

NOVA SCOTIA SECURITIES COMMISSION
RULE 54-101 (AMENDMENT)
COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES
OF A REPORTING ISSUER

-AND-

CONSEQUENTIAL AMENDMENTS TO NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS

-AND-

CHANGES TO COMPANION POLICY 51-102CP
CONTINUOUS DISCLOSURE OBLIGATIONS

WHEREAS:


1. Pursuant to section 150 of the Securities Act, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Changes to Companion Policy 51-102CP *Continuous Disclosure Obligations*, copies of which are attached hereto and are hereinafter called the Rule and Companion Policy, respectively, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Companion Policy as a policy statement of the Commission; and

- (c) declares that the rule approved and made pursuant to clause (a) and the issuance of the policy statement pursuant to clause (b) shall both take effect on **February 11, 2013**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 29th day of November, 2012.



Sarah P. Bradley

Attachments

**AMENDMENTS TO
NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS**

1. *National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.*

2. *Section 1.1 is amended by adding the following definitions:*

“corporate law” has the same meaning as in section 1.1 of NI 54-101;

“notice-and-access” has the same meaning as in section 1.1 of NI 54-101;

“proxy-related materials” means securityholder material relating to a meeting of securityholders that a person or company that solicits proxies is required under corporate law or securities legislation to send to the registered holders or beneficial owners of the securities;

“special meeting” has the same meaning as in section 1.1 of NI 54-101;

“special resolution” has the same meaning as in section 1.1 of NI 54-101;

“stratification” has the same meaning as in section 1.1 of NI 54-101;

3. *Section 4.6 of National Instrument 51-102 is amended by*

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

4.6 Delivery of Financial Statements – (1) Subject to subsection (2), a reporting issuer must send annually a 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 any of the following:

(a) a paper copy of the reporting issuer’s annual financial statements and MD&A for the annual financial statements;

(b) a copy of the reporting issuer’s interim financial reports and MD&A for the interim financial reports, ***and***

(b) replacing “two years” in subsection (4) with “one year”.

4. *The Instrument is amended by adding the following sections:*

9.1.1 Notice-and-Access – (1) A person or company soliciting proxies may use notice-and-access to send proxy-related materials to a registered holder of voting securities of a reporting issuer if all of the following apply:

- (a) the registered holder of voting securities is sent a notice that contains the following information and no other information:
 - (i) the date, time and location of the reporting issuer’s meeting for which the proxy-related materials are being sent;
 - (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 a form of proxy that is being sent to the registered holder of voting securities 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 documents in paragraph (2)(b) from the person or company;
 - (vi) a plain-language explanation of notice-and-access that includes the following information:
 - (A) if the person or company is using stratification, a list of the types of registered holders or beneficial owners who will receive paper copies of the information circular and, if applicable, the documents in paragraph (2)(b);
 - (B) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), is to 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;
 - (C) an explanation of how the registered holder is to return the proxy, including any deadline for return of the proxy;
 - (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 can call to get information about notice-and-access;
- (b) the registered holder of voting securities is sent, by prepaid mail, courier or the equivalent, the notice required by paragraph (a) and a form of proxy for use at the meeting and, in the case of a solicitation by or on behalf of management of the reporting issuer, the notice and form of proxy are sent at least 30 days before the date of the meeting;
- (c) in the case of a solicitation by or on behalf of management of the reporting issuer, the reporting issuer files on SEDAR the notification of meeting and record dates in the manner and within the time specified by NI 54-101;
- (d) public electronic access to the information circular, form of proxy and the notice in paragraph (a) is provided on or before the date that the person or company soliciting proxies sends the notice in paragraph (a) to registered holders in the following manner:
 - (i) the documents are filed on SEDAR as required by section 9.3;
 - (ii) the documents are posted until the date that is one year from the date that the documents are posted, on a website other than the website for SEDAR;
- (e) 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 and, if applicable, the documents in paragraph (2)(b), at any time from the date that the person or company soliciting proxies sends the notice in paragraph (a) to the registered holder up to and including the date of the meeting, including any adjournment;
- (f) if a request for a paper copy of the information circular and, if applicable, the documents in paragraph (2)(b), is received at the toll-free telephone number provided under paragraph (e) or by any other means, a paper copy of any such document requested is sent free of charge by the person or company soliciting proxies to the requester 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) Unless an information circular is included with the proxy-related materials, a reporting issuer that sends proxy-related materials to a registered holder of voting securities using notice-and-access must not include with the proxy-related materials any information or document that relates to the particulars of any matter to be submitted to the meeting, except for the following:
 - (a) the information required to be included in the notice under paragraph (1)(a);
 - (b) financial statements of the reporting issuer to be approved at the meeting and MD&A related to those financial statements, which may be part of an annual report.
- (3) A notice under paragraph (1)(a) and the form of proxy may be combined in a single document.

9.1.2 Posting materials on non-SEDAR website – (1) A person or company that posts proxy-related materials in the manner referred to in subparagraph 9.1.1(1)(d)(ii) must also post on the website the following documents:

- (a) any disclosure material regarding the meeting that the person or company has sent to registered holders or beneficial owners of voting securities;
 - (b) any written communications the person or company soliciting proxies has made available to the public regarding each matter or group of matters to be voted upon at the meeting, whether or not they were sent to registered holders or beneficial owners of voting securities.
- (2) Proxy-related materials that are posted under subparagraph 9.1.1(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 easily:
- (a) access, read and search the documents on the website;
 - (b) download and print the documents.

9.1.3 Consent to other delivery methods – For greater certainty, section 9.1.1 does not

- (a) prevent a registered holder of voting securities from consenting to a person or company's use of other delivery methods to send proxy-

related materials,

- (b) terminate or modify a consent that a registered holder of voting securities previously gave to a person or company regarding the use of other delivery methods to send proxy-related materials, or
- (c) prevent a person or company from sending proxy-related materials using a delivery method to which a registered holder has consented prior to February 11, 2013.

9.1.4 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 and, if applicable, the documents in paragraph 9.1.1(2)(b), be sent to the registered holder in all cases when the reporting issuer uses notice-and-access.

- (2) If a reporting issuer has obtained standing instructions from a registered holder under subsection (1), the reporting issuer must do both of the following:
 - (a) include with the notice required by paragraph 9.1.1(1)(a) any paper copies of information circulars and, if applicable, the documents in paragraph 9.1.1(2)(b), required to comply with standing instructions obtained under subsection (1);
 - (b) include with the notice under paragraph (a) a description, or otherwise inform the registered holder of, the means by which the registered holder may revoke the registered holder's standing instructions.

9.1.5 Compliance with SEC Notice-and-Access Rules – A reporting issuer that is an SEC issuer can send proxy-related materials to registered holders under section 9.1 using a delivery method permitted under U.S. federal securities law, if both of the following apply:

- (a) the SEC issuer is subject to, and complies with Rule 14a-16 under the 1934 Act;
- (b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50% of the votes for the election of directors, and none of the following apply:
 - (i) the majority of the executive officers or directors of the issuer are residents of Canada;

- (ii) more than 50% of the consolidated assets of the issuer are located in Canada;
- (iii) the business of the issuer is administered principally in Canada..

5. Form 51-102F5 Information Circular is amended by adding the following section:

4.3 The information circular must include the following, if applicable:

- (a) a statement that the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access and, if stratification will be used, a description of the types of registered holders or beneficial owners who will receive paper copies of the information circular and, if applicable, the documents in paragraph 9.1.1(2)(b);
- (b) a statement that the reporting issuer is sending proxy-related materials directly to non-objecting beneficial owners under NI 54-101;
- (c) a statement that management of the reporting issuer does not intend to pay for intermediaries to forward to objecting beneficial owners under NI 54-101 the proxy-related materials and Form 54-101F7 – Request for Voting Instructions Made by Intermediary, and that in the case of an objecting beneficial owner, the objecting beneficial owner will not receive the materials unless the objecting beneficial owner's intermediary assumes the cost of delivery..

6. (1) Despite section 9.1.1 of National Instrument 51-102, as enacted by section 4 of this Instrument, a person or company must not use notice-and-access to send proxy-related materials to a registered holder of voting securities of a reporting issuer in respect of a meeting of the reporting issuer that takes place before March 1, 2013.

(2) A reporting issuer must not rely on section 9.1.5 of National Instrument 51-102, as enacted by section 4 of this Instrument, in respect of a meeting that takes place before February 15, 2013.

7. This Instrument comes into force on February 11, 2013.

CHANGES TO COMPANION POLICY 51-102CP CONTINUOUS DISCLOSURE OBLIGATIONS

This Annex shows, by way of blackline, changes approved to Companion Policy 51-102CP *Continuous Disclosure Obligations*. These changes become effective on February 11, 2013.

3.5 Delivery of Financial Statements and Paper Copies of Information Circulars

~~Section~~(1) Subsection 4.6(1) of the Instrument requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities, other than debt instruments. The registered holders and beneficial owners may use the request form to request a paper copy of the reporting issuer's annual financial statements and related MD&A, ~~an~~ interim financial ~~report~~reports and related MD&A, or both.

In addition, the request form also may (but is not required to) be used to request a paper copy of the information circular and annual financial statements and related MD&A where a reporting issuer uses notice-and-access to deliver proxy-related materials.

Reporting issuers are only required to deliver financial statements and MD&A to the person or company 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 NI 54-101 in respect of the financial statements.

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

(2) Subsection 4.6(5) provides that subsection 4.6(1) and the requirement to send annual financial statements under subsection 4.6(3) do not apply to a reporting issuer that sends its annual financial statements to its securityholders, other than holders of debt instruments, within 140 days of the issuer's financial year-end and in accordance with NI 54-101. Notice-and-access can be used to send the annual financial statements and related MD&A under subsection 4.6(5). Notice-and-access is consistent with the principles for electronic delivery set out in National Policy 11-201 *Electronic Delivery of Documents*.

PART 10 ELECTRONIC DELIVERY OF DOCUMENTS

10.1 Electronic Delivery of Documents

~~Any~~ Generally, any documents required to be sent under the Instrument may be sent by electronic delivery, as long as such delivery is ~~made in compliance with Québec 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) This Instrument permits a reporting issuer to use notice-and-access to send proxy-related materials to registered holders.
- (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 such information is already included 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 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 management's information circular".

The notice must contain a plain-language explanation of notice-and-access. The explanation also can 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 9.1.1(1)(b) of the Instrument requires the registered holder to be sent the form of proxy as part of the notice package. The notice package must be sent by prepaid mail, courier or the equivalent; however, section 9.1.3 permits an alternate delivery method (e.g., email) to be used if the registered holder's consent has been or is obtained. 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.
- (4) Paragraph 9.1.1(1)(c) of the Instrument requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) of NI 54-101 in the manner and within the time specified by NI 54-101. See the guidance in Companion Policy 54-101CP to NI 54-101.
- (5) Paragraph 9.1.1(1)(d) of the Instrument requires the notice, information circular and form of proxy to be filed on SEDAR and posted on a website other than SEDAR. The non-SEDAR website can be the website of the person or company soliciting proxies (e.g., the reporting issuer's website) or the website of a service provider.
- (6) Paragraph 9.1.1(1)(e) of the Instrument requires the person or company soliciting proxies to establish a toll-free telephone number for the registered holder to request a paper copy of the information circular. A person or company 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 or company soliciting proxies does so, it must still comply with the fulfillment timelines in paragraph 9.1.1(1)(f) of the Instrument.
- (7) Subsection 9.1.2(2) of the Instrument 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.
- (8) 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 9.1.3 of the Instrument 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 or intermediaries may have previously obtained (and continue to obtain) consents from registered holders for proxy-related materials to be sent

by email. This delivery method would still be available.

- Section 9.1.4 of the Instrument permits a reporting issuer to obtain standing instructions from a registered holder to be sent a paper copy of the information circular and if applicable, annual financial statements and annual MD&A 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 relevant documents.

(9) 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 Instrument and in NI 54-101.

We do not mandate the use of stratification, except if it is necessary to comply with standing instructions or other 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 registered holder instructions does so in order to enhance effective communication, and not to disenfranchise registered holders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which types of registered holders will receive a copy of the information circular.