

**NATIONAL POLICY 47-201  
DISTRIBUTION OF SECURITIES USING THE INTERNET  
AND OTHER ELECTRONIC MEANS**

**PART 1 GENERAL**

**1.1 Purpose of this Policy**

- (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 Canadian 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 Canadian 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.

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

**PART 2 USE OF THE INTERNET FOR TRADING IN SECURITIES**

- 2.1 General Jurisdictional Issue** - 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 Canadian securities legislation and similar requirements under the securities laws of foreign jurisdictions.

- 2.2 Trading in a Jurisdiction**

- (1) The Canadian 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 Canadian 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 Canadian 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.

### 2.3

**Trading from a Jurisdiction** - 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 Canadian

securities regulatory authorities in those jurisdictions may provide relief from those provisions in appropriate circumstances. The Canadian 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.

**2.4 Application of Securities Laws of Foreign Jurisdictions** - 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](http://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.

**2.5 Distribution Lists**

- (1) Canadian 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 Canadian 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 Canadian 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.

**2.6 Advertising** - 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.

## **2.7 Roadshows**

- (1) For the purposes of this Policy, “roadshow” means a presentation in a jurisdiction by a dealer to a prospective purchaser of securities during the “waiting period” for the purpose of soliciting from the prospective purchaser an expression of interest to purchase the securities. The “waiting period” is the time between the issuance of a receipt for the preliminary prospectus pertaining to the distribution and the issuance of a receipt for the final prospectus.
- (2) Canadian securities legislation permits the solicitation of expressions of interest from prospective purchasers during the waiting period.
- (3) The Canadian securities regulatory authorities do not object in principle to an issuer or underwriter holding a roadshow over the Internet during the waiting period in connection with a distribution of securities. However, care should be taken to ensure that the transmission of a roadshow over the Internet complies with the waiting period requirements and Canadian securities legislation generally. In this connection, the following guidelines are recommended:
  1. As with any roadshow, issuers and underwriters should take reasonable steps to ensure that information disclosed in a roadshow transmission is not inconsistent with the preliminary prospectus that has been filed in connection with the distribution.
  2. A copy of the filed preliminary prospectus should be made available to each viewer before each roadshow transmission, and each transmission should contain visual statements emphasizing the pre-eminence of the information contained in the preliminary prospectus over other information provided in the roadshow. A copy of the preliminary prospectus could be sent electronically to viewers in accordance with the guidelines contained in National Policy 11-201.

3. Electronic access to the transmission of a roadshow over the Internet should be controlled by the issuer or underwriter conducting the roadshow, using such means as password protection, in order to ensure that all viewers are identified and have been offered a preliminary prospectus. Any persons or companies that are "prospective purchasers" within the meaning of the provisions of securities legislation relating to roadshows may be invited to view the roadshow.
4. An issuer or underwriter should not transmit a roadshow to a person or company unless that person or company has agreed not to copy or further distribute the transmissions. An issuer or underwriter should take reasonable steps to prevent copying or further distribution of transmissions.

### **PART 3      EFFECTIVE DATE**

**3.1      Effective Date** - This National Policy comes into force on January 1, 2000.

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