

25 July 2001

Sent via Email

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Department of Government Services and Lands, Newfoundland and Labrador
Registrar of Securities, Government of the Northwest Territories
Registrar of Securities, Government of the Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montreal, Québec H4Z 1G3

Re: Proposed National Policy 51-201 Disclosure Standards

Dear Sirs and Madames:

The Canadian Advocacy Council (CAC) of the Association for Investment Management and Research (AIMR)¹ is pleased to respond to the request for comments of the Canadian Securities Administrators regarding the above-noted Proposed Policy. The CAC represents members of AIMR and its 11 Member Societies and Chapters across Canada. The CAC is comprised of

¹ The Association for Investment Management and Research is a global, nonprofit organization of over 50,000 analysts, portfolio managers, and other investment professionals in 100 countries. Through its headquarters in Charlottesville, Virginia and more than 100 Member Societies and Chapters throughout the world, AIMR provides global leadership in investment education, professional standards, and advocacy programs. Over 6,200 AIMR members live and work in Canada.

investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada.

General Comments

Overall, the CAC supports the Proposed Policy and in particular, the inclusion of guidance for issuers in the form of best disclosure practices. Moreover, we support strongly the practice of making analyst conference calls and webcasts open and accessible to any interested party. These practices will increase awareness and understanding of disclosure obligations by issuers, which will in turn, improve issuer compliance and ultimately improve the disclosure available to investors in making investment decisions. We believe that the incidence of selective disclosure of material information is likely to be substantially reduced by companies who follow these practices.

Specific Comments on Private Placements

We would like to bring attention to paragraph 3.4 of the Proposed Policy that discusses the characterization of disclosures by a company in connection with a private placement as being in the “necessary course of business”. In our view, private placees, who purchase directly from the company, should not be in a better position (in terms of the information available to make an investment decision) than other current investors of that company, who could be simultaneously purchasing or selling securities of the same class in the secondary market. The fact that the private placee may not pass the information on to another party or sell shares using the information until it has been generally disclosed does not address the informational imbalance between the private placee and secondary market purchasers on the private placement transaction itself. For example, if a private placee is aware of negative undisclosed and material information it will be in a position to negotiate a lower price on the transaction (in addition to the discount generally obtained on private placements). As a result, secondary market purchasers will be disadvantaged if this information is not available to the market.

Not only is selective disclosure to private placees unfair to public investors, this interpretation is not, in our view, supported by the legislation. It would appear from section 76 of the Ontario Securities Act (OSA) that securities transactions by way of private placement are not contemplated as being in the “necessary course of business”. We suggest that subsection 76(2) was intended to deal with relationships not involving securities transactions, such as those with lenders or suppliers, while subsection 76(3) sets out permitted disclosure in connection with certain securities transactions, including take-over bids and business combinations, which are specifically mentioned and restricted in this context.

We also suggest that the “exemption” to the selective disclosure prohibition referenced in footnote 16 of the Proposed Policy, (where the person proves they reasonably believed that the other party to the trade or the “tippee” had knowledge of the information) is solely a defence to the statutory civil liability provisions in section 134 OSA and not an exemption to the prohibition. This defence would not appear to be available to avoid liability in a quasi-criminal

action under section 122 OSA for breach of the selective disclosure prohibition. Accordingly, we believe that there is no clear statutory basis for the interpretation set out in section 3.4 of the Proposed Policy that disclosures by a company in connection with a private placement would be in the “necessary course of business.” Therefore, we recommend that CSA reconsider the inclusion of private places in section 3.4 of the Proposed Policy. The fair treatment of all investors is essential for the efficient functioning of the capital markets and thus, we believe that allowing selective disclosure to private places would undermine the fair treatment of other investors, who are not privy to this information.

Closing Remarks

In conclusion, we support strongly practices that require full and fair disclosure of material facts and information, which are essential in making well-informed investment decisions. Such transparency promotes efficient allocation of capital within Canada’s financial markets. We appreciate the opportunity to comment on this proposal. If you have any questions or seek further elaboration of our views, please do not hesitate to contact Georgene Palacky at 1.804.951.5334 or gbp@aimr.org.

Sincerely,

/s/ Donald A. Gordon

Donald A. Gordon, CFA
Canadian Advocacy Council Co-Chair

/s/ Georgene Palacky

Georgene Palacky, CPA
Associate, Advocacy

Cc: Canadian Advocacy Council
Patricia D. Walters, Ph.D., CFA – Sr. Vice President, AIMR Professional Standards and
Advocacy