

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2021-17
(Section 149.1, The Securities Act)

AMENDMENTS TO NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*

1. *National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.*
2. *Section 1.1 is amended by adding the following definitions:*

“information circular” means a document prepared in accordance with Form 51-102F5 *Information Circular*;

“intermediary” has the same meaning as in section 1.1 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*;

“meeting” means, except in sections 10.2, 10.3 and 16.3, a meeting of securityholders of an investment fund;

“NOBO” has the same meaning as in section 1.1 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*;

“notice-and-access” means the delivery procedures referred to in section 12.2.1;

“notification of meeting and record dates” has the same meaning as in section 1.1 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*;

“proximate intermediary” has the same meaning as in section 1.1 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*;

“proxy-related materials” means securityholder materials relating to a meeting that a person or company that solicits proxies is required under corporate law or securities legislation to send to a registered holder or beneficial owner of the securities of an investment fund;

“send” includes to deliver or forward, or arrange to deliver or forward, by any means;

“stratification” means procedures whereby a paper copy of the information circular and, if applicable, the financial statements of the investment fund are included with the documents required to be sent in order to use notice-and-access under section 12.2.1;

3. *The Instrument is amended by adding the following sections:*

12.2.1 Notice-and-access

A person or company that solicits proxies from a registered holder of securities of an investment fund under subsection 12.2(2) of this Instrument, or sends proxy-related materials to beneficial owners of an investment fund under section 2.7 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, must not use notice-and-access to send proxy-related materials to the registered holder or beneficial owner unless all of the following apply:

- (a) the registered holder or beneficial owner is sent a notice that contains only the following information:
 - (i) the date, time and location of the meeting;

(ii) a description of each matter or group of related matters identified in the form of proxy to be voted on, unless that information is already included in the form of proxy, in Form 54-101F6 *Request for Voting Instructions Made by Reporting Issuer* or in Form 54-101F7 *Request for Voting Instructions Made by Intermediary*, that is sent to the registered holder or beneficial owner under paragraph (b);

(iii) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;

(iv) a reminder to review the information circular before voting;

(v) an explanation of how to obtain a paper copy of the information circular and, if applicable, the financial statements of the investment fund, from the person or company soliciting proxies;

(vi) a plain-language explanation of notice-and-access that includes the following information:

(A) if stratification is used, a list of the types of registered holders or beneficial owners who will receive paper copies of the information circular and, if applicable, the financial statements of the investment fund;

(B) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the financial statements of the investment fund, is to be received in order for the registered holder or beneficial owner to receive the paper copy in advance of any deadline for the submission of the proxy or the voting instructions for the meeting, and the date of the meeting;

(C) an explanation of how the registered holder or beneficial owner is to return the proxy or the voting instructions, including any deadline for return of the proxy or the voting instructions;

(D) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the notice can be found;

(E) a toll-free telephone number the registered holder or beneficial owner can call to get information about notice-and-access;

(b) by prepaid mail, courier or the equivalent,

(i) the registered holder is sent the notice, and a form of proxy for use at the meeting, at least 30 days before the date of the meeting, and

(ii) the beneficial owner is sent the notice and a Form 54-101F6 or Form 54-101F7, using the procedures referred to in section 2.9 or 2.12 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, as applicable;

(c) the proxy-related materials are sent at least 30 days, and no more than 50 days, before the date of the meeting;

(d) if proxy-related materials are sent directly to a NOBO using notice-and-access, the notice and, if applicable, any paper copies of information circulars and financial statements, are sent at least 30 days before the date of the meeting;

(e) if proxy-related materials are sent indirectly to a beneficial owner using notice-and-access, the notice and, if applicable, any paper copies of information circulars or financial statements are sent to any proximate intermediary,

(i) at least 3 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent, and

(ii) at least 4 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary using any other type of prepaid mail;

(f) in the case of a solicitation by or on behalf of management of the investment fund, or if another person or company soliciting proxies has requested a meeting, the notification of meeting and record dates is filed on SEDAR and that filing occurs on the same date that the notification of meeting and record dates is sent under subsection 2.2(1) of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*;

(g) public electronic access to the information circular, the notice and the form of proxy is provided on or before the date that the notice is sent to the registered holder or beneficial owner, as follows:

(i) the documents are filed on SEDAR;

(ii) the documents are posted for no less than one year on

(A) the investment fund's designated website, in the case of a solicitation by or on behalf of management of the investment fund, and

(B) a website other than SEDAR, in the case of a solicitation by or on behalf of any other person or company;

(h) a toll-free telephone number is provided for use by the registered holder or beneficial owner to request a paper copy of the information circular and, if applicable, the financial statements of the investment fund at any time

(i) following the date that the notice is sent to the registered holder or beneficial owner, and

(ii) on or before the date of the meeting, including any adjournment;

(i) if a request for a paper copy of the information circular and, if applicable, the financial statements of the investment fund is received by telephone using the toll-free telephone number provided in the notice or by any other means, a paper copy of the document requested is sent free of charge by the person or company to the registered holder or beneficial owner at the address specified in the request,

(i) in the case of a request received before the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent, and

(ii) in the case of a request received on or after the date of the meeting, and within one year of the date the information circular is filed on SEDAR, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent;

(j) the notice is not sent with any other document other than the following:

(i) a form of proxy, Form 54-101F6 or Form 54-101F7;

(ii) if financial statements of the investment fund are to be presented at the meeting, the financial statements;

(iii) if the meeting is to approve a reorganization of the investment fund with another investment fund as contemplated by paragraph 5.1(1)(f) of National Instrument 81-102 *Investment Funds*, Form 81-101F3 *Contents of Fund Facts Document* or Form 41-101F4 *Information Required in an ETF Facts Document* for the continuing investment fund;

(k) the notice is not combined with any document other than a form of proxy, Form 54-101F6 or Form 54-101F7;

(l) the information circular discloses that proxy-related materials are being sent to registered holders or beneficial owners of the investment fund using notice-and-access, and if stratification is used, the types of registered holders or beneficial owners who will receive paper copies of the information circular and, if applicable, the financial statements of the investment fund;

(m) the cost of sending the information circular and, if applicable, the financial statements of the investment fund, to a registered holder or beneficial owner, if a paper copy is requested by the registered holder or beneficial owner, is paid by the manager of the investment fund or other person or company soliciting proxies that is not the investment fund.

12.2.2 Restrictions on Information Gathering

(1) A person or company using notice-and-access that receives a request for a paper copy of the information circular or the financial statements of the investment fund, through the toll-free telephone number provided in the notice referred to in paragraph 12.2.1(a) or by any other means, must not

(a) ask for any information about the person or company making the request, other than the name and address to which the information circular and, if applicable, the financial statements are to be sent, or

(b) disclose or use the name or address of the person or company making the request for any purpose other than sending the information circular or the financial statements of the investment fund.

(2) A person or company that posts proxy-related materials to a website under subparagraph 12.2.1(1)(g)(ii) must not collect information that can be used to identify a person or company that has accessed the website.

12.2.3 Posting Materials on Non-SEDAR Website

(1) A person or company that posts proxy-related materials to a website under subparagraph 12.2.1(1)(g)(ii) must also post on the website all of the following:

(a) any disclosure regarding the meeting that the person or company has sent to registered holders or beneficial owners;

(b) any written communications the person or company has made available to the public regarding each matter or group of matters to be voted on at the meeting, whether or not the communications were sent to registered holders or beneficial owners.

(2) For greater certainty, a person or company that posts proxy-related materials on a website under subparagraph 12.2.1(1)(g)(ii) must do so in a manner and format that permits an individual with a reasonable level of computer skill and knowledge to easily do all of the following:

(a) access, read and search the materials;

(b) download and print the materials.

12.2.4 Record Date for Notice of Meeting, Abridgement of Time and Notification of Meeting Date and Record Date

(1) A person or company that solicits proxies from a registered holder or beneficial owner using notice-and-access, in the case of solicitation by or on behalf of management of an investment fund, must

(a) despite paragraph 2.1(b) of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, set or request a record date for notice of the meeting that is no fewer than 40 days before the date of the meeting,

(b) specify in the notification of meeting and record dates sent under section 2.2 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* that proxy-related materials are being sent to registered holders or beneficial owners using notice-and-access, and

(c) not abridge the time prescribed under paragraph 2.1(b), subsection 2.2(1) or subsection 2.5(1) of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* unless the person or company

(i) complies with paragraphs 2.20 (a) to (c) of that Instrument, and

(ii) sends the notification of meeting and record dates sent under section 2.2 of that Instrument at least 3 business days before the record date for notice of the meeting.

(2) In the case of a person or company not referred to in subsection (1) that requests a meeting, the person or company must request the following:

(a) a record date for notice of the meeting that is no fewer than 40 days before the date of the meeting;

(b) that the notification of meeting and record dates sent under section 2.2 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* state that proxy-related materials are being sent to registered holders or beneficial owners using notice-and-access.

12.2.5 Consent to Other Delivery Methods - For greater certainty, section 12.2.1 does not

(a) prevent a registered holder or beneficial owner from consenting to the use of other delivery methods to send proxy-related materials,

(b) terminate or modify a consent that a registered holder or beneficial owner previously gave to a person or company regarding the use of other delivery methods to send proxy-related materials to the registered holder or beneficial owner, or

(c) prevent a person or company that solicits proxies, an intermediary or any other person or company from sending proxy-related materials to a registered holder or beneficial owner using a method to which the registered holder or beneficial owner has consented prior to January 5, 2022.

12.2.6 Instructions to Receive Paper Copies

(1) Despite section 12.2.1, an investment fund or its manager or management may obtain standing instructions from a registered holder of securities of the investment fund, and an intermediary may obtain

standing instructions from a client that is a beneficial owner of securities of the investment fund, that a paper copy of the information circular or the financial statements of the investment fund be sent to the registered holder or beneficial owner in all cases when using notice-and-access in respect of a meeting of the investment fund.

(2) If an investment fund or its manager or management has obtained standing instructions from a registered holder under subsection (1), the investment fund, its manager or management must do all of the following:

(a) include with the notice referred to in paragraph 12.2.1(a) any paper copies of information circulars or financial statements of the investment fund referred to in the registered holder's standing instructions;

(b) notify the registered holder, by including a statement in the notice referred to in paragraph 12.2.1(a) or by another method, of the means by which the registered holder may revoke the registered holder's standing instructions.

(3) If an intermediary has obtained standing instructions from a beneficial owner under subsection (1), the intermediary must do all of the following:

(a) if the investment fund or its manager or management is sending proxy-related materials directly under section 2.9 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, indicate in the NOBO list provided to the investment fund or its manager or management, those NOBOs who have provided standing instructions under subsection (1) as at the date the NOBO list is generated;

(b) if the intermediary is sending proxy-related materials to a beneficial owner on behalf of an investment fund or its manager or management using notice-and-access, request appropriate quantities of paper copies of the information circular and, if applicable, the financial statements of the investment fund, from the investment fund or its manager or management, for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;

(c) include with the notice a description, or otherwise inform the beneficial owner of, the means by which the beneficial owner may revoke the beneficial owner's standing instructions.

12.2.7 Compliance with National Instrument 51-102 and National Instrument 54-101 –

(1) A person or company that solicits proxies must comply with the following:

(a) Items 7.12 and 9.9 of Form 54-101F2 Request for Beneficial Ownership Information;

(b) Form 54-101F5 Electronic Format for NOBO List.

(2) For the purposes of subsection (1), “notice-and-access” and “stratification”, as used in Items 7.12 and 9.9 of Form 54-101F2 and in Form 54-101F5, have the same meaning as in this Instrument..

Transition

4. Before September 6, 2022, if an investment fund has not designated a website as its designated website, the reference to “designated website” in paragraph 12.2.1(g) of National Instrument 81-106 *Investment Fund Continuous Disclosure* must be read as a reference to the investment fund’s or its manager’s website.

Effective Date

5. (1) This Instrument comes into force on January 5, 2022.

5.(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after January 5, 2022, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

5.(3) This Instrument may be cited as MSC Rule 2021-17.