

Schedule D
Revised Proposed Amendment Instrument to NI 51-102 and
Blackline to the Original Materials

Proposed Amendment Instrument to
National Instrument 51-102
Continuous Disclosure Obligations

1. *This Instrument amends National Instrument 51-102 Continuous Disclosure Obligations.*
2. *Section 1.1 of National Instrument 51-102 is amended by*
 - (a) *adding the following definition after “common share”:*

“corporate law” has the same meaning as in section 1.1 of NI 54-101;
 - (b) *adding the following definition after “non-voting security”:*

“notice-and-access” has the same meaning as in section 1.1 of NI 54-101;
 - (c) *adding the following definition after “proxy”:*

“proxy-related materials” means securityholder materials relating to a meeting that the reporting issuer is required under corporate law or securities legislation to send to the registered holders of the securities;
 - (d) *adding the following definitions after “solicit”:*

“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. *Subsection 4.6 of National Instrument 51-102 is amended by*
 - (a) *repealing and replacing subsection (1) with the following:*

4.6 Delivery of Financial Statements – (1) Subject to subsection (2), a reporting issuer must send an annual 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 one or both of the following:

- (a) a copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements and, where the reporting issuer uses notice-and-access to send proxy-related materials, a paper copy of the information circular;
- (b) a copy of the reporting issuer's interim financial reports and MD&A for the interim financial reports.

(b) inserting “using the request form in subsection (1)” **after** “requests the reporting issuer's annual financial statements or interim financial reports” **in subsection (3)**;

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

4. The following is added after section 9.1 of National Instrument 51-102 Continuous Disclosure Obligations:

9.1.1 Notice-and-Access – (1) A person or company soliciting proxies may send proxy-related materials to a registered holder of voting securities by notice-and-access that complies with all of the following:

- (a) the registered holder of voting securities is sent the following:
 - (i) a notice containing all of the following information, and no other information:
 - A. the date, time and location of the reporting issuer's meeting;
 - B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;
 - C. the website address other than the address for SEDAR, where the proxy-related materials are located;
 - D. a reminder to review the information circular before voting;
 - E. an explanation of how to obtain a paper copy of the information circular from the person or company;
 - (ii) a document in plain language that explains notice-and-access and includes the following information:
 - A. why the person or company is using notice-and-access;
 - B. if the person or company is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;
 - C. the date and time by which a request for a paper copy of the information circular should 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;
 - D. an explanation of how the registered holder is to return the proxy, including any deadline for return of the proxy;
 - E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)(B) can be found;
 - F. a toll-free telephone number the registered holder can call to ask questions about notice-and-access;
- (b) the registered holder of voting securities is sent a form of proxy for use at the meeting;
 - (c) the registered holder of voting securities is sent by prepaid mail, courier or the equivalent, paper copies of the documents required by paragraphs (a) and (b), and in the case of a solicitation by or on behalf of management of the reporting issuer the documents are sent at least 30 days before the date fixed for the meeting;
 - (d) in the case of a solicitation by or on behalf of management of the reporting issuer, at least 30 days before the date fixed for the meeting the reporting issuer files the notification required by subsection 2.2(1) of NI 54-101;
 - (e) public electronic access to the information circular, form of proxy and the documents in paragraph (a) is provided on or before the day that the person or company soliciting proxies sends the documents in paragraphs (a), in the following manner:
 - (i) the documents are filed on SEDAR as required by section 9.3;
 - (ii) the documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the documents relate, at a website address other than the address for SEDAR;
 - (f) 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 at any time from the date that the person or company soliciting proxies sends the documents in paragraph (a) to the registered holder, up to and including the date of the meeting including any adjournment;
 - (g) if a request is received under paragraph (f) or by any other means, a paper copy of the information circular is sent free of charge to the person or company 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) A person or company that sends proxy-related materials to a registered holder of voting securities using notice-and-access must not include with the proxy-related material any documents other than the documents set out in paragraphs (1)(a) or (b) unless an information circular also is included.

9.1.2 Notice in advance of first use of notice-and-access – Management of a reporting issuer that uses notice-and-access to send proxy-related material to a registered holder of voting securities must do the following not more than six months and not less than three months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

- (a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;
- (b) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

9.1.3 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)(e)(ii) must also post on the website the following documents:

- (a) any other 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 the meeting, whether sent to registered holders or beneficial owners of voting securities or not.
- (2) Proxy-related materials that are posted under subparagraph 9.1.1(1)(e)(ii) must be posted in a manner and be in a format that permits an individual with a reasonable level of computer skill and knowledge to do all of the following conveniently:
 - (a) access, read and search the documents on the website;

- (b) download and print the documents.

9.1.4 Consent to other delivery methods – Nothing in section 9.1.1 shall be interpreted as

- (a) restricting a registered holder of voting securities from consenting to a reporting issuer's use of other delivery methods to send proxy-related materials;
- (b) terminating or a modifying a consent that a registered holder of voting securities previously gave to reporting issuer regarding a reporting issuer's use of other delivery methods to send proxy-related materials; or
- (c) preventing a reporting issuer from sending proxy-related materials using a delivery method to which a registered holder has previously consented.

9.1.5 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 be sent to the registered holder in all cases where the reporting issuer uses notice-and-access.

- (2) Where a reporting issuer has obtained standing instructions from registered holder under subsection (1), the reporting issuer must do all of the following:
 - (a) include any paper copies of information circulars required to comply with standing instructions obtained under subsection (1) with the documents required by paragraphs 9.1.1(1)(a) and (b);
 - (b) provide a mechanism for the registered holder to revoke the registered holder's standing instructions.
- (3) Where a reporting issuer has received a request for a paper copy of the information circular from a registered holder under paragraph 4.6(1)(a), the reporting issuer must include a paper copy of the information circular with the documents required by paragraphs 9.1.1(1)(a) and (b).

9.1.6 Compliance with SEC Rules – Section 9.1 does not apply to a reporting issuer that is an SEC issuer if it satisfies both of the following:

- (a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act;

- (b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50 per cent of the votes for the election of directors, and none of the following is true:
 - (i) the majority of the executive officers or directors of the issuer are residents of Canada;
 - (ii) more than 50 per cent 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 after item 4.2:

4.3 The information circular must state the following information if applicable:

- (a) that the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is being used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;
- (b) that the reporting issuer is sending proxy-related materials directly to non-objecting beneficial owners under NI 54-101;
- (c) that management of the reporting issuer has decided not 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 it is the responsibility of objecting beneficial owners to contact their intermediaries to make any necessary arrangements to exercise voting rights attached to securities they beneficially own.

6. This Instrument is effective on [*].