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Proposed Amendments to Rules on Communications with Shareholders

By: Constantinos Ragas and Christian Jacques | Montréal

The Canadian Securities Administrators (**CSA**) are proposing the adoption of new rules which would allow reporting issuers to choose to provide securityholders with proxy solicitations and materials through the internet (**Notice-and-Access**). The proposals (**Proposed Amendments**) were published for consultation on June 17, 2011, and aim to reduce the substantial printing and mailing costs incurred by reporting issuers under the current regime, while using the internet to improve the efficiency of securityholder engagement.

The Notice-and-Access System

The Proposed Amendments contemplate that reporting issuers who opt for Notice-and-Access would be required to post a document explaining Notice-and-Access (**Explanatory Notice**) on both their websites and on SEDAR, and to issue a news release directing attention to the website address where the Explanatory Notice is posted. These steps would be required no earlier than six months and no later than three months prior to the anticipated date of the first meeting conducted under these new procedures. Afterward, reporting issuers would be required to send an information package (**Information Package**) 30 days in advance of each securityholder meeting. The Proposed Amendments to NI 54-101 envisage that the content of the Information Package should include a prescribed list of basic information about date, time and location of the meeting, a description of the matters to be voted on at the meeting, a website address where meeting materials are posted, a reminder to read the information circular and an explanation of how to obtain paper copies of the meeting materials. A copy of the Explanatory Notice, which explains how to exercise voting rights under Notice-and-Access, must also be included along with the Information Package.

The Option to Continue Receiving Paper Copies

The Proposed Amendments would permit securityholders to continue receiving paper copies of meeting materials, as is currently the practice. Securityholders may make this election via an annual form to this effect sent by the reporting issuer.

By virtue of the Proposed Amendments, securityholders who would request to receive paper copies of the reporting issuer's annual financial statements and related management's discussion and analysis would be deemed to have requested paper copies of the information circular as part of the Information Package (a process known as "stratification" under the Proposed Amendments). The CSA have also proposed that standing instructions to receive a paper copy of the information circular could automatically constitute instructions to receive paper copies of the reporting issuer's annual financial statements and related management's discussion and analysis. However, the CSA have requested further input from stakeholders on this issue.

Proposed Amendments to Apply Equally to Third Parties

The Proposed Amendments permit third parties (i.e., parties other than the reporting issuer acting through its management) to use Notice-and-Access for engaging in a proxy contest. The advantages of these rules would therefore be available in an attempt by such a third party to (i) influence the voting of the reporting issuer's securityholders; or (ii) offer to acquire the shares of the reporting issuer.

Exceptions for SEC Issuers

The Proposed Amendments could exempt companies which meet U.S. notice-and-access requirements from the obligation to send notices and proxies to Canadian shareholders. A reporting issuer which qualifies as an SEC issuer and satisfies certain statutory requirements, may benefit from this exemption provided that: (i) fewer than 50% of its voting shares are held by Canadian residents; (ii) fewer than 50% of its executive officers and directors are Canadian residents; (iii) fewer than half its assets are located in Canada; and (iv) its business is principally administered outside of Canada.

Increased Issuer Obligation to Interface with Beneficial Owners

The Proposed Amendments provide that reporting issuers who opt for Notice-and-Access would consequently be required to modify their disclosure procedures. In addition to describing in proxy materials how securityholders can exercise their voting rights, reporting issuers would also be required to disclose in their information circulars both whether they are using Notice-and-Access and their stratification policies. A toll-free number would have to be provided by the reporting issuer for securityholders with inquiries about Notice-and-Access, and the reporting issuer would have to be prepared to provide printed materials upon request. Naturally, securityholder materials posted on a reporting issuer's website would be user-friendly as well.

Comment Period Open Until August 16, 2011

The CSA permits you to provide your comments on the Proposed Amendments by August 16, 2011. If you would like to discuss proposed changes and submit your comments, we would be happy to assist you with the preparation and submission of any comments you may have.

For more information on the subject of this bulletin, please contact the authors:

Constantinos Ragas

514 397 5244

cragas@fasken.com

Christian Jacques

514 397 5191

chjacques@fasken.com

Contacts

VANCOUVER

Lata Casciano

604 631 4746

lcasciano@fasken.com

CALGARY

R. Greg Powers Q.C.

403 261 6148

gpowers@fasken.com

TORONTO

Richard J. Steinberg

416 865 5443

rsteinberg@fasken.com

OTTAWA

Virginia K. Schweitzer

613 236 3882

vschweitzer@fasken.com

MONTRÉAL

Peter Villani

514 397 4316

[pvillani@fasken.com](mailto:pwillani@fasken.com)

LONDON

David Smith

+44 207 917 8510

dsmith@fasken.com

PARIS

Ginette Leclerc

+33 1 44 94 96 98

gileclerc@fasken.com

PARIS/JOHANNESBURG

Al Gourley

+27 11 685 0804

agourley@fasken.com

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