

Ontario Securities Commission

Policy 33-601

Unofficial consolidation current to 1998-01-27.

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OSC POLICY 33-601

GUIDELINES FOR POLICIES AND PROCEDURES CONCERNING INSIDE INFORMATION

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PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Policy

"employees" includes employees, directors, officers, partners, independent contractors and agents;

"grey list" means a highly confidential list, compiled by a registrant, of issuers about which the registrant has inside information;

"inside information" means a material fact or a material change with respect to a reporting issuer that has not been generally disclosed; and

"restricted list" means a list, compiled by a registrant, of issuers about which the registrant may have inside information.

Purpose

1.2 This Policy provides general guidelines that registrants may wish to consider in satisfying the requirements of the exemption contained in subsection 175(1) of the Regulation. Subsection 175(1) of the Regulation provides an exemption from the insider trading provisions of subsection 76(1) of the Act. These guidelines are not exhaustive, nor would following them necessarily result in the registrant having implemented and maintained reasonable policies and procedures necessary to sustain the burden of proof required by the exemption in subsection 175(1) of the Regulation. Registrants should consider which practices and procedures would be appropriate for their business.

PART 2 POLICIES AND PROCEDURES

General

2.1 (1) While the selection and implementation of policies and procedures by a registrant to prevent contravention of subsection 76(1) of the Act must be determined by the registrant having regard to its business activities, a registrant should consider establishing written policies and procedures in the following areas

- (a) education of employees;
- (b) containment of inside information;
- (c) restriction of transactions; and
- (d) compliance.

(2) In the view of the Commission, the board of directors and senior officers of a registrant should be responsible for ensuring that appropriate policies and procedures for the business activities of the registrant are adopted, maintained and enforced.

Education of Employees

2.2 To educate employees about insider trading and ethical standards, a registrant should consider advising employees as to

- (a) what constitutes inside information and the legal restrictions on its transmission and use;
- (b) the legal consequences to the registrant and its employees for breaches of the restrictions on the transmission and use of inside information, including civil and quasi-criminal liability, self-regulatory organization and securities commission disciplinary proceedings and internal disciplinary action, including dismissal, by the registrant against its offending employees; and
- (c) their ethical responsibilities as members of the securities industry and, if applicable, as registrants under the Act.

Policies and Procedures to Contain Inside Information

2.3 To limit the unauthorized transmission of inside information, a registrant should consider

- (a) restricting access to those areas of the registrant that typically are in receipt of inside information, including the corporate finance and mergers and acquisitions departments, by
 - (i) designating departments as sensitive areas and separating those departments from others within the registrant, or
 - (ii) if restricting access to departments is impractical or impossible, as in the case of a smaller registrant, treating all of its departments as being "behind the wall" so that if the registrant is in receipt of inside information, all trading and advisory activities of the registrant are subject to any restrictions imposed; and
- (b) assuring the security of confidential information within the registrant by, among other things,
 - (i) restricting access to inside information,
 - (ii) using code names in place of the names of issuers for confidential projects being worked on,
 - (iii) keeping information in sensitive areas secured when not immediately supervised by persons working on the project, and
 - (iv) ensuring electronic transmission of inside information takes place only when there are adequate controls for sending and receiving the transmissions.

Policies and Procedures to Restrict Transactions

2.4 (1) When the registrant is, or may be, in receipt of inside information about an issuer a registrant should consider whether to monitor, restrict or discontinue certain activities of the registrant and its employees related to securities of that issuer, including trading, advising and dissemination of research material.

(2) Policies and procedures commonly used by a registrant to restrict transactions include the use of grey lists and restricted lists.

Use of Grey Lists

2.5 (1) A registrant should normally place an issuer on the grey list when it has received inside information about the issuer; for example, when the registrant has been invited to manage or participate in a possible offering or to act concerning a possible merger or acquisition or other corporate assignment.

(2) A registrant should normally disseminate grey lists only to those employees who require the list to monitor unusual principal or agent trading in the securities by the registrant or its employees and, if necessary, to inquire about or restrict trading.

(3) A registrant should seek legal or other advice before new research materials and opinions concerning securities on the grey list are published or disseminated by it or its employees.

(4) A registrant should normally remove an issuer's name from the grey list when the registrant no longer has inside information regarding the issuer.

Use of Restricted Lists

2.6 (1) A registrant should normally move an issuer's name from the registrant's grey list to the registrant's restricted list when the registrant has agreed to act as an underwriter, or banking group member, or to represent the issuer in a merger or acquisition and the transaction in which the registrant is acting has been generally disclosed but the registrant is still in possession of or may gain access to inside information during the course of the transaction.

(2) Trading by the registrant as principal, except for normal market-making or other permitted activities, should cease and the dissemination of research materials should be restricted or stopped for securities of issuers on the restricted list.

(3) A registrant should normally remove an issuer's name from the restricted list when the registrant is no longer in possession of inside information, for example, when that information has been disclosed following completion of a distribution or a merger or acquisition.

Compliance Policies and Procedures

2.7 (1) To promote compliance with requirements related to insider trading under securities laws, self-regulatory organizations' regulations and the registrant's policies and procedures, a registrant should consider

- (a) developing, implementing, maintaining and enforcing written policies and procedures, approved by the registrant's board, appropriate to the type of business being carried on by the registrant;
- (b) monitoring and reviewing trading for the registrant's account;
- (c) monitoring and/or restricting trading in securities of issuers about which the registrant or the registrant's employees possess or may possess inside information;
- (d) monitoring, reviewing and/or restricting trading of all employees and, in particular, employees who in the normal course might be in receipt of inside information; for example senior management, merger and acquisition employees, corporate finance employees and professional traders;
- (e) unless a recognized self-regulatory organization or stock exchange has provided otherwise in a by-law, rule, regulation or policy that has been approved by the Commission, requiring all employees and associates to maintain accounts with the employer-registrant only;
- (f) requiring a senior officer of the registrant to be responsible for the implementation and enforcement of the policies and procedures; and
- (g) instituting a periodic review of the adequacy of its policies and procedures, including a written report on their effectiveness to senior officers or the board of directors of the registrant, which report should normally be kept on file.