

# National communication rule needs reform

*Full disclosure of relevant information is important, but different investors have different needs*

**CANADIAN REGULATORS HAVE built a solid foundation of disclosure policies and regulations to ensure investors in public corporations and other reporting issuers have adequate information to make informed investment decisions.**

Reporting issuers are required to send shareholders proxy information circulars for shareholder meetings, and annual and quarterly financial statements. (Reporting issuers must also disclose significant changes in their affairs.) These documents must also be filed electronically with the regulators through the system for electronic document analysis and retrieval. Although disclosure material is accessible through the Internet, regulatory requirements are largely premised on investors receiving paper copies.

The centrepiece of the regulatory dissemination system is National Instrument 54-101 — Communication with Beneficial Owners of Securities. NI 54-101 was initially adopted to ensure unregistered beneficial owners of voting securities received proxy informa-

tion circulars and other materials relating to voting at shareholder meetings. But it also regulates dissemination of all statutory disclosure material. As most shareholders hold their shares through registered dealers rather than in their own names, NI 54-101 requires registered dealers to send their clients documents furnished by reporting issuers, sometimes regardless of whether the clients wish to receive them. Under NI 54-101, the choice of whether documents are sent to all clients is left to the issuer.

The emphasis on disclosure dissemination to investors is a well-intentioned attempt by regulators to discharge their responsibilities for investor protection. But even good rules can have unforeseen, adverse consequences. As a result of allowing issuers to decide whether documents should be sent to shareholders, shareholders may receive substantial disclosure material they neither want nor need. In response, dealers have increasingly received complaints from clients about the number of documents that have been sent to them.

## GUEST COLUMN BY IAN C.W. RUSSELL

Clients with diversified accounts may hold as many as 80 or more securities. They may receive a large number of annual and quarterly corporate financial statements and other documents.

NI 54-101 is in need of reform. Full disclosure of relevant information is important to the investment process, but different investors have different disclosure needs. For example, investors with discretionary managed accounts do not need to receive documents from all corporations whose securities are held in their portfolios. They look to their investment advisors to review these documents and make investment decisions.

When NI 54-101 was adopted, the focus was on proxy circulars and shareholder voting. The regulators did not then undertake a comprehensive investor survey to determine the disclosure investors want and need — and they have not done so since. A starting point in reforming NI 54-101 would be

to initiate professionally run client focus groups and surveys to determine the level of investor dissatisfaction with receiving so many documents, the degree to which investors read and use them and what documents, if any, different investors want and need.

Regulators should also explore alternative approaches to dissemination requirements. Some documents may be more closely related to decisions made by investors than others. For example, proxy information circulars relate directly to voting by shareholders. These and other meeting-related documents are different from quarterly financial reports, the results of which are often reflected in the market before investors receive or read them. Investors often look to their advisors for investment decisions based on such documents. But shareholders cannot choose to receive meeting-related documents and not the others; under NI 54-101, an investor can choose only to receive all issuer documents or none at all.

It is not clear why issuers should decide whether investors with

fully managed accounts, or other investors, must receive both types of documents. Regulators should consider adopting mechanisms to allow investors to make these decisions, subject to corporate law requirements applicable to individual issuers, and possibly depending on the importance of specific documents.

Despite regulators' efforts to permit electronic transmission, the proliferation of disclosure materials is a problem for investors and dealers. The problem must be examined with a view to reforming existing rules. One of the **Ontario Securities Commission's** stated priorities is to reassess the impact of NI 54-101. The **Investment Industry Association of Canada** has also encouraged the **Canadian Securities Administrators** to address these issues. We are prepared to work closely with the OSC and the CSA, and have made a submission to regulatory authorities.

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