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How to Plan the Annual General Meeting

After a company's year-end, the beginning of the next calendar year is a busy one with regards to year-end filings and planning the details of the upcoming annual general meeting (AGM). Here is a summary of the tasks issuers listed on a Canadian stock exchange should consider:

The Year-end Filing

The year-end filing deadlines for:

- Toronto Stock Exchange – TSX issuers is: 90 days after year-end
- Toronto Stock Exchange Venture – TSX-V issuers is 120 days after year-end

Planning for the AGM

Start the AGM planning by using the transfer agent's meeting planner form (also known as the "proxy planner"). It conveniently arranges all the information needed to organize the investor communications related to the AGM. It also identifies important dates, which are driven by the **record date for voting** (the date by which a shareholder must be an investor to participate in the AGM). Once the proxy planner is completed and submitted to the transfer agent, it becomes the source document to ensure that all subsequent steps of the annual meeting process are executed in a timely manner.

Determining mailing quantities

Based on the information in the proxy planner, the transfer agent will SEDAR file a **Notice of Meeting and Record Date**. The meeting notification will be sent to all financial intermediaries (banks, brokers or trust companies), reported by the Canadian Depository for Securities (CDS), that hold positions in the issuers' security, as well as selected U.S. financial intermediaries via The Depository Trust Company (DTC). Under National Instrument 54-101 (NI 54-101), these financial intermediaries have three business days to provide transfer agent with an approximate number of investors who would like to receive annual reports (annual financial statements). These numbers are reported to issuers so they can plan ahead to have sufficient quantities of materials for the year-end mailing.

The investor mailing

The investor mailing contains documentation an investor needs to make a decision on matters to be discussed at the AGM. The rules for communication with **registered investors**, whose names are recorded directly on a company's share register, are found in the various federal or provincial business acts. The transfer agent sends meeting materials directly to all registered investors holding positions in the issuer as of the record date for voting.

Rules for communication with non-registered investors (also known as beneficial) shareholders, whose shares are held by a financial intermediary, are defined by NI 54-101. Mailings to beneficial investors vary depending on whether the investors are considered "non-objecting" or "objecting":

- **Non-objecting beneficial owners (NOBOs)** are investors whose personal identities can be disclosed to the issuer. NI 54-101 specifies that the issuer can decide on who can communicate with the NOBOs. On the meeting planner, issuers can choose the **transfer agent** or the **financial intermediary (banks, brokers or trust companies)**. Most intermediaries use the services of a mailing agent (such as **Broadridge Financial Solutions Inc. "Broadridge"**) to accomplish this requirement. If the transfer agent is chosen, the issuer must also complete NI 54-101F9, which contains an undertaking that the NOBO information will only be used for certain specified purposes such as the annual meeting mailing.
- **Objecting beneficial owners (OBOs)** are investors whose identities are NOT to be disclosed to the issuer. The financial intermediaries via Broadridge are always responsible for mailing to OBOs. The issuer is not required to pay the costs of communicating with these investors but is often asked to do so to ensure all investors are treated equally. Regardless of the payment arrangement, the cost of the meeting materials and the mailing/postage fees are always the responsibility of the issuer.

It is important to note that under NI 54-101, it is the **financial intermediary** that confirms whether investors are NOBOs or OBOs – usually when they first become an investor in the security (most likely when an account is opened with the broker). If investors do not make their choice known to the financial intermediary, under NI 54-101 they are deemed to be a NOBO.

Summary of Investor Mailing Deadlines:

The Canadian Securities Administrators (CSA) published amendments to National Instrument 51-102 – Continuous Disclosure Deadlines which were effective December 29, 2006.

The amendments allow issuers 10 more days for quarterly and annual report MAILINGS.

In summary – Mailing Deadlines

For annual reports (financial statements), the mailing deadlines for registered holders (shareholders with a share certificate) and beneficial holders (holding shares in a brokerage account) are as follows:

- TSX Issuers – 10 calendar days after the SEDAR filing deadline of 90 days, therefore **100 days** (to opt-in requesting holders)
- TSX-Venture Issuers – 10 calendar days after the SEDAR filing deadline of 120 days, therefore **130 days** (to opt-in requesting holders)

*(Beneficial holders who declined to receive ALL security holder materials under National Instrument 54-101, are excluded from receiving the annual report and AGM mailing materials).

If the issuer cannot meet the deadlines listed above they:

Have up to **140 days** after their year-end to mail their annual reports to **ALL** registered and **ALL** beneficial holders (excluding *).

Here is the relevant section of 51-102 relating to the **10 extra days** on page 18 of page 232:

http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part5/rule_20081231_51-102_unofficial-consolidated.pdf

AGM materials:

Annually, issuers still must mail the Notice of Meeting and the Management Information Circular (MIC), Proxy Form (for Registered holders) or Voting Instruction Form (VIF – for Beneficial holders) and a Supplemental Card to **ALL share/unit holders** (excluding *).

- The Supplemental Card can be omitted from the mailing if the opt-in questions regarding the annual/interim report delivery are added to the Proxy Form or VIF. Beneficial share/unit holders must indicate if they want to “opt-in” and registered holders must indicate if they do NOT want to receive annual/interim reports.
- Shareholders must receive ALL these documents at least 21 days before the AGM.

For interim reports, mailing deadlines were also extended by 10 days:

- TSX Issuers – 10 calendar days after the SEDAR filing deadline of 45 days, therefore **55 days** (to opt-in requesting holders)
- TSX-Venture Issuers – 10 calendar days after the SEDAR filing deadline of 60 days, therefore **70 days** (to opt-in requesting holders)

Tabulating investor responses

Prior to the AGM, proxy tabulation is done. This is the process where the Transfer Agent collects all the responses from investors who do not plan to attend meeting but who wish to have company management (or another appointee) vote on their behalf on matters being considered:

- For the **registered investor**, proxy tabulation consists of receiving (by mail, fax and, if desired, telephone or Internet), a **registered proxy form**. These are recorded and summarized for the issuer, prior to the AGM.
- For the non-registered investor (beneficial shareholders) when a mailing agent such as Broadridge is used for the NOBO and/or OBO mailing, the **voting instruction form (VIF)** is used to solicit investor responses. These responses are recorded by the mailing agent, who periodically forwards proxy report totals to transfer agent who is the overall proxy tabulator.

To be included in the final proxy totals for the annual meeting, all investor proxies and VIF's must be received and deposited by the **cut-off date**, typically 24 to 48 hours prior to the AGM. Shortly after the cut-off time, the transfer agent provides the issuer with final proxy voting totals.

The AGM

The final step in this process is the annual meeting itself. The transfer agent provides scrutineers, who register investors as they come to the AGM, they distribute and tabulate ballots and provide the issuer with final voting totals. Final reporting – consisting of the attendance and scrutineers' and ballot reports, for example – are provided one business day after the meeting. For TSX (not TSX-V) issuers, the voting results are to be filed on SEDAR the next day.

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