places time limits on the extent to which personal information may be provided without explicit instructions from the relevant beneficial owner.