

Schedule A

Proposed Amendment Instrument to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*

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) *amending the definition of “proxy-related materials” to insert “or beneficial owners” between “registered holders” and “of the securities”;*

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

(c) *adding the following definition after the definition of “non-objecting beneficial owner list”:*

“notice-and-access” means the delivery procedures referred to in section 2.7.1;

(d) *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 the definition of “securityholder materials” to insert “or beneficial owners” between “registered holders” and “of the securities”;*

(g) *repealing the definition of “send”;*

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 *Subsection 2.5(4) of National Instrument 54-101 is repealed and replaced with the following:*

(4) A reporting issuer that requests beneficial ownership information under this section must do so through one of the following:

- (a) a transfer agent;
- (b) another person or company if both of the following apply:
 - (i) the person or company is in the business of providing services to assist persons or companies soliciting proxies;
 - (ii) the reporting issuer has reasonable grounds to believe that the person or company has the technological capacity to receive the beneficial ownership information.

4. Section 2.7 of National Instrument 54-101 is repealed and replaced with the following:

2.7 Sending of Proxy-Related Materials to Beneficial Owners – (1) A reporting issuer that is required by Canadian securities legislation to send proxy-related materials to the registered holders of any class or series of its securities must send the proxy-related materials to beneficial owners of the securities by doing one of the following:

- (a) the reporting issuer sends the proxy-related materials directly under section 2.9 to NOBOs, and indirectly under section 2.12 to OBOs;
 - (b) the reporting issuer sends the proxy-related materials indirectly under section 2.12 to beneficial owners.
- (2) A reporting issuer that sends proxy-related materials under subsection (1) to a beneficial owner of securities may do so using any one or a combination of the following methods:
- (a) paper copies sent by prepaid mail, courier or the equivalent;
 - (b) notice-and-access, but only for a meeting that is not a special meeting;
 - (c) any delivery method to which the beneficial owner consents.

2.7.1 Notice-and-Access – (1) For a meeting that is not a special meeting, a reporting issuer may send proxy-related materials to a beneficial owner of securities by notice-and-access that complies with all of the following:

- (a) the beneficial owner is sent a document containing all of the following information:
 - (i) the date, time and location of the reporting issuer's meeting;
 - (ii) a summary of the items to be voted on;
 - (iii) an explanation of how to electronically access the information circular and other proxy-related materials, including a website

- address other than the address for SEDAR, where the proxy-related materials are located;
- (iv) a reminder to review the information circular before voting;
 - (v) an explanation of how to obtain a paper copy of the information circular from the reporting issuer;
 - (vi) an explanation of how the NOBO is to execute and return Form 54-101F6 sent under paragraph (b), including any deadline for the return of the form;
- (b) each NOBO is sent a Form 54-101F6, if the reporting issuer is sending proxy-related materials to, and seeking voting instructions from, NOBOs under section 2.9;
 - (c) using the direct or indirect procedures in section 2.9 or 2.12 as applicable, the beneficial owner is sent by prepaid mail, courier or the equivalent, paper copies of the documents required by paragraph (a) and if applicable, paragraph (b), or is sent these documents by any other method previously consented to by the beneficial owner;
 - (d) a news release is issued at least 30 days before the date fixed for the meeting containing the following:
 - (i) the information set out in paragraph (a);
 - (ii) if the reporting issuer is using notice-and-access only in respect of some beneficial owners, an explanation of its decision;
 - (e) public electronic access to the information circular and other proxy-related materials is provided on the same day as the reporting issuer sends the document in paragraph (a) to beneficial owners, in the following manner:
 - (i) the proxy-related materials are filed on SEDAR;
 - (ii) the proxy-related materials are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the materials relate, at a website address other than the address for SEDAR;
 - (f) a toll-free telephone number is provided for use by the beneficial owner to request a paper copy of the information circular at any time from the date that the reporting issuer sends the document in paragraph (a) to the beneficial owner, 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 by prepaid mail, courier or the equivalent to the person or company at the address specified in

the request, free of charge to the person or company to whom the paper copy of the information circular is sent, no later than 3 business days after receiving the request.

- (2) A reporting issuer that receives a request under paragraph (1)(f) or by any other means must not do any of the following:
 - (a) obtain any information about the person or company making the request, other than the name and address to which the paper copy of the information circular is to be sent;
 - (b) disclose or use the name or address of the person or company making the request for any purpose other than sending the paper copy of the information circular.
- (3) A reporting issuer that posts proxy-related materials pursuant to subparagraph (1)(e)(ii) must not use any means that would enable the reporting issuer to identify a person or company who has accessed the website address where the proxy-related materials are located.
- (4) A reporting issuer that posts proxy-related materials in the manner referred to in subparagraph (1)(e)(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 the meeting, whether sent to registered holders or beneficial owners of its securities or not.
- (5) Proxy-related materials that are posted under subparagraph (1)(e)(ii) must be posted in a manner and be in a format that permits a person or company 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.
- (6) An information circular posted under subparagraph (1)(e)(ii) must contain the same information as the information circular filed on SEDAR.
- (7) Despite anything in this section or the previous section, a beneficial owner may consent to the use of other delivery methods to send proxy-related

materials. Nothing in this section shall be interpreted as restricting a beneficial owner from consenting to the reporting issuer's or intermediary's use of other delivery methods to send proxy-related materials.

2.7.2 Compliance with SEC Rules – Section 2.7 does not apply to a reporting issuer that is an SEC issuer if it complies with both of the following:

- (a) the SEC issuer sends proxy-related materials to the beneficial owner using the procedures in Rule 14a-16 under the 1934 Act;
- (b) the SEC issuer obtains confirmation from the intermediary that holds securities on behalf of the beneficial owner that the intermediary will implement 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.

5. Section 2.8 is repealed and replaced with the following:

2.8 Other securityholder materials – (1) A reporting issuer may send securityholder materials other than proxy-related materials to beneficial owners of its securities by doing one of the following:

- (a) the reporting issuer sends the materials directly under section 2.9 to NOBOs, and indirectly under section 2.12 to OBOs;
 - (b) the reporting issuer sends the materials indirectly under section 2.12 to beneficial owners.
- (2) A reporting issuer that sends securityholder materials under subsection (1) may send the securityholder materials using any of the methods in subsection 2.7(2).

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

2.9 Direct sending of proxy-related materials to NOBOs by 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 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 the meeting.

- (3) A reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access must send the material required by paragraphs 2.7.1(1)(a) and (b) at least 30 days before the date fixed for the meeting.
- (4) A reporting issuer that sends proxy-related materials directly to a NOBO using a delivery method that is not notice-and-access and to which the NOBO has consented under paragraph 2.7(2)(c) must send the proxy-related materials using that delivery method either:
 - (a) at least 21 days before the date fixed for the meeting, if the NOBO has not consented to a specific day or days for sending of the proxy-related materials; or
 - (b) on any day to which the NOBO has consented.
- (5) Despite subsection (2), a reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access and also sends paper copies of proxy-related materials directly to other NOBOs under subsection (2) by prepaid mail, courier or the equivalent must send the paper copies of the proxy-related materials to those other beneficial owners on the same day as it sends the documents set out in paragraphs 2.7.1(1)(a) and (b) to the beneficial owner using notice-and-access.

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

2.12 Indirect sending of securityholder materials by 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 intermediary send paper copies of the proxy-related materials by prepaid mail, courier or the equivalent must send the proxy-related materials to the proximate intermediary at least 3 business days before the 21st day before the date fixed for the meeting.
- (3) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using notice-and-access must provide the information set out in paragraph 2.7.1(1)(a) to the intermediary in sufficient time for the intermediary to send a document containing that information to the

beneficial owner at least 30 days before the date fixed for the meeting.

- (4) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using a delivery method that is not notice-and-access and to which a beneficial owner has consented under paragraph 2.7(2)(c) must make any necessary arrangements to enable the intermediary to send the proxy-related materials using that delivery method either:
 - (a) at least 21 days before the date fixed for the meeting, if the NOBO has not consented to a specific day or days for sending of the proxy-related materials; or
 - (b) on any day to which the beneficial owner has consented.
- (5) Despite subsection (2), a reporting issuer that sends proxy-related materials directly or indirectly to a beneficial owner using notice-and-access, and also sends proxy-related materials indirectly to other beneficial owners by having the intermediary send paper copies of the proxy-related materials using prepaid mail, courier or the equivalent, must arrange for the intermediary to send the paper copies of the proxy-related materials to those other beneficial owners on the same day as the reporting issuer or intermediary, as applicable, sends the document containing the information set out in paragraph 2.7.1(1)(a) to the beneficial owner.
- (6) 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 specified in the request for beneficial ownership information.
- (7) A reporting issuer must not send securityholder materials directly to a NOBO if a proximate intermediary in a foreign jurisdiction holds securities on behalf 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. Section 2.16 of National Instrument 54-101 is repealed and 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 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) if the reporting issuer is not paying for intermediaries to send proxy-related materials and Form 54-101F7 to OBOs through the indirect sending procedures in section 2.12, disclosure of the following:
 - (i) the reporting issuer is choosing not to pay for intermediaries to send proxy-related materials and Form 54-101F7 to OBOs;
 - (ii) 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;
 - (b) if the reporting issuer is using notice-and-access only in respect of some beneficial owners, an explanation of its decision.
- (3) Despite subsection (2), management may omit the disclosure set out in paragraph (2)(b) if management has not determined at the time of preparing the information circular whether notice-and-access will be used only in respect of some beneficial owners.

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

- 2.17 Voting instruction form (Form 54-101F6)** – (1) A reporting issuer that sends proxy-related materials that solicit votes or voting instructions directly to a NOBO must provide a Form 54-101F6 in substitution for the form of proxy.
- (2) A reporting issuer that sends a Form 54-101F6 to a NOBO under subsection (1) must maintain a record of the following:
 - (a) each Form 54-101F6 sent to the NOBO;
 - (b) the date and time of any voting instructions, including proxy appointment instructions, submitted to the reporting issuer.

11. Section 2.18 of National Instrument 54-101 is repealed and 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 submitted the completed Form 54-101F6 previously sent to the NOBO by the reporting issuer;
 - (b) the NOBO submitted any other documentation that is acceptable to the reporting issuer.
- (2) 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.
- (3) If legislation requires an intermediary or depository to appoint the NOBO or nominee of the NOBO as proxy holder in respect of securities beneficially owned by the NOBO in accordance with any written voting instructions received from the NOBO, the intermediary may ask for, and the reporting issuer must provide, in a form that is acceptable to 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 is acting on behalf of the intermediary or depository to the extent it appoints a NOBO or nominee of the NOBO as proxy holder in respect of the securities of the reporting issuer beneficially owned by the NOBO.

12. Subsection 2.20(a) of National Instrument 54-101 is repealed and 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;

13. 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 person or company described in paragraph 2.5(4)(b) that sent the request”;

14. Subsection 4.2(2) of National Instrument 54-101 is repealed and replaced with the following:

- (2) A proximate intermediary shall send the following securityholder materials to beneficial owners or intermediaries holding securities of the relevant class

or series that are its clients within the following time periods:

- (a) in the case of paper copies of securityholder materials to be sent by prepaid mail, courier or the equivalent, or any other securityholder materials that are not proxy-related materials, within 3 business days after receipt;
- (b) in the case of a document containing the information set out in paragraph 2.7.1(1)(a), at least 30 days before the date fixed for the meeting;
- (c) in the case of proxy-related materials to be sent by a delivery method that is not notice-and-access to which the beneficial owner has consented under paragraph 2.7(2)(c), on any day to which the beneficial owner has consented for the sending of proxy-related materials, or if the beneficial owner has not consented to a specific day or days, at least 21 days before the date fixed for the meeting;
- (d) despite paragraph (a), in the case of paper copies of proxy-related materials to be sent by prepaid mail, courier or the equivalent, on the same day as the reporting issuer or intermediary, as applicable, sends any document using notice-and-access containing the information set out in paragraph 2.7.1(1)(a) to a beneficial owner.

15. Subsection 4.2(5) of National Instrument 54-101 is repealed, and the following is added after the repealed subsection 4.2(5):

- (6) An intermediary that sends securityholder materials to a beneficial owner under this section may do so through either of the following methods:
 - (a) paper copies sent by prepaid mail, courier or the equivalent;
 - (b) any delivery method to which the beneficial owner consents.

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

- 4.4 Voting instruction form (Form 54-101F7) –** (1) An intermediary that forwards proxy-related materials to beneficial owners that solicit votes or voting instructions from securityholders must provide a Form 54-101F7 in substitution for the form of proxy.
- (2) An intermediary that sends a Form 54-101F7 to a beneficial owner under subsection (1) must maintain a record of the following:
 - (a) each Form 54-101F7 sent to the beneficial owner;

- (b) the date and time of any voting instructions, including proxy appointment instructions, submitted to the intermediary.

17. Section 4.5 of National Instrument 54-101 is repealed and 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 expense to the beneficial owner, to appoint the beneficial owner or a nominee of the beneficial owner as a proxy holder if the beneficial owner has instructed the intermediary to do so using either of the following methods:

- (a) the beneficial owner submitted the completed Form 54-101F7 previously sent to the beneficial owner by the intermediary;
 - (b) the beneficial owner submitted any other documentation that is acceptable to the intermediary.
- (2) 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.

18. The following is added after subsection 5.4(2) of National Instrument 54-101:

- (3) If legislation requires a depository to appoint a beneficial owner or nominee of the beneficial owner as proxy holder in respect of securities that are beneficially owned by a beneficial owner in accordance with any written voting instructions received from the beneficial owner, the depository may ask any participant described in subsection (1) for, and the participant must provide, in a form that is acceptable to 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 the confirmation set out in subsection 2.18(3).

19. Subsection 6.2(6) of National Instrument 54-101 is repealed and 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 54-101F10.

20. 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 a reporting issuer and obtained under this Instrument in any manner other than 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 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.

21. Form 54-101F6 – Request for Voting Instructions Made by Reporting Issuer is amended by striking out the paragraph that begins “Should you wish to attend the meeting and vote in person...” and substituting 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 the voting instruction form (Form 54-101F6) provided to you. If you require help, please contact [the undersigned].

22. Form 54-101F7 – Request for Voting Instructions Made by Intermediary is amended by deleting 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 the voting instruction form (Form 54-101F7) provided to you. If you require help, please contact [the undersigned].

23. Form 54-101F8 – Legal Proxy is repealed.

24. Form 54-101F9 – Undertaking is amended by

(a) striking out paragraph 2 and substituting the following:

2. I undertake that the information set out on the NOBO list will be used only 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.

(b) striking out paragraph 4 and substituting 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.

25. The following is added after Form 54-101F9:

Form 54-101F10 – 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, set out the full legal name of the body corporate, position of person signing 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 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.
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

26. This Instrument is effective on [*].