

Corporate Securities

MAY 6, 2002

Changes to the Shareholder Communication Regime

The Canadian Securities Administrators have approved National Instrument 54-101 (the "Instrument"), and National Instrument 54-102 which on July 1, 2002 will replace the provisions of National Policy 41 pertaining to communication by public companies with beneficial owners of their securities.

Purpose and Application of the Instrument

One of the stated purposes of National Policy 41 was to provide a framework to ensure that non-registered holders of securities of public company issuers had the same access to corporate information and voting rights as registered holders. The Instrument continues and builds on this objective by establishing a procedure for issuers to directly send securityholder materials to the non-registered beneficial owners of their securities.

Securityholder materials are materials required by securities legislation or applicable corporate law to be sent to registered holders of securities of an issuer including proxy-related materials and non-proxy materials such as issuer bids and directors circulars. Proxy-related materials are securityholder materials relating to a meeting that the issuer is required under corporate law or securities legislation to send to registered holders.

Compliance with the procedures set out in the Instrument is mandatory for issuers when sending proxy-related materials to beneficial owners and is optional for the sending of other securityholder materials. Once an issuer chooses to use the communication procedures specified in the Instrument for non-proxy materials, depositaries, intermediaries and other parties must comply with their corresponding obligations under the Instrument.

Effective Dates

If the Minister of Finance for Ontario approves each of the Instrument and National Instrument 54-102, they will come into force and National Policy 41 will be rescinded on July 1, 2002. Transitional provisions in the Instrument provide that lists of beneficial securityholders (as described below) will not be required to be furnished before September 1, 2002, and the sending of proxy-related materials for meetings to be held before September 1, 2004 may only be sent to beneficial holders indirectly through the intermediaries holding securities on their behalf. The implementation of the provisions of the Instrument related to furnishing securityholder lists and the use of the lists by issuers to send proxy-related materials directly to securityholders has been staged in order to enable market participants to identify and resolve any potential difficulties that may be encountered in establishing the necessary systems and administrative infrastructure.

The Instrument is expected to be implemented in all provinces.

Major Changes

The Instrument differs from National Policy 41 in a number of significant ways. The following is a brief summary of certain of the major substantive changes incorporated in the Instrument:

- ***Request for Beneficial Ownership Information:*** Perhaps the most controversial aspect of the Instrument are the procedures that have been

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included to permit an issuer to obtain from intermediaries a list of those beneficial owners of the issuer's securities who do not object to the disclosure of their names and other information to the issuer (called "Non-Objecting Beneficial Owners" or "NOBOs") in order to allow the issuer to communicate directly with them. Depending on the circumstances, a request for beneficial ownership information may be made for any class or series of securities and is not restricted to those securities carrying the right to receive notice of, or to vote, at a meeting.

- ***Sending Materials to Beneficial Owners:*** An issuer must send proxy-related materials to beneficial owners of its securities by sending such materials: (i) directly to NOBOs and indirectly through intermediaries to those beneficial owners who object to disclosure of their names to the issuer (called "Objecting Beneficial Owners" or "OBOs" in the Instrument); or (ii) indirectly through intermediaries to both NOBOs and OBOs.

The Instrument requires that proxy-related materials sent to beneficial owners of securities explain, in plain language, the right of the beneficial owner to attend and vote the securities directly at a meeting and a description of how those rights may be exercised.

- ***Receiving Securityholder Materials:*** The scope of materials that a beneficial owner may decline to receive has been narrowed from National Policy 41. Under the Instrument, a beneficial owner can decline to receive non-proxy-related securityholder materials and proxy-related materials for meetings at which only "routine business" (i.e., non-special business) is to be conducted. However, issuers may override the securityholder's choice and send such materials nonetheless.

- ***Timing Requirements:*** Changes have been made to facilitate the calling of meetings on a more expedited basis than under National Policy 41. Like its predecessor, the Instrument requires that an issuer give notice of the meeting and record dates at least 25 days before the record date for a meeting and send a request for beneficial ownership information to intermediaries at least 20 days before the record date. However, the Instrument allows these timing requirements to be abridged upon the issuer filing an officer's certificate containing certain specified information including an acknowledgment that arrangements have been made for other require-

ments of the Instrument to be satisfied in a shorter time period.

The period of time between the record date and the meeting date has been shortened from the 35 days in National Policy 41 to 30 days. In addition, the deadline for an issuer to send out proxy-related materials has been reduced to a minimum of 21 calendar days before the meeting when the issuer is sending the materials directly to NOBOs and a minimum of 21 calendar days plus 3 business days before the meeting when the issuer is sending the materials indirectly to OBOs through an intermediary or indirectly through an intermediary to NOBOs.

The time frames stipulated by the Instrument are minimum requirements. For a meeting that will deal with contentious matters, it is expected that good corporate practice will often require that materials be sent earlier than the minimum required dates to ensure that securityholders have a full opportunity to understand and react to the matters raised.

- ***Third Party Requests for NOBO Lists:*** The Instrument allows a third party to request a NOBO list from the issuer or directly from intermediaries upon providing an undertaking not to misuse the information. A bidder under a take-over bid will thus be able to obtain a NOBO list. The decision to use the procedures contained in the Instrument for the distribution of securityholder materials to beneficial owners is within the third party's discretion. A copy of all intermediary search requests and all requests for beneficial ownership information must be provided to the issuer by the third party.

- ***Supplemental Lists:*** National Instrument 54-102 replaces and essentially adopts the provisions of National Policy 41 and associated rules and blanket orders pertaining to supplemental mailing lists. Issuers only have to send interim financial statements to those registered and beneficial securityholders that request them.

Annual Financial Statements or Annual Report

The Instrument recognizes that corporate law or security legislation may permit an issuer to send its audited financial statements or annual report to registered holders of its securities later than other proxy-related

materials. The time periods applicable to sending proxy-related materials in the Instrument do not apply to the sending of proxy-related materials that are annual financial statements or an annual report if the statements or report are sent by the issuer to the beneficial owners of the securities within the time limitation established in applicable corporate law and securities legislation for the sending of the statements or report to registered holders of the securities. Issuers are nonetheless encouraged to send their audited annual financial statements or annual report at the same time as other proxy-related materials.

We invite you to contact any member of the Goodmans securities team to discuss the new shareholder communication regime.

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