

## Corporate Securities Law

December 3, 2012

### CSA Adopts “Notice-and-Access” Rules and other Amendments to Improve Issuer Communications with Investors

The Canadian Securities Administrators (the “**CSA**”) recently adopted amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, National Instrument 51-102 *Continuous Disclosure Obligations*, and related forms and companion policies, intended to improve communications between reporting issuers and their shareholders. These amendments, which come into force on February 11, 2013, are an important first step taken by the CSA in an effort to reduce costs and increase overall efficiency in the Canadian proxy voting system.

Highlights of the amended rules include the introduction of a “notice-and-access” system for sending proxy-related materials to registered and beneficial owners of securities and enhanced disclosure requirements regarding the beneficial owner voting process.

#### 1. The Notice-and-Access System

Under the notice-and-access provisions, which may be used in respect of shareholder meetings occurring on or after March 1, 2013, reporting issuers will be permitted to deliver proxy-related materials by posting them on a website other than SEDAR and sending a notice package to beneficial owners. The notice package must include: (i) the relevant form of proxy or voting information form; (ii) basic information about the meeting and the matters to be voted on, (iii) instructions on how to obtain a paper copy of the information circular and other material disclosure documents, if applicable, and (iv) a plain-language explanation of how the new notice-and-access system operates and how proxy-related materials can be accessed online. Where prior consent has been obtained, a reporting issuer can send this notice package to beneficial owners electronically.

Reporting Issuers who choose to use the notice-and-access system are required to set the record date for the meeting to be at least 40 days before the meeting (as opposed to 30 days before the meeting as is otherwise the case under NI 54-101). This allows sufficient time to satisfy the website posting and delivery requirements under NI 54-101. The notice of meeting and record dates for a reporting issuer using the notice-and-access system for the first time must be filed on SEDAR at least 25 days before the record date for notice (being not less than 65 days before the meeting date) and must explain that the issuer intends to use the notice-and-access system to deliver proxy-related materials in connection with the meeting. For subsequent meetings, the rules establish an abridged timeline for the filing of such notice of three business days prior to the record date for notice.

Under the amended rules, the notice-and-access system can also be used by reporting issuers to deliver annual financial statements and corresponding management discussion and analysis required under NI 51-102, and by persons other than management of the reporting issuer to deliver non-management proxy solicitation materials to beneficial owners, including dissident information circulars and related materials.

Consistent with the period of time within which a reporting issuer must fulfil requests for paper copies of proxy-related materials, any person using the notice-and-access system must ensure that proxy-related materials are on the non-SEDAR website for a period of one year from the date of posting.

#### 2. Enhanced Disclosure of the Voting Process

Once the amended rules come into effect, reporting issuers must provide enhanced disclosure of the voting process in their information circulars. For example, in addition to disclosing whether the issuer intends to use the notice-and-access system for delivery of proxy-related materials, the issuer must disclose whether it is sending proxy-related materials directly to Non-Objecting Beneficial Owners (“**NOBOs**”). Where a reporting issuer does not intend to pay for intermediaries to deliver proxy-related materials to Objecting Beneficial Owners (“**OBOs**”), the circular must also state that the OBO’s intermediary will be required to assume the costs of delivery of those documents should they wish to receive them.

# Goodman's<sup>LLP</sup> Update

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### 3. Areas Requiring Further Study

According to CSA Chair and chairman and chief executive of the Alberta Securities Commission, Bill Rice, these amendments will "modernize and enhance" communications between reporting issuers and investors by allowing greater use of the Internet in the delivery of proxy-related materials. However, while slated as a major modernization of the proxy-voting process, the CSA deferred addressing several key areas of reform suggested by market participants, which the CSA indi-

cate require further study and consideration. For example, the CSA did not adopt proposed amendments that would explicitly require intermediaries to reconcile the files of beneficial ownership data with their registered, depository and nominee positions, citing the need for further review in the area of reconciliation of voting positions generally.

For further information on these amendments and how they might affect you, please contact any member of our Corporate Securities Group.