NOTICE OF NATIONAL INSTRUMENT 54-101
***COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER* AND COMPANION POLICY 54-101CP**
COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

The Commission has made, and the other members of the Canadian Securities Administrators (the "CSA" or "we") have made or plan to adopt, National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (including related forms) (the "Instrument") and related Companion Policy NI 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer* (the "Policy") to deal with communication with beneficial owners of securities of a reporting issuer.

The forms are: Forms 54-101F1, 54-101F2, 54-101F3, 54-101F4, 54-101F5, 54-101F6, 54-101F7, 54-101F8 and 54-101F9 (the "Forms"). The full text of the Instrument (including the Forms) and the Companion Policy follow this Notice and is also reproduced on the Commission's website at www.albertasecurities.com.

Through the Instrument, the CSA seek to continue, with some changes, the regulatory regime concerning communications with beneficial owners of securities of a reporting issuers currently embodied in National Policy Statement No. 41 *Shareholder Communication* ("NP41").

Effective Dates

On April 9, 2002, the Commission made the Instrument as a rule under section 224 of the Securities Act (Alberta). The Instrument will come into force on July 1, 2002. Transitional provisions in the Instrument provide that NOBO lists 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 under the Instrument to NOBOs indirectly through the intermediaries holding on behalf of the NOBOs.

The Commission has also adopted the Policy. The Policy will come into force on the date that the Instrument comes into force.

The Commission has, concurrently with making the Instrument a rule, also made as a rule National Instrument 54-102 *Interim Financial Statement and Report Exemption* ("NI 54-102"), all of which collectively replace the provisions of NP41 and associated blanket orders pertaining to communication with beneficial owners of securities of a reporting issuer.

The Instrument has been, or is expected to be, also implemented as a rule in each of British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario and Quebec, as a

Commission regulation in Saskatchewan and as a policy in all other jurisdictions represented by the CSA.

Background

The CSA first published the Instrument for comment on February 27, 1998 and after considering the comments, published for comment a revised version on July 17, 1998. After considering those comments, the CSA published a further revised version for comment on September 1, 2000 (the "2000 Proposal").

Following the publication of the 2000 Proposal, the CSA received 179 comments as part of the formal comment process. Many comments followed a standard format, of which there were three different types. The CSA also received a large number of informal submissions made outside the formal comment process, including 72 sent by electronic mail and a number sent after the comment period, which echoed comments made in the formal process. All comments and submissions were considered. The names of the commenters that made their submissions formally, a summary of their comments and our responses are contained in Appendix "A" and Appendix "B" to this Notice. We thank all of those who made comments or submissions.

We have made some changes to the 2000 Proposal in response to the comments received and further consultation. We are of the view that republication of the Instrument and Policy for comment is not required.

Purpose of the Instrument and Policy

The Instrument establishes an obligation on reporting issuers to send proxy-related materials to the beneficial owners of its securities who are not registered holders of its securities, provides a procedure for the sending of proxy-related materials and other securityholder material to beneficial owners and imposes obligations on various parties in the securityholder communication process.

The Policy sets forth our views on the interpretation and application of the Instrument.

Summary of Changes to the Instrument

There were no material changes made to the Instrument from the version published in the 2000 Proposal. We have made typographical and drafting changes and certain other minor changes based on comments received on the 2000 Proposal, including the following:

- Paragraph (b) of the definition of "non-objecting beneficial owner" in section 1.1 has been revised consequentially to the number changes in paragraph 3.3(b).

- The conjunctive between paragraphs (d) and (e) of the definition of "routine business" in section 1.1 has been revised from "and" to "or".

- The previous section 1.2 has been deleted as it merely restates general principles of agency law.

- Section 1.4 (which was previously section 1.5) has been simplified through the elimination of redundant language.

- Subparagraph 2.2(1)(b) has been revised to refer simply to "securities regulatory authority", which is defined in National Instrument 14-101 *Definitions*, in order to clarify the jurisdictional operation of the requirement.

- Subparagraph 2.2(1)(c) has been revised to simply refer to "exchange" to encompass the different terms used in the securities legislation of each jurisdiction.

- Subsection 2.5(4) has been revised to eliminate redundancy.

- Section 2.5 has been revised to clarify how a reporting issuer makes requests for beneficial ownership information from proximate intermediaries that do not hold the relevant securities as a participant in a depository, but are registered holders.

- Section 2.6 has been revised to specify the date for satisfaction of the requirements a reporting issuer must meet in order not to be subject to sections 2.3 or 2.5. Section 2.6 also has been revised to reflect the fact that a nominee of a depository or an intermediary may be the registered holder.

- A new subsection 2.11(2) has been added to respond to concerns expressed that where the reporting issuer sends proxy-related materials directly to NOBOs, the responsibility of the reporting issuer for the process should be made clear to the NOBO.

- Section 2.15 has been revised to clarify that the notice must be sent concurrently. Section 2.15 has also been revised to clarify which proximate intermediaries a reporting issuer is required to send the notice of adjournment or other change for a meeting.

- Section 3.1 has been revised to clarify its application to existing intermediaries and persons or companies that become intermediaries after the Instrument comes into force.

- Section 3.2 has been revised to eliminate the requirement that the explanation to clients and the client response form be sent before the intermediary may hold securities on behalf of a client, in circumstances where it has received oral

instructions from the client, provided that it sends the explanation to clients and client response form as part of its opening-account procedures.

- Subparagraph 3.3(b)(ii) (previously 3.3(b)2) has been revised to clarify that the clients referred to in this subparagraph are those clients who were deemed to be NOBOs under NP 41.

- Subparagraph 3.3(b)(iv) has been revised to also include, as materials that may be declined to be received by a client, annual reports and financial statements that are *not* part of proxy-related materials.

- Paragraph 3.3(c) now requires an intermediary to obtain, before January 1, 2004, new instructions on the matters to which a client response form pertains if the client was deemed to be a NOBO under NP41. This change was made to conform with the expiry of the time period provided in section 30 of the *Personal Information Protection and Electronic Documents Act* (Canada).

- Subsection 6.2(2) has been amended by deleting the reference to the forms, as the forms are part of the Instrument.

- Section 10.1 provides that the Instrument comes into force on July 1, 2002, instead of July 1, 2001.

- Section 10.2 now sets out transitional provisions for reporting issuers that have begun the process of sending meeting materials under NP41 but whose meeting will be held after the coming into force of the Instrument.

- Section 10.3 now provides that, despite section 10.1, a reporting issuer sending proxy-related materials to beneficial owners for a meeting to be held before September 1, 2004 shall send those materials only indirectly under section 2.12.

- Section 10.4 now provides that there is no requirement to furnish a NOBO list before September 1, 2002.

- Form 54-101F1 *Explanation to Clients and Client Response Form*:
  - In the *Explanation to Clients*, under the heading "Receiving Securityholder Materials," the explanation has been revised to include in the referenced materials that may be declined, annual reports and financial statements that are not part of proxy-related materials. The *Client Response Form* has been amended accordingly.
  - In the *Explanation to Clients*, under the heading "Electronic Delivery of Documents," the instruction has been revised to clarify that the instruction is addressed to the intermediary and that the client's consent referred to in the instruction relates to the sending of documents by the intermediary only.

- In Form NI 54-101F2, footnotes have been added to Part 1 and Part 2 to define "routine business".

Staged Implementation

The implementation of the provisions of the Instrument related to furnishing NOBO lists and the use of NOBO lists by reporting issuers to send proxy-related materials directly to NOBOs 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 CSA will continue to consult with and monitor the ability of market participants to:

- Ensure effectiveness of the process for generating and transmitting NOBO lists, before the NOBO lists are made available to be used for the direct sending of proxy-related materials to NOBOs.

- Negotiate reasonable fees for services, particularly fees payable to intermediaries for NOBO lists.

The CSA will also monitor related developments in the regulation of securityholder communication, including those in the United States of America.

If, during the period of staged implementation, it becomes apparent to the CSA that the use by reporting issuers of NOBO lists to send proxy-related materials to NOBOs should be accelerated or delayed, the CSA reserves the ability to respond by way of appropriate amendments to the Instrument.

Summary of Changes to Policy

The Policy is the same as the version published in the 2000 Proposal, except for the following minor changes based on comments received on the 2000 Proposal:

- A new section 2.6 has been added under the heading "General" to provide guidance on the interpretation of what is a "reasonable amount" for fees.

- A new section 2.7 has been added under the heading "General" to remind market participants using the services of an agent that they remain fully responsible for compliance with the requirements of the Instrument.

- Paragraph 3.2(1) has been revised to reflect the changes to section 2.15 of the Instrument.

- Additional text has been added to section 4.4 to explain the circumstances in which the Instrument requires that FINS numbers will be required to be included in NOBO lists.

- Section 5.4(4) has been modified to clarify that the client's consent relates only to the sending by the intermediary and the relevance of that consent to a reporting issuer.

- A new Part 6 has been added to remind market participants that trafficking of a NOBO list, contrary to Part 7 of the Instrument, will constitute a breach of securities legislation. The previous Part 6 is now Part 7, and the previous Part 7 has been deleted to eliminate redundancy.

- The former section 5.4(2) has been deleted as it does not directly relate to the subject matter of the Instrument. In addition, the issue of whether exemptive relief from the requirements for written voting instructions is required in order to send voting instructions in electronic form is being reviewed.

Rescission of NP41

Effective the date the Instrument and NI 54-102 come into force, NP41 will be rescinded.

Questions

Questions may be referred to:

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April 9, 2002

Appendix "A"

National Instrument 54-101 and Companion Policy 54-101CP

List of Commenters

1. Admiral Bay Resources Inc. dated November 1, 2000
2. Agro International Holdings Inc. dated November 1, 2000
3. Alcanta International Education Ltd. dated November 1, 2000
4. Alexis Resources Ltd. dated November 1, 2000
5. Alternative Fuel Systems Inc. dated October 26 and 30, 2000
6. Ambassador Industries Ltd. dated November 1, 2000
7. American Wild Woodland Ginseng Corp. dated November 1, 2000
8. Apac Minerals Inc. dated November 1, 2000
9. Arapaho Capital Corp. dated October 13 and 25, 2000
10. Archangel Diamond Corporation dated November 1, 2000
11. Arlington Ventures Ltd. dated October 13 and November 1, 2000
12. Athlone Minerals Ltd. dated November 1, 2000
13. Atikokan Resources Inc. dated November 1, 2000
14. Atna Resources Ltd. dated November 1, 2000
15. Austin Developments Corp. dated November 1, 2000
16. Automated Recycling Inc. dated November 1, 2000
17. AVC Venture Capital dated November 1, 2000
18. Aylesworth Thompson Phelan O'Brien dated November 1, 2000
19. Ballad Enterprises Ltd. dated November 1, 2000
20. Bard Ventures Ltd. dated November 1, 2000
21. Bargold Resources Ltd. dated November 1, 2000

22. BCY Ventures Inc. dated November 1, 2000
23. Big Star Energy Inc. dated November 1, 2000
24. Blackling Oil Corporation dated November 1, 2000
25. Brick Brewing Co. Limited dated October 27, 2000
26. Brown McCue dated November 1, 2000
27. Can Alaskantures Ltd. dated November 1, 2000
28. Canadian Bankers Association dated October 30, 2000
29. Canadian Investor Relations Institute dated November 1, 2000
30. Canadian Shareowners Association dated November 1, 2000
31. Cantrell Capital Corp. dated November 1, 2000
32. Castle Metals Corporation dated November 1, 2000
33. Century Gold Corp. dated November 1, 2000
34. Circumpacific Energy Corp. dated November 1, 2000
35. Clickhouse.com Online Inc. dated November 1, 2000
36. Consolidated Kaitone Holdings Ltd. dated November 1, 2000
37. Coubran Resources Ltd. dated October 13 and 25, 2000
38. CPAC (Care) Holdings Ltd. dated November 1, 2000
39. Creo Products Inc. dated October 31, 2000
40. Curion Venture Corp. dated November 1, 2000
41. Davis & Company dated November 1, 2000
42. Denison Mines Limited dated October 27, 2000
43. Digital Atheneum Technology Corporation dated November 1, 2000
44. Discfactories Corporation dated November 1, 2000
45. Donner Minerals Ltd. dated November 1, 2000
46. Dumoulin Black dated November 1, 2000
47. Dxstorm.com Inc. dated November 1, 2000

48. Earl Resources Limited dated November 1, 2000
49. Eastfield Resources Limited dated November 1, 2000
50. eDispatch.com Wireless Data Inc. dated November 1, 2000
51. Edwards, Kenny & Bray dated November 1, 2000
52. El Nino Ventures Ltd. dated November 1, 2000
53. Ella Resources Inc. dated October 13 and 25, 2000
54. eVirus Software Corporation dated November 1, 2000
55. Exploration Tom inc. dated November 7, 2000
56. Fancamp Exploration Limited dated November 1, 2000
57. First Au Strategies Corp. dated November 1, 2000
58. Foxpoint Resources Ltd. dated October 13, 25 and November 1, 2000
59. GenSci Regeneration Sciences Inc. dated November 1, 2000
60. Global Cogenix Industrial Corp. dated November 1, 2000
61. Global Election Systems Inc. dated November 1, 2000
62. Global Securities Corporation dated October 31, 2000
63. Godinho, Sinclair dated November 1, 2000
64. Goepel McDermid Inc. dated October 24, 2000
65. Golden Cariboo Resources Ltd. dated November 1, 2000
66. Golden Temple Mining Corp. dated November 1, 2000
67. Goldengoals.com Ventures Inc. dated November 1, 2000
68. Goodfellow Resources Ltd. dated October 13 and 25, 2000
69. Grand Resource Corporation dated November 1, 2000
70. Green Valley Mine Inc. dated November 1, 2000
71. Greystar Resources Ltd. dated October 13 and 25, 2000
72. Hedong Energy Inc. dated November 1, 2000
73. Holmes, King dated November 1, 2000

74. Home Capital Group Inc. dated October 27 and 31, 2000
75. Hymex Diamond Corp. dated November 1, 2000
76. IICC Investor Communications dated November 1, 2000
77. IMC Ventures Inc. dated November 1, 2000
78. Inca Pacific Resources Inc. dated November 1, 2000
79. Integrated Business Systems and Services Inc. dated November 1, 2000
80. International Absorbents Inc. dated November 1, 2000
81. International Alliance Resources Inc. dated November 1, 2000
82. International Croesus Ventures Corp. dated November 1, 2000
83. International Freehold Mineral Development dated November 1, 2000
84. International Northair Mines Ltd. dated October 31, 2000
85. International Road Dynamics Inc. dated November 1, 2000
86. International Rochester Energy Corp. dated November 1, 2000
87. International Sunstate Ventures Ltd. dated November 1, 2000
88. Intracoastal System Engineering Corporation dated November 1, 2000
89. Investment Dealers Association of Canada dated October 30, 2000
90. Inzeco dated November 7, 2000
91. Island-Arc Resources Corp. dated November 1, 2000
92. IVS Intelligent Vehicle System Inc. dated November 1, 2000
93. Kalimantan Gold Corporation Limited dated November 1, 2000
94. Kingston Resources Ltd. dated November 1, 2000
95. Kiwi Charter Corp. dated November 1, 2000
96. Lakewood Mining Company Limited dated November 1, 2000
97. Lasik Vision Corporation dated November 1, 2000
98. Leigh Resource Corp. dated October 13, 25 and November 1, 2000
99. Lucky Strike Resources Ltd. dated November 1, 2000

100. Luscar Caol Income Fund dated October 31, 2000

101. Manhattan Resources Ltd. dated October 31, 2000

102. Marchwell Capital Corp. dated October 13 and 25, 2000

103. Maximum Resources Inc. dated November 1, 2000

104. Menika Mining Limited dated November 1, 2000

105. Merrill Lynch Canada Inc. dated October 31, 2000

106. Michael F. Provenzano dated November 1, 2000

107. Michael Sikula Law Corporation dated November 1, 2000

108. Mill City International Inc. dated October 26, 2000

109. Morton & Company dated November 1, 2000

110. Navan Capital Corp. dated October 13 and 25, 2000

111. New Shoshoni Ventures Ltd. dated November 1, 2000

112. Next Millennium Commercial Corp. dated November 1, 2000

113. Novadex International Inc. dated November 1, 2000

114. Novawest Resources Inc. dated November 1, 2000

115. NTS Computer Systems Ltd. dated November 1, 2000

116. Nuequus Petroleum Corporation dated November 1, 2000

117. Nuinsco Resources dated October 26, 2000

118. Olympus Stone Inc. dated November 1, 2000

119. Omni Resources Inc. dated November 1, 2000

120. Pacific Booker Minerals Inc. dated November 1, 2000

121. Pacific Corporate Trust Company dated November 1, 2000

122. Pacific North West Capital dated November 1, 2000

123. Pacific Topaz Resources Ltd. dated November 1, 2000

124. Petromin Resources Ltd. dated November 1, 2000

125. Platinex Inc. dated November 1, 2000

126. Polymer Solutions Inc. dated November 1, 2000

127. Powerhouse Energy Corp. dated November 1, 2000

128. Powertech Industries Inc. dated November 1, 2000

129. Prospector International Resources Inc. dated November 1, 2000

130. Randsburg International Gold Corp. dated November 1, 2000

131. Ravenhead Recovery Corp. dated November 1, 2000

132. RBC Dominion Securities dated October 31, 2000

133. Red Emerald Resource Corp. dated October 13 and 25, 2000

134. Reliant Ventures Ltd. dated October 13 and 25, 2000

135. Rock Resources Inc. dated November 1, 2000

136. Royal Trust Corporation of Canada dated November 1, 2000

137. San Telmo Resources Ltd. dated November 1, 2000

138. Seacrest Development Corp. dated November 1, 2000

139. Security Transfer Association of Canada dated October 30, 2000

140. Seine River Resources Inc. dated November 1, 2000

141. Setanta Ventures Inc. dated November 1, 2000

142. Shaw Industries Ltd. dated October 31, 2000

143. Soligen Technologies Inc. dated November 1, 2000

144. Spectrum Games Corporation dated November 1, 2000

145. Stackpole Limited dated October 30 and 31, 2000

146. Startech Energy Inc. dated October 26 and 27, 2000

147. State Street Trust Company Canada dated November 1, 2000

148. Stone Point Group Limited dated October 23 and 30, 2000

149. TCEnet Inc. dated October 24 and 26, 2000

150. TD Waterhouse Investor Services dated November 1, 2000

151. Tearlach Resources Ltd. dated November 1, 2000

152. Technovision Systems Inc. dated November 1, 2000

153. The Bank of Nova Scotia dated October 31, 2000

154. The Canadian Depository for Securities Limited dated November 8, 2000

155. The Canadian Society of Corporate Secretaries dated October 31, 2000

156. The Investment Funds Institute of Canada dated November 1, 2000

157. Tiger International Resources Inc. dated November 1, 2000

158. TimberWest Forest Corp. dated October 23, 2000

159. Trade Wind Communications Limited dated November 1, 2000

160. TransCanada PipeLines dated October 30, 2000

161. Tres-Or Resources Limited dated November 1, 2000

162. Trivalence Mining Corporation dated November 1, 2000

163. Tropika International Limited dated November 1, 2000

164. Tyhee Development Corp. dated November 1, 2000

165. U. S. Cobalt Inc. dated November 1, 2000

166. U. S. Diamond Corporation dated November 1, 2000

167. Unique Broadband Systems Inc. dated November 1, 2000

168. United Bolero Development Corp. dated November 1, 2000

169. United Media Limited dated October 16, 2000

170. Urbco Inc. dated October 30, 2000

171. Ventir Challenge Enterprises Ltd. dated November 1, 2000

172. Vertigo Software Corp. dated November 1, 2000

173. Veteran Resources Inc. dated October 23, 2000

174. Video Headquarters Inc. dated November 2, 2000

175. Visionquest Enterprise Group Inc. dated November 1, 2000

176. Walloper Gold Resources Limited dated November 1, 2000

177. WestBond Enterprises Corporation dated November 1, 2000

178. White Knight Resources Ltd. dated November 1, 2000

179. Whitegold Resource Corp. dated November 1, 2000

Appendix "B"

National Instrument 54-101 and Companion Policy 54-101CP

Summary of Comments Received and CSA Response

Background

This is a summary of the comments received by the CSA during the comment period that expired on November 1, 2000, with the CSA response. The CSA received 179 formal submissions (listed in Appendix "A"). The CSA has considered the comments and thanks all commenters.

Below are the summarized versions of the submissions, grouped by subject, with the CSA response.

General Comments Regarding the Instrument and CSA Response

Use of E-mail

Some commenters expressed concern that the use of electronic communication was not specifically provided for in the Instrument. Other commenters thought that the requirement for issuers to obtain client consent to electronic delivery would be too onerous and that consent to electronic delivery from issuers should be provided for in the client response form, with that portion of the form given to issuers. It was suggested that issuers could be excluded from communicating electronically with their shareholders by reason of the consent to electronic communication being limited to usage only by the intermediary who has obtained the authorization.

CSA Response

The CSA point out that there is nothing in the Instrument that precludes an electronic form of delivery. In addition, section 5.4 of the Policy explains how the requirements of the Instrument can be complied with using the guidelines set out in Quebec Staff Notice 11-201, and in the rest of Canada, National Policy 11-201 Delivery of Documents by Electronic Means (the "11-201 Documents"). Although issuers will not be entitled to rely upon consents to electronic delivery given by beneficial owners to intermediaries, issuers will obtain the electronic mail address of beneficial owners from the NOBO list. Issuers will then be able to send an e-mail to beneficial owners requesting their consent to the sending of materials in an electronic format by the issuer, in accordance with the 11-201 Documents.

Form F1 has been revised to conform with the provisions of the 11–201 Documents.

Fragmentation and Economies of Scale

Some commenters suggested that the current system was operating in an effective and efficient manner and commented that, under the proposed Instrument, the voting system would be fragmented, with fewer controls, and would result in a deterioration of service. They felt that the current system was reliable, well-understood, efficient, accountable (i.e. intermediaries were accountable to their clients), equitable (i.e. both OBOs and NOBOS receive their meeting materials in a timely manner) and enjoyed a high rate of client satisfaction. They expressed concern that accountability and equity might disappear under the proposed system. They suggested that the United States had decided not to facilitate the use of shareholder lists for proxy solicitation.

Some commenters said that the current system was cost-efficient. They suggested that the revenue base was too small to justify increasing competition and competition would erode investment in system enhancements. The added complexity of the proxy process (due to an increase in the number of parties involved) would result in a more costly system. Some submitted that intermediaries would not maintain electronic voting applications for institutional holders, so issuers would be spending more for a less effective vote turn-out.

Certain commenters were concerned that intermediaries would be held accountable for deficiencies in the delivery of security holder materials where they did not control the mailing. If problems did occur, intermediaries would not know who was responsible. They submitted that increased non-compliance would lead to an increased regulatory burden.

One commenter said that the voting process would be perceived as lacking integrity and independence. Contests would be complex, potentially unfair, and costly.

On the other hand, most commenters supported the principle of direct communication between an issuer and its securityholders.

CSA Response

The CSA notes that many of these comments have been made before. The CSA reiterates that it has consulted with industry and experts in securityholder communications since 1998. The CSA believes the requirement that all requests for beneficial ownership information be made through a transfer agent will better facilitate an efficient communications process and encourage a limited number of entities to invest in changing technologies. The Instrument allows the option of continued use of the existing system or the option of direct mailing to NOBOs; the CSA expects that market forces will lead issuers to the system most appropriate for their own situation.

The CSA believes that the concerns related to changing the current system to accommodate the sending of proxy-related materials directly to beneficial owners are best addressed by a delayed implementation of this aspect of the Instrument.

The Instrument does not preclude reporting issuers (through their professional transfer agents) from exploiting innovations that are developed in the registered shareholder environment. Transfer agents and other potential service providers can make use of efficiencies that they have developed in their existing business operations and may be able to "piggyback" on technologies used by their parents or affiliates.

The CSA believes that permitting reporting issuers to send proxy-related materials directly to beneficial owners is desirable. The CSA also recognizes that reporting issuers with beneficial owners in the United States may wish to use a single process for sending their proxy-related materials, which the Instrument facilitates by also providing for indirect sending through intermediaries.

In response to the concerns expressed by intermediaries about accountability, a new subsection 2.11(2) has been added to provide for specified text that addresses accountability to be included with proxy-related materials that solicit votes or voting instructions where a reporting issuer uses the NOBO list to send the materials directly to a NOBO.

Shareholder register

A commenter thought that the Instrument did not resolve the problems of issuer access to shareholders and direct participation in voting and wanted the responsibility for shareholder registers to revert to issuers. Another said that the Instrument did not effectively address the identification of beneficial owners, particularly institutional beneficial owners.

CSA response

The CSA points out that the concern relating to issuer responsibility for shareholder registers is a matter for corporate law and may also be impacted by privacy legislation.

The CSA believes that the Instrument strikes an appropriate balance between the identification by an issuer of its beneficial owners and the beneficial owner's desire for anonymity.

CSA Survey

One commenter felt that the survey conducted by the CSA in 1999 did not contain a meaningful level of detail, in particular regarding the costs, efficiencies and integrity of voting.

CSA Response

The CSA is satisfied with the survey, which accomplished its goal: to identify how many issuers are satisfied with the current process, and how many would like to communicate directly with beneficial owners. The survey was not meant to displace the comment process, which allowed for a more detailed consideration of specific proposals and criticisms.

SEDAR

One commenter strongly urged the CSA to use SEDAR to simplify and expedite the shareholder communication process.

CSA Response

The CSA points out that SEDAR was developed to facilitate the electronic filing of information by issuers to the respective securities commissions and was not designed for electronic communication between market participants.

Specific Comments Regarding the Instrument and CSA Response

Fees (Sections 1.4 [previously Section 1.5] and 2.13)

Commenters expressed concern that the Instrument did not prescribe a fee or clarify what would be a reasonable fee. Some commenters suggested that intermediaries furnish the NOBO list free of charge while others suggested a flat fee of $15.00.

CSA Response

Section 1.4 provides that fees payable under the Instrument shall be, unless prescribed by the applicable regulator or securities regulatory authority, a reasonable amount. Consequently, the only present restriction is that the fee be a "reasonable amount".

The CSA is of the view that, except for a threshold requirement that amount be reasonable, the determination of the amount of fees should, to the extent possible, be left to market participants who are in the best position to take account of rapidly changing technology and the attendant costs of providing the service. However, in response to concerns raised by certain commenters that there is no benchmark for determining what

is a reasonable fee, the CSA has revised the Policy to state that it is the CSA expectation that market participants will be guided by the fees payable for comparable services in other jurisdictions (such as the United States) and will take account of cost reductions associated with technological change.

The requirement in Section 1.4 that the fees payable by reporting issuers to intermediaries for delivery of materials to beneficial owners be a reasonable amount is consistent with provisions of the securities legislation of some jurisdictions that specifically permit an intermediary to decline to forward materials to beneficial owners unless arrangements have been made for the payment of its reasonable costs.

The requirement in Section 1.4 that the fees payable by reporting issuers to intermediaries for responding to requests for beneficial ownership information be a "reasonable amount" is consistent with provisions of the corporate legislation of many jurisdictions that require the payment to a corporation of a reasonable fee for a list setting out the names, addresses and holdings of its security holders.

Request for Beneficial Ownership Information (Section 2.5)

A commenter requested that the position of reporting issuers be strengthened by requiring intermediaries to provide all pertinent information about beneficial owners, and that it should be provided on labels or disks.

Another commenter suggested that the NOBO list should be maintained on an issuer-by-issuer basis, rather than on an account-by-account basis, and should be updated annually.

CSA Response

The CSA believes that the Instrument strikes a balance between providing information about beneficial owners and the beneficial owner's desire for anonymity. The CSA also believes that the modes of transmission of the beneficial ownership information are a matter to be negotiated between the issuer and the intermediary.

Transfer Agent Requirement (Section 2.5(4))

Some commenters felt that there should be no transfer agent requirement and that issuers and others should be able to perform mailing and tabulating functions themselves. They also expressed concern that only those persons and companies defined as transfer agents would be eligible to perform the functions that the Instrument requires to be performed by transfer agents. On the other hand, other commenters expressed concern that if issuers were themselves able to perform the transfer agent functions specified in the Instrument, the process would be less effective and more costly.

Some commenters asked that the CSA prescribe voting forms and procedures, as different permitted formats would add confusion to the voting process.

CSA Response

Section 2.5(4) of the Instrument remains unchanged in that all requests for beneficial ownership information must be made using the services of a person or company that carries on the business of a transfer agent. The CSA continues its view that this requirement will better facilitate an efficient and secure communications process by minimizing the number of required electronic linkages required to be established and maintained.

Request for Legal Proxy (Section 2.18)

Commenters expressed concern that the provision permitting beneficial owners to request a legal proxy may be confusing for them and that there would not be sufficient time for the legal proxy requests to be processed. These commenters felt that issuers should be permitted to send legal proxies directly to beneficial owners at the time proxy materials are mailed, rather than require beneficial owners to specifically request that a legal proxy be sent to them.

CSA Response

The CSA is of the view that this is more properly the subject of corporate law reform and is beyond the purpose of this Instrument.

Decision to remain OBO (Part 3)

A commenter felt that beneficial owners should be able to remain OBOs without penalty and that issuers should bear the costs of sending materials to OBOs.

CSA Response

The CSA reiterate its decision to be silent on the issue and permit the market to determine how the costs of sending to OBOs will be borne where the matter is not addressed by local rule.

Instructions from Clients (Section 3.2)

Some commenters advised that written instructions from clients may not always be received before they hold the securities and suggested that the requisite information form part of the "account-opening procedures".

CSA Response

The CSA has noted the comment and has amended section 3.2 to address this situation.

Transitional - Instructions from Existing Clients (Section 3.3)

A commenter suggested that the proposed rule should make clear what happens when a client has not responded to an intermediary's request for instructions.

A commenter suggested that intermediaries be allowed one year from implementation of the Instrument, or until July 2002, to collect new data from clients because there is a lack of incentive for intermediaries to proactively manage this issue prior to 2004.

CSA Response

Section 3.3 of the Instrument makes it clear that an intermediary has an obligation to obtain new instructions from clients who were deemed to be NOBOs under NP 41.

The timeline in the Instrument was chosen to coincide with the transitional period contained in the federal Personal Information Protection and Electronic Documents Act ("PIPEDA"). The CSA has amended Part 3.3(c) to correspond to the transition period set out in section 30 of that Act.

Request for Voting Instructions (Section 4.4)

Commenters felt that portfolio managers or trustees with full discretionary authority should not be required to seek voting instructions from clients.

CSA Response

This concern is addressed by the definition of "beneficial owner" contained in section 1.1 of the Instrument, which is explained in subsection 2.4(2) of the Policy.

Right to Decline to Receive Materials (Section 4.4 and Client Response Form)

One commenter thought that Form 54-101F1 should allow clients of intermediaries to request or decline certain of the three documents listed, not all or none, as is proposed. The same commenter suggested that interim financial statements be included in the set of materials that beneficial owners be allowed to decline to receive. Another suggested that the beneficial owner should be responsible for requesting the issuer to remove them from the mailing list and that intermediaries should no longer be responsible for Form C [being the predecessor in NP41 to the client response form in the Instrument].

One commenter thought that registered securityholders should be able to decline to receive all materials, including proxy materials relating to non-routine meetings, so as to minimize administrative burden and costs. The commenter recommended that issuers send a form (substantially the same as the client response form F1) to registered holders allowing them to elect not to receive materials.

CSA Response

The CSA continues to take the view that by allowing beneficial owners to decline to receive some but not all security holder material strikes an appropriate balance between ensuring that beneficial owners are properly informed of the most significant issues that may have an impact on their investment in the reporting issuer and their desire not to receive material. The CSA agrees that beneficial owners should be entitled to decline to receive annual and interim financial statements that are not related to meetings and has amended the client response form accordingly.

With respect to the comment that registered securityholders should be allowed to decline to receive materials, the CSA recognizes that this is a valid comment but notes that it goes beyond the scope of this Instrument, which is intended to provide a mechanism for a reporting issuer to communicate with its beneficial owners. The CSA is currently reviewing, as a separate initiative, the requirements relating to the sending of materials to registered holders.

Third-Party Access to NOBO lists (Section 7.1)

One commenter expressed its concern that third parties would have access to NOBO lists and suggested that it might compromise the issuer's security. Another commenter said that because the NOBO list is available to third parties, beneficial owners who chose to be NOBOs under NP41 and non-responders to requests for client instructions should be deemed to be OBOs. This commenter suggested the deemed OBO provision was necessary for compliance with PIPEDA and with a trustee's fiduciary duties.

One commenter queried whether it was practical to expect a reporting issuer to delete the FINS numbers before forwarding the NOBO list to a third party, particularly if the NOBO list was sent to the issuer in electronic format.

CSA Response

These issues have been raised before. The CSA reiterates its view that the prohibitions on the misuse of NOBO lists satisfactorily address concerns about their misuse. Any party seeking a NOBO list must undertake not to misuse it and all NOBO lists must contain a warning about their misuse. The potential for misuse has been further limited by a provision in the Instrument requiring FINS numbers to be deleted from NOBO lists not requested in relation to a meeting. The CSA is satisfied that the provisions of sections 6.1(2) and 7.1 of the Instrument adequately deal with the request for and use by third parties of NOBO lists.

The transition provisions in Part 3 of the Instrument are intended to minimize the cost of obtaining new instructions from clients.

With respect to the comments concerning PIPEDA and a trustee's fiduciary duties, the CSA notes that section 7(3)(i) of PIPEDA does not require consent where the disclosure of information is required by law and that a trustee's responsibilities must be carried out in accordance with the law.

With regard to the issue of deleting FINS numbers, the CSA is of the view that a reporting issuer can generate a paper copy of the NOBO list and delete the FINS numbers from the paper copy. The CSA points out that the request for a NOBO list by a third party and the forwarding of that NOBO list to the third party must be done through a transfer agent. The rationale for deleting the FINS numbers is the valid concern that confidentiality between an intermediary and its client would be compromised if the FINS numbers could be disseminated to third parties.