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SHAREHOLDER ASSOCIATION *for* RESEARCH & EDUCATION

August 31 2010

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8

-and-

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
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Request for Comment - Proposed Amendments to 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;* Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Companion Policy 51-102CP *Continuous Disclosure Obligations;* Proposed Amendments to National Policy 11-201 *Delivery of Documents by Electronic Means*

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We would like to thank the Canadian Securities Administrators (the CSA) for this opportunity to provide comments on the Proposed Amendments noted above.

The Shareholder Association for Research and Education (SHARE) is an advisor to Canadian institutional investors. Since its creation in 2000, SHARE has provided proxy voting and shareholder engagement services as well as education, policy advocacy and practical research on emerging responsible investment issues.

In its Request for Comment, the CSA invites interested parties to comment on the proposed materials generally. We have elected to begin with general comments. This introductory section is followed by our responses to the specific questions set out in the Request for Comments.

General Comments

The U.S. statistics we have reviewed indicate that in the first year after Notice and Access was introduced, the percentage of retail shares voted fell by more than 50%.[1] The data also shows that in 2009 and 2010, the percentage of shareholders who voted was significantly lower among shareholders who received a notice instead of a full set of proxy materials in a stratified distribution.[2]

We do not believe that the differences between the U.S. provisions and the proposed requirements for Canadian issuers will produce a significantly different result with respect to shareholder voting. This is because the key characteristic of Notice and Access is that shareholders must take one or more different or extra steps to vote in both the U.S scheme and under the Canadian proposal. From this perspective, Notice and Access is not in shareholders' best interests, and we therefore recommend that as currently proposed, this initiative should be abandoned.

We do, however, believe that many of the objectives of Notice and Access are laudable. These include encouraging shareholders to access information online about the companies in which they invest, saving costs by electronically delivering proxy materials and reducing the environmental impact of shareholder voting. We therefore conclude this submission with recommendations for the implementation of Notice and Access that we believe will better prepare shareholders for its implementation.

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[1] See Broadridge Financial Solutions, Inc. statistics online at: http://www.niriswrc.org/powerpoint/2008-NIRI-SWRC-proxy-notice.ppt, p. 19.

[2] See Broadridge Financial Solutions, Inc. statistics online at: www.broadridgeinfo.com/ADPFiles/FY10%20Full%20Year.pdf, p. 4 and www.broadridge.com/notice-and-access/NAStatsStory.pdf, p. 4.

Below, please find our comments on the questions set out in the Notice and Request for Comment.

1. We propose to exclude proxy-related materials relating to special meetings from notice-and-access. Should we expand notice-and-access to include special meetings? Should other types of meetings be excluded from notice-and-access as well?

Due to the negative impact of Notice and Access on the proportion of retail shareholders who exercise their voting rights, we understand the impetus to proceed with caution on its implementation in Canada. We are, however, concerned about the message that the CSA's proposed approach sends to the market about the relative importance of 'special' meetings and meetings that are not special meetings.

Restricting the availability of Notice and Access delivery to meetings that are not special meetings is likely to perpetuate the already too-common view that the election of directors and (re)appointment of auditors are 'routine' matters that require less attention from shareholders than 'special' resolutions.[3]

We acknowledge that the classification of resolutions as special business (or not) on corporate ballots is set out in corporate law, but the distinction is too often interpreted as a way to identify 'routine' matters of lesser importance and 'non-routine' matters of more importance.

The election of directors is arguably the most crucial matter to be considered by shareholders each year. The members of the board are charged with making the decisions that result in all of the other items on the proxy ballot and are therefore their effectiveness is critical to a company and its investors. If the external auditors falter or fail on ethical or other grounds, the repercussions for the company can be catastrophic. Voting on directors and auditors is routine only in the sense that each happens annually.

Securities regulation should encourage shareholders to view voting on directors and auditors as seriously as voting on other items. These are not matters of lesser importance, but the use of annual meeting agendas as guinea pigs for Notice and Access suggests this.

[3] We acknowledge that the agenda items that are `special` will vary depending upon the jurisdiction of incorporation of an issuer and that the distinction is established by corporate statutes.

Although we are not supportive of Notice and Access as it is currently proposed, we recommend that if use of the mechanism is permitted for Canadian public issuers, it should be an option for all shareholder meetings.

2. We propose that reporting issuers be able to use notice-and-access to send proxy-related materials to some, but not all beneficial owners, so long as this fact is publicly disclosed and an explanation provided. Should there be restrictions on when a reporting issuer can use notice-and-access selectively?

We understand that in the U.S., issuers employ stratified Notice and Access for a wide variety of reasons. Full sets of materials are sent only to, for example, larger shareholders, foreign shareholders or frequent voters, while all other retail shareholders receive a notice.

The use of stratified mailings is problematic because shareholders who receive a notice only are less likely to vote their shares. Avoiding the notice only option with foreign shareholders makes sense because they are less likely to be aware of its introduction and more likely to find it confusing. The foreign and domestic distinction also acknowledges that the notices delivered may not, on their own, provide shareholders with sufficient guidance to facilitate vote execution.

We can understand the desire to send full materials to shareholders who habitually exercise their franchise in order to avoid discouraging them from voting. We believe that the CSA should take steps to encourage shareholders who do not vote to begin doing so rather than introducing a mechanism that essentially writes these shareholders off as perpetual non-participants in the voting process.

Stratified mailings also provide issuers with an invitation to treat shareholders differently, which we believe should be discouraged. For example, the use of Notice and Access to distinguish between the shareholders based on the numbers of shares they hold undercuts the important 'one share, one vote' equality that securities regulators should seek to foster.

3. The US model of notice-and-access seems to have resulted in a decrease in voting by retail shareholders. Our notice-and-access proposal has some significant differences from the US model which are intended to minimize the impact on retail shareholders. Does our notice-and-access proposal adequately meet the needs of retail shareholders who wish to vote? Are there any specific enhancements or other ways that notice-and-access can be made more user-friendly?

As noted above under the heading 'General Comments', shareholders receiving notice instead of a full set of materials are less likely to vote their shares.

Despite the differences in the proposed implementation of Notice and Access in Canada, the effect on shareholder voting will almost certainly be strongly negative. One obvious reason for this is that shareholders will lose the consistency that they currently have in the delivery of proxy materials and will be required to take different steps to vote their shares.

We also note that although the notice component of Notice and Access attracts most of the attention from those interested in exploring its implementation, the access end of the mechanism deserves equal consideration.

At SHARE, we periodically receive VIFs in connection with our proxy voting service. We have observed that some U.S. companies elect to post materials directly to their own websites, whereas others engage a third party and its website for this purpose.

Company websites are arguably the preferred point of access for proxy materials because this encourages direct contact between shareholders and companies more online. The difficulty is that the web pages to which shareholders are directed can be very busy with materials and links that are not proxy materials. This increases the likelihood that shareholders will become discouraged and decide not to vote their shares.

We believe that providing a high level of consistency in at least one of the two components of the Notice and Access mechanism will encourage shareholders to vote, or at least do less to discourage voting. Such consistency is likely most easily achieved in the mailings to shareholders (notice) rather than through online presentation of materials. We therefore recommend that issuers not be permitted broad discretion in the form and contents of mailings to shareholders (the notice component), but instead be provided with a proscribed form in plain language.

4. We would appreciate data from issuers, service providers and other stakeholders on the anticipated costs and savings of implementing and using the notice-and-access process. Will notice-and-access result in meaningful costs savings that make the proxy voting system more efficient?

We have no data regarding the anticipated cost savings or efficiencies of Notice and Access as an option for the delivery of proxy materials.

5. We propose to give reporting issuers flexibility in the form and content of the notice provided the notice contains certain specified information. Is this approach appropriate, or should there be a prescribed form?

It is our view that as Notice and Access is currently proposed, corporate choice will result in investor confusion. The proposed notice provisions will likely result in many investors receiving a dizzying variety of corporate mailings. For meetings that qualify for Notice and Access, corporate options include the familiar full set of materials, the notice and VIF only, or the notice, VIF and other inserts of the company's choosing. The last option will produce completely unique notice packages from company to company.

6. The CSA proposal does not impose any restrictions on additional materials that can be included with the notice and voting instruction form. We do not have any concerns with including additional material that explains the notice-and-access process, such as a Q&A. However, is it appropriate for reporting issuers and others to include materials that address the substance of the matters to be voted on at the meeting? Would this create a disincentive for investors to read the full information circular? Should there be restrictions on what can be included in this these types of materials? Should there be requirements prescribing basic information that these types of materials must contain?

As noted above in our response to Question 2, we are concerned that the more varied the contents of company mailings to shareholders, the more confusing Notice and Access will be for shareholder recipients. We advocate prescribing the information that can be delivered with the Notice form, and restricting it to the notice document which would indicate that the VIF will be mailed out in due course.

7. Is the requirement in subsection 4.6(1) of NI 51-102 that requires reporting issuers to send an annual request form to registered holders and beneficial owners of their securities to request financial statements and management's discussion and analysis adequately integrated with the requirements to send proxy-related materials? Will notice-and-access have any impact?

A notice under Notice and Access will sit awkwardly with the request form for financial statements and management's discussion and analysis. While one could reasonably view the receipt of hard copy of an issuer's annual report as non-essential, all market participants should and likely do view voting as a highly desirable and essential activity. The existence of forms for both purposes is not ideal if shareholder voting is to be encouraged.

8. The Proposed Amendments require management of reporting issuers that choose not to pay for delivery to OBOs to disclose this fact in the management information circular. The intent is to make the proxy voting system more transparent and easier to navigate. Will this disclosure facilitate this objective?

We agree that this disclosure should be provided in order to make the proxy voting system more transparent, and support the introduction of this requirement whether or not Notice and Access is implemented in our market.

Additional recommendations for the implementation of Notice and Access

We understand that one of the rationales for introducing Notice and Access is to encourage shareholders to view company websites as a recognized channel for information about the companies in which they invest. This is a worthwhile regulatory goal. For this reason, we support Notice and Access if the recommendations we put forward above are incorporated into the CSA proposal.

We are also of the view that additional requirements for the introduction of Notice and Access in Canada should be adopted. These are set out below, and we believe they are likely to result in a less pronounced negative impact on shareholder participation in voting under Notice and Access.

Graduated implementation of Notice and Access

In the year prior to permitting issuers to send notices to shareholders, all issuers would be required to include a one-page explanation of Notice and Access in their proxy material mailings to shareholders. The content of this page could be prescribed, and should be 'plain language'. The page could be entitled "Rule Changes for Delivery of Proxy Materials" or something to that effect. In this way, shareholders who read through their proxy materials would be advised that issuers may elect to send them a notice only for the next shareholder meeting.

Qualification requirements for use of Notice and Access

In conjunction with graduated implementation of Notice and Access, issuers could be required to provide certain supports for online communication with shareholders prior to using Notice and Access. Notice and Access would therefore be one of several possible components of issuer-shareholder communication online, and more effectively encourage its expansion.

The qualifying activities for using Notice and Access could include some or all of the following:

i) audio webcasting of at least the most recent meeting of shareholders
ii) a shareholder forum, moderated by the issuer
iii) a proxy–voting page for shareholders directly accessible from a tab on the homepage of the issuer's primary website.

On the proxy-voting page, postings should include proxy materials for upcoming meetings, any press releases with respect to the stratified use of Notice and Access, the toll-free number to be used by shareholders to request a full set of materials and other data directly relevant to an upcoming meeting.

We note that many senior issuers already provide some of these conduits for communication with their shareholders.

As it is proposed, the implementation of Notice and Access is likely to result in a significant decline in the proportion of retail shareholders who vote their shares. Institutional investors generally operate under a duty to vote their shares. Participation in shareholder voting is of course lower among retail shareholders who are not obliged to vote. We therefore recommend that the CSA consider implementing a more robust Notice and Access mechanism and consider what it might coincidentally do to 'get out the retail vote'.

Proposed amendments to the beneficial owner proxy appointment process

We support the proposed simplification of the beneficial owner proxy appointment process. As a service provider to institutional investors, we have significant experience with obtaining legal proxies for clients. We agree that the current requirements can take weeks, which is unacceptable when that the task must be accomplished in a tight time frame.

Sincerely,

Laura O'Neill
Director of Law and Policy