

Ontario Securities Commission

National Policy 47-201

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NATIONAL POLICY 47-201

TRADING SECURITIES USING THE INTERNET AND OTHER ELECTRONIC MEANS

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PART 1 GENERAL

Definitions

1.1 In this Policy

"securities legislation" means the statutes and other instruments listed in Appendix B of National Instrument 14-101 *Definitions*;

"securities regulatory authorities" means the securities commissions and similar regulatory authorities listed in Appendix C of National Instrument 14-101 *Definitions*;

Purpose of this Policy

1.2 (1) In recent years, market participants have begun using the Internet and other electronic means of communication to offer and sell securities and to facilitate distributions of securities. While the use of these methods of communication can be beneficial to market participants, enabling them to provide and access information in a timely, cost-efficient and user-friendly manner, the securities regulatory authorities recognize that the use of the Internet and other electronic means of communication in this context can raise investor protection concerns and issues concerning the application of securities legislation.

(2) The purpose of this Policy is to state the views of the securities regulatory authorities on a number of matters relating to the use of the Internet and other electronic means of communication in connection with trades and distributions of securities.

National Policy 11-201

1.3 Market participants are referred to National Policy 11-201 *Delivery of Documents by Electronic Means* for a discussion of the views of the securities regulatory authorities concerning the use of electronic means to satisfy the delivery requirements of securities legislation.

PART 2 USE OF THE INTERNET FOR TRADING IN SECURITIES

General Jurisdictional Issue

2.1 Information on the Internet may reach both intended recipients and anyone else in the world who has access to the Internet. The interjurisdictional nature of the Internet makes it important for issuers and other market participants to consider how they will satisfy the registration and prospectus requirements contained in securities legislation and similar requirements under the securities laws of foreign jurisdictions.

Trading in a Jurisdiction

2.2 (1) The securities regulatory authorities generally consider a person or company to be trading in securities in a local jurisdiction if that person or company posts on the Internet a document that offers or solicits trades of securities, and if that document is accessible to persons or companies in that local jurisdiction.

(2) Despite subsection (1), the securities regulatory authorities consider the posting of a document on the Internet that offers or solicits trades of securities not to be a trade or, if applicable, a distribution, in a local jurisdiction if

- (a) the document contains a prominently displayed disclaimer that expressly identifies the local jurisdictions and/or foreign jurisdictions in which the offering or solicitation is qualified to be made, and that identification does not include the local jurisdiction; and
- (b) reasonable precautions are taken by all persons or companies offering or soliciting trades of securities through the document posted on the Internet not to sell to anyone resident in the local jurisdiction.

(3) Market participants are reminded that the registration requirements of securities legislation apply in connection with the posting of a prospectus or other offering document on the Internet for use in connection with a distribution in a local jurisdiction. The act of posting a prospectus or offering document in those circumstances is an act in furtherance of a trade in that local jurisdiction, and the person or company posting the prospectus or offering document must, in order to comply with the registration requirements

- (a) be registered to trade in the local jurisdiction;
- (b) have the benefit of an exemption from the registration requirements in connection with the distribution in the local jurisdiction; or
- (c) refer all inquiries concerning the document to a registered dealer in the local jurisdiction.

Trading from a Jurisdiction

2.3 A person or company located in British Columbia, Alberta or Quebec that is distributing securities entirely outside of those jurisdictions through the Internet is considered to be trading within those jurisdictions and is therefore subject to applicable registration and prospectus requirements in those jurisdictions. The securities regulatory authorities in those jurisdictions may provide relief from those provisions in appropriate circumstances. The securities regulatory authorities in the remaining jurisdictions will assert jurisdiction over market participants on a case by case basis, with due regard to the legal tests ordinarily applied in such circumstances.

Application of Securities Laws of Foreign Jurisdictions

2.4 Canadian issuers and other market participants are reminded that foreign securities regulators may take the view that documents posted on a website that is accessible by persons or companies in their jurisdiction may constitute an offering of

securities in that foreign jurisdiction. In some foreign jurisdictions, securities regulators have informed the market as to the steps that should be taken to ensure that such regulators do not take the view that a document posted on a website constitutes an offering of securities in that foreign jurisdiction. Some of those steps could include the use of disclaimers in the document and/or measures that restrict access to the document. Issuers and other market participants are urged to inform themselves of any relevant guidelines in this regard. Reference is made to a report of the Technical Committee of the International Organization of Securities Commissions (IOSCO) dated September 1998 entitled "Securities Activity on the Internet", which is available on the website of IOSCO at www.iosco.org. The annex to that report refers market participants to the rules, policies and guidelines of various international securities regulators on these matters.

Distribution Lists

2.5 (1) Securities legislation requires certain persons or companies distributing securities under a prospectus to record the names and addresses of all persons or companies that have received a copy of the preliminary prospectus. Issuers and registrants are reminded that this requirement applies whether a preliminary prospectus is distributed in paper form or by electronic means.

(2) The securities regulatory authorities are of the view that no relief from this requirement is necessary or warranted in connection with the electronic distribution of prospectuses, since current technology makes it feasible for a person or company either to monitor who has had access to a preliminary prospectus or to require a written or electronic consent form from each recipient of a preliminary prospectus.

(3) In order to comply with securities legislation, a person or company should therefore record the names and addresses of all recipients of a preliminary prospectus by electronic means from such person or company, including those recipients who merely view a preliminary prospectus by electronic means.

Advertising

2.6 Persons or companies should be aware that the posting of new information on a website during a period of distribution may be construed as advertising, which is subject to restrictions in certain jurisdictions.

Road Shows

2.7 (1) For the purposes of this Policy, "road show" has the meaning assigned in National Instrument 41-101 *General Prospectus Requirements*.

(2) National Instrument 41-101 and other prospectus rules set out the circumstances in which an investment dealer may hold a road show in connection with a distribution of securities, including a road show held on the internet or by other electronic means.

(3) Subsections 13.9(3) and 13.10(3) of National Instrument 41-101, subsection 7.7(3) of National Instrument 44-101 *Short Form Prospectus Distributions*, subsection

9A.4(3) of National Instrument 44-102 *Shelf Distributions* and subsection 4A.4(3) of National Instrument 44-103 *Post-Receipt Pricing* provide that the investment dealer conducting the road show must establish and follow reasonable procedures to:

- ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;
- keep a record of any information provided by the investor; and
- provide the investor with a copy of the relevant prospectus and any amendment.

(4) In this connection, the following procedures are recommended for a road show held on the internet or by other electronic means:

- (a) Pursuant to securities legislation, a copy of the filed prospectus is required to be made available to each viewer before each road show transmission, and each transmission should contain visual statements emphasizing that the information conveyed through the road show does not contain all of the information in the prospectus, which should be reviewed for complete information. A copy of the prospectus could be sent electronically to viewers in accordance with the guidelines contained in National Policy 11-201.
- (b) Electronic access to the transmission of a road show on the internet or by other electronic means should be controlled by the investment dealer conducting the road show, using such means as password protection or a similar mechanism, in order to ensure that all viewers are identified and have been offered a prospectus.

PART 3 EFFECTIVE DATE

Effective Date

3.1 This National Policy comes into force on January 1, 2000.