

**Blackline of Final Amendment Instrument to  
National Instrument 54-101  
Communication with Beneficial Owners of Securities of a Reporting Issuer  
(Showing Changes Against Version Published for Comment on June 11, 2011)**

1. *National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer is amended by this Instrument.*
2. *Section 1.1 of National Instrument 54-101 is amended by*

(a) *repealing the definition of “legal proxy”;*

(b) *amending the definition of “proxy-related materials” to insert “or beneficial owners” between “registered holders” and “of the securities”;* (c) *adding the following definition after the definition of “non-objecting beneficial owner list”:*

“notice-and-access” means

- (a) in respect of registered holders of voting securities of a reporting issuer, the delivery procedures referred to in section 9.1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*; or
- (b) in respect of beneficial owners of securities of a reporting issuer, the delivery procedures referred to in section 2.7.1 ~~of this Instrument~~;

(c) in the definition of “proxy-related materials”, adding “or beneficial owners” between “registered holders” and “of the securities”.

(d) repealing the definition of “request for voting instructions”.

~~(d)~~

(e) adding the following definition after the definition of “request for beneficial ownership information”:

“SEC issuer” means an issuer that

- (a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act; and
- (b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended;

~~(e) repealing the definition of “request for voting instructions”;~~ (f) amending in the definition of “securityholder materials” to insert, adding “or beneficial owners” between “registered holders” and “of the securities”; and

(g) ~~adding the following definition~~ ~~after the definition of “special meeting”~~:

“stratification”, in relation to a reporting issuer using notice-and-access, means procedures whereby a paper copy of the information circular ~~is~~ and, if applicable, the documents in paragraph 2.7.1(2)(b), are included with either or both of the following:

- (a) the documents required to be sent to registered holders under subsection 9.1(1) of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (b) the documents required to be sent to beneficial owners under subsection 2.7.1(1) ~~of this Instrument~~;

3. Subsection 1.3(1) is replaced with the following:

1.3 Use of required forms – (1) A person or company required to send or use a required form or document under a provision of this Instrument may substitute for that form or document another form or document, or combine the required form or document with another form or document, if the substituted or combined form or document requests or includes the same information contemplated by the form or document that is otherwise required.

4. Paragraphs 2.2(2) is amended by striking out subparagraphs (g) and (h) and replacing them are replaced with the following:

- (g) the classes or series of securities that entitle the holder to vote at the meeting;
- (h) whether the meeting is a special meeting;

5. Subsection 2.2(2) is amended by adding the following paragraphs:

- (i) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access and, ~~and~~ if stratification will be used, the types of registered holders or beneficial owners who will receive paper copies of the information circular or other proxy-related materials;
- (j) whether the reporting issuer is sending the proxy-related materials directly to NOBOs; and
- (k) whether the reporting issuer intends to pay for ~~delivery~~ a proximate intermediary to send the proxy-related materials to OBOs. ;

**4.6.** *Subsection 2.5(4) of National Instrument 54-101 is repealed and is replaced with the following:*

- (4) A reporting issuer that requests beneficial ownership information under this section must do so through a transfer agent.

**7.** *Section 2.5 is amended by adding the following subsection:*

- (5) Despite subsection (4), a reporting issuer may request beneficial ownership information without using a transfer agent for the sole purpose of obtaining a NOBO list if the ~~intermediary to whom the request is being made reasonably believes that the reporting issuer, or if the reporting issuer has made the request through another person or company, the person or company making the request, has the technological capacity to receive the NOBO list.~~ reporting issuer has provided an undertaking using Form 54-101F9..

~~**5.** *The following is added after section 2.7 of National Instrument 54-101:*~~

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

**2.7.1 Notice-and-Access** – (1) A reporting issuer that is not an investment fund may use notice-and-access to send proxy-related materials relating to a meeting to a beneficial owner of its securities ~~using notice and access that complies with~~ if all of the following apply:

- (a) the beneficial owner is sent ~~the following:~~(i) — a notice ~~containing all that contains~~ the following information; and no other information:
- ~~A.~~(i) the date, time and location of the ~~reporting issuer's~~ meeting for which the proxy-related materials are being sent;
- ~~B.~~(ii) a ~~factual~~ 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 54-101F6 or Form 54-101F7 as applicable, that is being sent to the beneficial owner under paragraph (b);
- ~~C.~~(iii) the website ~~address other than the address~~addresses for SEDAR; and the non-SEDAR website where the proxy-related materials are ~~located~~;posted;
- ~~D.~~(iv) a reminder to review the information circular before voting;
- ~~E.~~(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 reporting issuer;

(ii) a ~~document in plain language that explains~~ explanation of notice-and-access ~~and that~~ includes the following information:

~~A. why the reporting issuer is using notice and access;~~

~~B. (A)~~ if the reporting issuer is using stratification, ~~which a~~ list of the types of registered holders or beneficial owners ~~are receiving who will receive~~ paper copies of the information circular, and if applicable, the documents in paragraph (2)(b);

~~C. (B)~~ the estimated date and time by which a request for a paper copy of the information circular ~~should~~and, if applicable, the documents in paragraph (2)(b), is to be received in order for the requester to receive the ~~information circular~~ paper copy in advance of any deadline for the submission of voting instructions and the date of the meeting;

~~D. (C)~~ an explanation of how the beneficial owner is to return voting instructions, including any deadline for return of ~~such~~ those instructions;

~~E. (D)~~ the page numbers sections 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. (E)~~ a toll-free telephone number the beneficial owner can call to ~~ask questions~~ get information about notice-and-access;

- (b) using the ~~direct or indirect~~ procedures referred to in section 2.9 or ~~2.12~~ 2.12, as applicable, the beneficial owner is sent, by prepaid mail, courier or the equivalent, the ~~documents~~ notice required by paragraph (a); and a Form 54-101F6 or Form 54-101F7, as applicable;
- (c) ~~at least 30 days before the date fixed for the meeting~~ the reporting issuer files on SEDAR the notification ~~required by~~ of meeting and record dates on the same date that it sends the notification under subsection 2.2(1) ~~of this Instrument~~;
- (d) public electronic access to the information circular and the ~~documents~~ notice in paragraph (a) is provided on or before the day date that the reporting issuer sends the ~~documents~~ notice in paragraph (a) to ~~registered holders~~ beneficial owners, in the following manner:

- (i) the documents are filed on SEDAR;
  - (ii) the documents are posted, ~~for a period ending no earlier than the date of the first annual meeting following the meeting to which~~ until the date that is one year from the date that the documents ~~relate, at~~ are posted, on a website ~~address~~ address other than the ~~address~~ website for SEDAR;
- (e) a toll-free telephone number is provided for use by the beneficial owner 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 reporting issuer sends the ~~documents~~ notice in paragraph (a) to the beneficial owner, up to and including the date of the meeting, including any adjournment;
- (f) if a request ~~is received~~ 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 ~~the information circular~~ any such document requested is sent free of charge by the reporting issuer to the ~~person or company~~ 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) ~~A~~ Unless an information circular is included with the proxy-related materials, a reporting issuer that sends proxy-related materials to a beneficial owner of its securities using notice-and-access must not include with the proxy-related ~~material~~ materials any information or document that relates to the particulars of any matter to be submitted to the meeting ~~unless an information circular also is included, other than any one or more of,~~ except for the following ~~documents~~:
- ~~(a) a document set out in paragraphs (1)(a) or (b);~~
  - (a) the information required to be included in the notice under paragraph (1)(a);
  - ~~(b) a document related to the approval of~~

(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.

**2.7.2 Notice in advance of first use of notice-and-access** – ~~A~~Despite paragraph 2.7.1(1)(c) and subsection 2.20(a.1), the first time that a reporting issuer ~~that~~ uses notice-and-access to send proxy-related materials to a beneficial owner of its securities ~~must do the following not more than 6 months and not less than 3 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.~~ the reporting issuer must file on SEDAR the notification of meeting and record dates at least 25 days before the record date for notice.

**2.7.3 Restrictions on information gathering** – (1) A reporting issuer that receives a request ~~under~~for a paper copy of the information circular or other documents referred to in paragraph 2.7.1(1)(e) using the toll-free telephone number or by any other means must not do any of the following:

~~(a) — request~~ ask for any information about the ~~person or company making the request~~requester, other than the name and address to which the ~~paper copy of the~~ information circular ~~is~~and, if applicable, the documents in paragraph 2.7.1(2)(b), are to be sent;

(b) disclose or use the name or address of the ~~person or company making the request~~requester for any purpose other than sending the ~~paper copy of the~~ information circular and, if applicable, the documents in paragraph 2.7.1(2)(b).

(2) A reporting issuer that posts proxy-related materials pursuant to subparagraph 2.7.1(1)(d)(ii) must not collect information that can be used to identify a person or company who has accessed the website address where the proxy-related materials are ~~located~~posted.

**2.7.4 Posting materials on non-SEDAR website** – (1) A reporting issuer that posts proxy-related materials in the manner referred to in subparagraph 2.7.1(1)(d)(ii) must also post on the website the following documents:

(a) any ~~other~~ disclosure material regarding the meeting that the reporting issuer has sent to registered holders or beneficial owners of its

securities;

- (b) any written communications the reporting issuer 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 of its securities ~~or not~~.
- (2) Proxy-related materials that are posted under subparagraph 2.7.1(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 ~~conveniently~~easily:
- (a) access, read and search the documents on the website;
  - (b) download and print the documents.

**2.7.5 Consent to other delivery methods** – For greater certainty, section 2.7.1 does not

- (a) prevent a beneficial owner from consenting to a reporting issuer~~'s or~~ an intermediary ~~or another person or company~~'s use of other delivery methods to send proxy-related materials~~; or~~;
- (b) terminate or modify a consent that a beneficial owner of voting securities previously gave to a reporting issuer, an intermediary or another person or company regarding the use of other delivery methods to send proxy-related materials, or
- (c) prevent a reporting issuer ~~or~~ an intermediary ~~or another person or company~~ from sending proxy-related materials using a delivery method to which a beneficial owner has ~~previously consented~~ prior to February 11, 2013.

**2.7.6 Instructions to receive paper copies** – (1) Despite section 2.7.1, an intermediary may obtain standing instructions from a beneficial owner that is a client of the intermediary that a paper copy of the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b), be sent to the beneficial owner in all cases ~~where~~when a reporting issuer uses notice-and-access.

- (2) 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 reporting issuer is sending proxy-related materials directly under section ~~2.9 of this Instrument, provide~~2.9, indicate in the NOBO list provided to the reporting issuer ~~with the names of~~ those NOBOs who

have provided standing instructions ~~to receive a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access, at the same time as the intermediary provides the reporting issuer with~~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 a reporting issuer using notice-and-access, request appropriate quantities of paper copies of the information circular and, if applicable, the documents in paragraph 2.7.1(2)(b), from the reporting issuer for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;
- (c) ~~provide a mechanism for~~include with the proxy-related materials a description, or otherwise inform the beneficial owner ~~to~~of, the means by which the beneficial owner may revoke the beneficial owner's standing instructions.

2.7.7 Application to non-management solicitations – (1) A person or company other than management of a reporting issuer that is required by law to send materials to registered holders or beneficial owners of securities in connection with a meeting may use notice-and-access to send the materials.

(2) Section 2.7.1, other than paragraph (1)(c), and sections 2.7.3, 2.7.4 and 2.7.5 apply to a person or company in subsection (1) as if the person or company were a reporting issuer.

(3) Paragraph 2.7.1(1)(c) and section 2.7.8 apply to a person or company referred to in subsection (1) only if the person or company has requisitioned a meeting.

2.7.8 Record date for notice – Despite subsection 2.1(b), a reporting issuer that uses notice-and-access must set a record date for notice that is no fewer than 40 days before the date of the meeting..

**6.9.** *Section 2.9 of National Instrument 54-101 is repealed and is replaced with the following:*

- 2.9 Direct sending of proxy-related materials to NOBOs by a reporting issuer** – (1) A reporting issuer that has stated in its request for beneficial ownership information sent in connection with a meeting, that it will send proxy-related materials to, and seek voting instructions from, NOBOs must send at its own expense the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request ~~at its own expense~~.

- (2) A reporting issuer that sends by prepaid mail, courier or the equivalent, paper copies of proxy-related materials directly to a NOBO must send the proxy-related materials at least 21 days before the date ~~fixed for~~of the meeting.
- (3) A reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access must send the ~~documents~~notice required by ~~paragraphs~~paragraph 2.7.1(1)(a) and ~~(b) and, if applicable,~~ any paper copies of information circulars ~~required to comply with standing instructions under section 2.7.6 or requests under section 4.6 of National Instrument 54-102 Continuous Disclosure Obligations and documents in paragraph 2.7.1(2)(b),~~ at least 30 days before the date ~~fixed for~~of the meeting.

~~7.10.~~ 7.10. *Section 2.10 of National Instrument 54-101 is amended by inserting “and despite subsection 2.9(1),” after “Except as required by securities legislation,”.*

~~8.11.~~ 8.11. *Section 2.12 of National Instrument 54-101 is repealed and is replaced with the following:*

**2.12 Indirect sending of securityholder materials by a reporting issuer – (1)**

A reporting issuer sending securityholder materials indirectly to beneficial owners must send to each proximate intermediary that responded to the applicable request for beneficial ownership information the number of sets of those materials specified by that proximate intermediary for sending to beneficial owners.

- (2) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner by having the proximate intermediary send the proxy-related materials by prepaid mail must send the proxy-related materials to the proximate intermediary
  - (a) at least 3 business days before the 21st day before the date ~~fixed for~~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~~;~~, or
  - (b) at least 4 business days before the 21st day before the date ~~fixed for~~of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.
- (3) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using notice-and-access must send the ~~documents~~notice required by paragraph 2.7.1(1)(a) and, if applicable, any paper copies of information circulars ~~to be included with such~~and documents in paragraph 2.7.1(2)(b), to the proximate intermediary

- (a) at least 3 business days before the 30th day before the date ~~fixed for~~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~~;~~, or
  - (b) at least 4 business days before the 30th day before the date ~~fixed for~~of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.
- (4) A reporting issuer that sends securityholder materials that are not proxy-related materials indirectly to beneficial owners must send the securityholder materials to the intermediary on the ~~day~~date specified in the request for beneficial ownership information.
- (5) ~~A~~Despite section 2.9, a reporting issuer must not send securityholder materials directly to a NOBO if a proximate intermediary in a foreign jurisdiction holds securities on behalf of the NOBO and one or both of the following applies:
- (a) the law of the foreign jurisdiction does not permit the reporting issuer to send securityholder materials directly to NOBOs;
  - (b) the proximate intermediary has stated in a response to a request for beneficial ownership information that the law in the foreign jurisdiction requires the proximate intermediary to deliver securityholder materials to beneficial owners..

***9.12. Section 2.16 of National Instrument 54-101 is repealed and is replaced with the following:***

- 2.16 Explanation of voting rights** – (1) If a reporting issuer sends proxy-related materials for a meeting to a beneficial owner of its securities, the materials must explain, in plain language, how the beneficial owner can exercise voting rights attached to the securities, including an explanation of how to attend and vote the securities directly at the meeting.
- (2) Management of a reporting issuer must provide the following disclosure in the information circular:
- (a) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners 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 documents in paragraph 2.7.1(2)(b);

- (b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;
- (c) whether the reporting issuer intends to pay for ~~delivery~~an intermediary to deliver to OBOs; ~~the proxy-related materials and Form 54-101F7,~~ and if the reporting issuer does not intend to pay for such delivery ~~to OBOs, a statement that it is the OBO's responsibility to contact the OBO's intermediary to make any necessary arrangements to exercise voting rights attached to the OBO's securities., a statement that OBOs will not receive the materials unless their intermediary assumes the costs of delivery..~~

**~~10.13.~~ Section 2.17 of National Instrument 54-101 is repealed and is replaced with the following:**

**2.17 Voting instruction form (Form 54-101F6) – ~~(1)~~** A reporting issuer that sends proxy-related materials directly to a NOBO that solicit votes or voting instructions ~~directly to a NOBO must provide~~from securityholders must include with the proxy-related materials a Form 54-101F6 ~~in substitution for the form of proxy-6..~~

**~~11.14.~~ Section 2.18 of National Instrument 54-101 is repealed and is replaced with the following:**

**2.18 Appointing beneficial owner as proxy holder – (1)** A reporting issuer whose management holds a proxy in respect of securities beneficially owned by a NOBO must arrange, without expense to the NOBO, to appoint the NOBO or a nominee of the NOBO as a proxy holder in respect of those securities if the NOBO has instructed the reporting issuer to do so using either of the following methods:

- (a) the NOBO filled in and submitted the ~~completed~~ Form 54-101F6 previously sent to the NOBO by the reporting issuer;
  - (b) the NOBO submitted any other document in writing that requests that the NOBO or a nominee of the NOBO be appointed as a proxyholder.
- (2) ~~Unless the NOBO has instructed otherwise, if~~If management appoints a NOBO or a nominee of the NOBO as a proxy holder under subsection (1), the NOBO or nominee of the NOBO, ~~as applicable also,~~ must be given authority to attend, vote and otherwise act for and on behalf of management of the reporting issuer in respect of all matters that may come before the applicable meeting and at any adjournment or continuance, unless corporate law prohibits the giving of that authority.

- (3) A reporting issuer who appoints a NOBO as a proxy holder pursuant to subsection (1) must deposit the proxy within any time specified ~~under corporate law~~ for the deposit ~~of proxies~~ in the information circular if the reporting issuer obtains the instructions under subsection (1) at least one business day before the termination of ~~such~~ that time.
- (4) If ~~legislation~~ corporate law requires an intermediary or depository to appoint the NOBO or nominee of the NOBO as a proxy holder in respect of securities beneficially owned by the NOBO in accordance with any written voting instructions received from the NOBO, and the intermediary ~~may ask for, and~~ has received the written voting instructions, the reporting issuer must provide, upon request by the intermediary, confirmation of both of the following:
- (a) management of the reporting issuer will comply with subsections 2.18(1) and (2);
  - (b) management of the reporting issuer is acting on behalf of the intermediary or depository to the extent it appoints ~~at~~ the NOBO or nominee of the NOBO as proxy holder in respect of the securities of the reporting issuer beneficially owned by the NOBO.
- (5) A confirmation provided under subsection (4) must identify the specific meeting to which the confirmation applies, but is not required to specify each proxy appointment that management of the reporting issuer has made.

**12. 15. Subsection 2.20(a) of National Instrument 54-101 is repealed and is replaced with the following:**

- (a) arranges to have proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12;

**16. Section 2.20 is amended by adding the following subsection:**

- (a.1) if the reporting issuer uses notice-and-access, fixes the record date for notice to be at least ~~30~~ 40 days before the date of the meeting and sends the notification of meeting and record dates under section 2.2 at least ~~30~~ 303 business days before the record date ~~of the meeting; for notice.~~

**13. 17. Subsection 4.1(1) of National Instrument 54-101 is amended by replacing “through the transfer agent of the reporting issuer that sent the request” with “through the transfer agent, or in the case of a NOBO list, a person or company described in subsection 2.5(5) that sent the request”;**

***14.18. Section 4.4 of National Instrument 54-101 is repealed and is replaced with the following:***

**4.4 Voting instruction form (Form 54-101F7)** – An intermediary that forwards proxy-related materials to a beneficial owner that solicit votes or voting instructions from securityholders must ~~provide~~ include with the proxy-related materials a Form 54-101F7 ~~in substitution for the form of proxy-7.~~

***15.19. Section 4.5 of National Instrument 54-101 is repealed and is replaced with the following:***

**4.5 Appointing beneficial owner as proxy holder** – (1) An intermediary who is the registered holder of, or holds a proxy in respect of, securities owned by a beneficial owner must arrange, ~~at no~~ without expense to the beneficial owner, to appoint the beneficial owner or a nominee of the beneficial owner as a proxy holder in respect of those securities if the beneficial owner has instructed the intermediary to do so using either of the following methods:

- (a) the beneficial owner filled in and submitted the ~~completed~~ Form 54-101F7 previously sent to the beneficial owner by the intermediary;
  - (b) the beneficial owner submitted any other document in writing that requests that the beneficial owner or a nominee of the beneficial owner be appointed as a proxy holder.
- (2) ~~Unless the beneficial owner has instructed otherwise, if~~ If an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder under subsection (1), the beneficial owner or nominee of the beneficial owner, as applicable ~~also~~, must be given authority to attend, vote and otherwise act for and on behalf of the intermediary in respect of all matters that may come before the applicable meeting and at any adjournment or continuance, unless corporate law does not permit the giving of that authority.
- (3) An intermediary who appoints a beneficial owner as proxy holder pursuant to subsection (1) must deposit the proxy within any time specified ~~under corporate law for the deposit of proxies~~ in the information circular if the intermediary obtains the instructions under subsection (1) at least one business day before the termination of ~~such~~ that time.

***16. The following is added after subsection 5.4(2) of National Instrument 54-101: 20. Section 5.4 is amended by adding the following subsections:***

- (3) If ~~legislation~~ corporate law requires a depository to appoint a beneficial owner or nominee of the beneficial owner as a proxy holder in respect of

securities ~~that are~~ beneficially owned by ~~the~~ beneficial owner in accordance with any written voting instructions received from the beneficial owner, ~~and~~ the depository ~~may ask~~ has received the written voting instructions, any participant described in subsection (1) ~~for, and the participant~~ must provide, upon request by the depository, confirmation of all of the following:

- (a) the participant will comply with subsections 4.5(1) and (2);
  - (b) the participant is acting on behalf of the depository to the extent it appoints a beneficial owner or nominee of a beneficial owner as proxy holder in respect of the securities of the reporting issuer beneficially owned by the beneficial owner;
  - (c) if the participant is required to execute an omnibus proxy under section 4.1, that the participant will ~~obtain~~ take reasonable steps to request the confirmation set out in subsection 2.18(34).
- (4) A confirmation provided under subsection (3) must identify the specific securityholder meeting to which the confirmation applies, but is not required to specify each proxy appointment that the participant has made.

**17.21. Subsection 6.2(6) of National Instrument 54-101 is repealed and is replaced with the following:**

- (6) A person or company, other than the reporting issuer to which the request relates, that sends materials indirectly to beneficial owners must comply with ~~all of~~ the following:
  - (a) the person or company must pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners;
  - (b) the person or company must provide an undertaking to the proximate intermediary in the form of Form 54-101F ~~10.10.~~

**18.22. Part 7 is repealed and replaced with the following:**

#### **PART 7 – USE OF NOBO LIST AND INDIRECT SENDING OF MATERIALS**

- 7.1 Use of NOBO list** —(1) A reporting issuer may use a NOBO list, or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument, in connection with any matter relating to the affairs of the reporting issuer.

- (2) A person or company that is not the reporting issuer must not use a NOBO list, or a report prepared under section 5.3 relating to ~~the~~ reporting issuer and obtained under this Instrument, in any manner other than any of the following:
- (a) for sending securityholder materials directly to NOBOs in accordance with this Instrument;
  - (b) in respect of an effort to influence the voting of securityholders of the reporting issuer;
  - (c) in respect of an offer to acquire securities of the reporting issuer.

**7.2 Sending of Materials** ~~—~~ (1) A reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, in connection with any matter relating to the affairs of the reporting issuer.

- (2) A person or company that is not the reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, only in connection with one or ~~more~~both of the following:
- (a) an effort to influence the voting of securityholders of the reporting issuer;
  - (b) an offer to acquire securities of the reporting issuer.

~~19.23.~~ The Instrument is amended by adding the following ~~is added after section 9.1 of National Instrument 54-101:~~

**9.1.1 Compliance with SEC Notice-and-~~access~~Access Rules** – (1) ~~Section 2.7 does not apply to~~Despite section 2.7, a reporting issuer that is an SEC issuer can send proxy-related materials to beneficial owners using a delivery method permitted under U.S. federal securities law, if it satisfies all of the following apply:

- (a) the SEC issuer is subject to, and complies with ~~requirements under~~ Rule 14a-16 under the 1934 Act;
- (b) the SEC issuer has arranged with each intermediary through whom the beneficial owner holds its interest in the reporting issuer's securities to

have each ~~such~~ intermediary send the proxy-related materials to the beneficial owner by implementing the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act;

- (c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50 ~~per cent~~% of the votes for the election of directors, and none of the following ~~applies~~apply:
  - (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.
- (2) Part 4 ~~of this Instrument~~ does not apply to an intermediary with whom a reporting issuer has made arrangements under paragraph (1)(b) if the intermediary implements the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act.

**24. Form 54-101F2 Request for Beneficial Ownership Information is amended by**

**(a) in Item 1, adding “in English and, if applicable, French” after “reporting issuer”;**

**(b) replacing Item 2 with the following:**

Item 2 – Contact person(s)

State the name, address, telephone number, facsimile number and email address of the contact person(s) of the reporting issuer, and of the reporting issuer’s agent, if applicable, with whom the intermediary should deal. If different from the foregoing, also state the name, address, telephone number, facsimile number and email address of the contact person(s) of the reporting issuer responsible for dealing with invoices.;

**(c) in Item 6.7, adding “State whether the reporting issuer would like materials to be sent electronically when consent has been obtained from the beneficial owner of securities.” after “National Instrument.”;**

**20. Form 54-101F2 is amended as follows:**

**(d) in Item 6.9, replacing “If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to**

receive them, so state.” with “State if securityholder materials are to be sent to (a) all beneficial owners of securities (including beneficial owners that have declined to receive them), (b) only those beneficial owners who have requested to receive all securityholder materials, or (c) only those beneficial owners who have requested to receive all securityholder materials or special meeting materials.”;

~~(a) in the following provisions, replacing “National Policy 11-201 and, in Québec, Staff Notice 11-201” with “National Policy 11-201 *Electronic Delivery of Documents*”;~~

(e) in Item 7.9, adding “State whether the reporting issuer would like materials to be sent electronically when consent has been obtained from the beneficial owner of securities.” after “National Instrument.”;

~~(i) Item 6.7;~~

~~(ii) Item 7.8;~~

~~(iii) Item 8.5;~~

~~(iv) Item 9.7;~~

(f) in Item 7.11, replacing “If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state.” with “State if securityholder materials are to be sent to (a) all beneficial owners of securities (including beneficial owners that have declined to receive them), (b) only those beneficial owners who have requested to receive all securityholder materials, or (c) only those beneficial owners who have requested to receive all securityholder materials or special meeting materials.”;

~~(b)~~

(g) adding the following after Item 7.11:

7.12 State whether the reporting issuer is using notice-and-access, and any stratification criteria ~~being used~~ to be used. *[Before completing this item, the reporting issuer should discuss with the intermediary what stratification criteria the intermediary is able to apply.];*

(h) in Item 8.5, adding “State whether the reporting issuer would like materials to be sent electronically when consent has been obtained from the beneficial owner of securities.” after “National Instrument.”;

(i) in Item 8.6, replacing “If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state.” with “State if securityholder materials are to be sent to (a) all beneficial owners of securities (including beneficial owners that have declined to receive them), (b) only those beneficial owners who have requested to receive all securityholder materials, or (c) only those beneficial owners who have requested to receive all securityholder materials or special meeting materials.”;

(j) in Item 9.7, adding “State whether the reporting issuer would like materials to be sent electronically when consent has been obtained from the beneficial owner of securities.” after “National Instrument.”;

(k) in Item 9.8, replacing “If the securityholder materials are to be sent to all beneficial owners of securities, including beneficial owners that have declined to receive them, so state.” with “State if securityholder materials are to be sent to (a) all beneficial owners of securities (including beneficial owners that have declined to receive them), (b) only those beneficial owners who have requested to receive all securityholder materials, or (c) only those beneficial owners who have requested to receive all securityholder materials or special meeting materials.”;

~~(e)~~  
(l) adding the following after Item 9.8:

9.9 State whether the reporting issuer is using notice-and-access, and any stratification criteria ~~being used.~~ to be used. [Before completing this item, the reporting issuer should discuss with the intermediary what stratification criteria the intermediary is able to apply.]; and

(m) replacing “National Policy 11-201 and, in Québec, Staff Notice 11-201” with “National Policy 11-201 Electronic Delivery of Documents” wherever the expression occurs.

25. Form 54-101F5 Electronic Format for NOBO List is repealed and replaced with the following:

**FORM 54-101F5**  
**ELECTRONIC FORMAT FOR NOBO LIST**

<u>HEADER RECORD</u> <u>DESCRIPTION</u>	<u>TYPE</u>	<u>LENGTH</u>	<u>POSITION</u>	<u>COMMENTS</u>
RECORD TYPE	A	1	1	Header record = A
EINS NUMBER	A	4	2-5	Prefix T,M,V or C
ISIN	A	12	6-17	
FILLER	X	3	18-20	Blank
SECURITY DESC.	A	32	21-52	Security Description
REC ORD DATE	N	8	53-60	Format YYYYMMDD
CREATION DATE	N	8	61-68	Format YYYYMMDD
FILLER	X	250	69-318	Blank
<u>DETAIL RECORD</u> <u>DESCRIPTION</u>	<u>TYPE</u>	<u>LENGTH</u>	<u>POSITION</u>	<u>COMMENTS</u>
RECORD TYPE	A	1	1	Detail Record = B

<u>HEADER RECORD DESCRIPTION</u>	<u>TYPE</u>	<u>LENGTH</u>	<u>POSITION</u>	<u>COMMENTS</u>
<u>FINS NUMBER</u>	<u>A</u>	<u>4</u>	<u>2-5</u>	<u>Same as in Header record</u>
<u>ISIN</u>	<u>A</u>	<u>12</u>	<u>6-17</u>	
<u>FILLER</u>	<u>X</u>	<u>3</u>	<u>18-20</u>	<u>Blank</u>
<u>FILLER</u>	<u>X</u>	<u>20</u>	<u>21-40</u>	<u>Blank</u>
<u>NAME</u>	<u>A</u>	<u>32</u>	<u>41-72</u>	<u>Holder Name</u>
<u>ADDRESS</u>	<u>A</u>	<u>32 x 6</u>	<u>73- 264</u>	<u>Occurs 6 times</u>
<u>FILLER</u>	<u>X</u>	<u>32</u>	<u>265- 296</u>	<u>Blank</u>
<u>POSTAL CODE</u>	<u>A</u>	<u>9</u>	<u>297- 305</u>	
<u>POSTAL REGION</u>	<u>A</u>	<u>1</u>	<u>306</u>	<u>C=Canada; U=USA; F=Foreign; (other than USA); H=Hand Deliver</u>
<u>NOTICE AND ACCESS</u>	<u>A</u>	<u>1</u>	<u>307</u>	<u>Y=Full Package; N=Notice Only</u>
<u>FILLER</u>	<u>X</u>	<u>1</u>	<u>308</u>	<u>Blank</u>
<u>E-MAIL ADDRESS</u>	<u>A</u>	<u>32</u>	<u>309- 340</u>	
<u>LANGUAGE CODE</u>	<u>A</u>	<u>1</u>	<u>341</u>	<u>E=English; F=French</u>
<u>NUMBER OF SHARES</u>	<u>N</u>	<u>9</u>	<u>342- 350</u>	<u>Shareholder Position</u>
<u>RECEIVE ALL MATERIAL</u>	<u>A</u>	<u>1</u>	<u>351</u>	<u>A – ALL Material, S – Material for SPECIAL Meetings only, D – DECLINE to receive Materials</u>
<u>AGREE TO ELECTRONIC DELIVERY BY INTERMEDIARY</u>	<u>A</u>	<u>1</u>	<u>352</u>	<u>Y/N</u>
<u>TRAILER RECORD DESCRIPTION</u>	<u>TYPE</u>	<u>LENGTH</u>	<u>POSITION</u>	<u>COMMENTS</u>
<u>RECORD TYPE</u>	<u>A</u>	<u>1</u>	<u>1</u>	<u>Trailer record = C</u>
<u>FINS NUMBER</u>	<u>A</u>	<u>4</u>	<u>2-5</u>	<u>Same as in Header Record</u>
<u>ISIN</u>	<u>A</u>	<u>12</u>	<u>6-17</u>	
<u>FILLER</u>	<u>X</u>	<u>3</u>	<u>18-20</u>	
<u>TOTAL SHAREHOLDERS</u>	<u>N</u>	<u>7</u>	<u>21-27</u>	<u>Number of “B” type records</u>
<u>TOTAL SHARES</u>	<u>N</u>	<u>11</u>	<u>27-38</u>	<u>Total Shares on “B” type records</u>
<u>FILLER</u>	<u>X</u>	<u>280</u>	<u>39-318</u>	<u>Blank</u>

~~21.26.~~

*Form 54-101F6 –*

*Request for Voting Instructions Made by Reporting Issuer is amended by ~~striking~~ ~~out~~replacing the paragraph that begins “Should you wish to attend the meeting and vote in person...” and substituting with the following:*

If you want to attend the meeting and vote in person, ~~please~~ write your name in the place provided for that purpose in this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless ~~you instruct otherwise~~ prohibited by law, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if ~~these~~ those matters are not set out in this form or the information circular. Consult a legal advisor if you wish to modify the authority of that person in any way. If you require help, ~~please~~ contact [~~the undersigned~~ insert name].

**22.27. Form 54-101F7 —Request for Voting Instructions Made by Intermediary is amended by ~~striking out~~ replacing the paragraph that begins “Should you wish to attend the meeting and vote in person...” ~~and replacing it with the following:~~**

If you want to attend the meeting and vote in person, ~~please~~ write your name in the place provided for that purpose in this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless ~~you instruct otherwise~~ prohibited by law, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if ~~these~~ those matters are not set out in this form or the information circular. Consult a legal advisor if you wish to modify the authority of that person in any way. If you require help, ~~please~~ contact [~~the undersigned~~ insert name].

**23.28. Form 54-101F8 —Legal Proxy is repealed.**

**24.29. Form 54-101F9 —Undertaking is amended by**

**(a) ~~striking out~~ replacing paragraph 2 ~~and substituting with~~ the following:**

**<Option #1: use this alternative if the reporting issuer is providing the undertaking>**

2. I undertake that the information set out on the NOBO list will be used only in connection with ~~one or more~~ matters relating to the affairs of the reporting issuer.

**<Option #2: use this alternative if a person or company other than the reporting issuer is providing the undertaking>**

2. I undertake that the information set out on the NOBO list will be used only for one or more of the following purposes:
  - (a) sending securityholder materials directly to NOBOs in accordance with National Instrument 54-101;

- (b) an effort to influence the voting of securityholders of the reporting issuer;
- (c) an offer to acquire securities of the reporting issuer.;

(b) ~~striking out~~replacing paragraph 4 ~~and substituting with~~ the following:

4. I am aware that it is a contravention of the law to use a NOBO list for purposes other than in connection with one or more of the following:
- (a) sending securityholder materials directly to NOBOs in accordance with National Instrument 54-101;
  - (b) an effort to influence the voting of securityholders of the reporting issuer;
  - (c) an offer to acquire securities of the reporting issuer.;

(c) adding the following paragraph:

5. I declare that I (or the person or company I am using to make this request) has the technological capacity to receive the NOBO list..

~~25.30. The Instrument is amended by adding the following ~~is added after Form 54-101F9~~ form:~~

~~Form~~**FORM 54-101F10—Undertaking**  
**UNDERTAKING**

*Note: Terms used in this Form have the meaning given to them in National Instrument 54-101.*

*The use of this Form is referenced in section 6.2 of National Instrument 54-101.*

I, .....  
(Full Residence Address) .....

*(If this undertaking is made on behalf of a ~~body corporate~~person or company other than an individual, set out the full legal name of ~~the body corporate~~that person or company, position of ~~person~~the individual signing on behalf of that person or company and address for service ~~of the body corporate~~.)*

SOLEMNLY DECLARE AND UNDERTAKE THAT:

1. I wish to send materials to beneficial owners of securities of [*insert name of the reporting issuer*] on whose behalf intermediaries hold securities, using the indirect sending procedures provided in National Instrument 54-101 (the

“NI 54-101 Procedures”).

2. I undertake that I am using the NI 54-101 Procedures to send materials to beneficial owners only for the purpose of one or both of the following:

- (a) an effort to influence the voting of securityholders of the reporting issuer;
- (b) an offer to acquire securities of the reporting issuer.

3. I am aware that it is a contravention of the law to send materials using the NI 54-101 Procedures for purposes other than in connection with one or both of the following:

- (a) an effort to influence the voting of securityholders of the reporting issuer;
- (b) an offer to acquire securities of the reporting issuer.

.....Signature  
.....Name of person signing  
.....Date

*31. (1) Despite section 2.7.1 of National Instrument 54-101, as enacted by section 8 of this Instrument, a person or company must not use notice-and-access to send proxy-related materials to a beneficial owner of voting securities of a reporting issuer in respect of a meeting of the reporting issuer that takes place before March 1, 2013.*

*(2) Despite subsection 2.5(5) of National Instrument 54-101, as enacted by section 7 of this Instrument, a reporting issuer must not request beneficial ownership information without using a transfer agent for the sole purpose of obtaining a NOBO list before February 15, 2013.*

*(3) Despite paragraph 6.2(6)(b) of National Instrument 54-101, as enacted by section 21 of this Instrument, a person or company is not required to provide the undertaking for a request to send materials indirectly to beneficial owners made before February 15, 2013.*

*(4) Despite section 22 of this Instrument, sections 7.1 and 7.2 of National Instrument 54-101 do not apply to NOBO lists requested before February 15, 2013 and requests to send materials indirectly to beneficial owners made before February 15, 2013.*

*(5) Despite section 23 of this Instrument, a reporting issuer must not rely on section 9.1.1 of National Instrument 54-101 in respect of a meeting that takes place before February 15, 2013.*

26.32. *This Instrument ~~is effective on [x]~~ comes into force on February 11, 2013.*