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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o

George Hungerford
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC, V7Y 1L2
Email: ghungerford@bcsc.bc.ca

and

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Notice and Request for Comment: Proposed Amendments to National Policy 11-201 "Delivery of Documents by Electronic Means"

This letter is being provided in response to the notice and request for comment found at (2011) 34 OSCB 50565.

We support the proposed changes to National Policy 11-201 (the "Policy") with respect to the consents obtained from recipients. The former guidance was too prescriptive and the sample form of consent was not user-friendly. We do have a few specific comments on other aspects of the proposed changes.

1. In the definition of "electronic delivery", we do not think it is appropriate to replace the word "means" with "includes". There should be a limit to what may constitute electronic delivery. In addition, it should be made clearer that the definition is intended to apply not only to electronic transmission of a physical document but also physical transmission of a storage medium (such as an optical disk or memory stick) for a document which is in electronic form. Accordingly, we would suggest revising the definition to read as follows:

   "electronic delivery" means the delivery of documents by electronic means and the delivery of documents in electronic form in any manner, including delivery of documents by facsimile, e-mail, optical disk and the Internet."

2. The definition of "electronic signature" may not be sufficiently flexible to address all the potential ways that an individual may evidence the execution of signing of a document. It also appears to be slightly inconsistent with the broad language contemplated in section 4.3(2). We would suggest revising the definition to read as follows:

   "electronic signature" means the creation or use of a technology or process by a person to evidence their execution of or signature to a document or by which a person's signature is incorporated in, attached to or associated with a document."

3. The second sentence of section 2.4(2) introduces a concept of "electronic systems" which is not defined in the policy and appears to be focussed on hardware issues even though the principle should be applied more broadly. In addition, we disagree with the reference to the need for general availability since it should be permissible to use different forms of electronic delivery of the same document to different persons. Whether a document should be generally available or not should be determined by the securities law provisions giving rise to the production and delivery of the document. Accordingly, we would suggest revising the sentence to read:

   "The systems or processes employed by deliverers to effect electronic delivery should enable the recipient to quickly download or upload the document, as applicable, in the appropriate format."

4. Section 2.5 is drafted in a manner which imposes an unrealistic standard on deliverers. A deliverer should only be obliged to take "reasonable" steps to prevent alteration or corruption. A deliverer's security measures cannot ensure there will be no tampering, such measures can only "protect against third party tampering".

5. To provide more meaningful guidance, section 3.3(3) should clearly state whether in the view of the Canadian Securities Administrators if a document contains a hyperlink to information located outside the document such hyperlinked information is thereby incorporated into and forms part of the document.

6. In light of section 3.3(6), please clarify whether sending an e-mail with a hyperlink to the specific document on the SEDAR webpage in accordance with the recipient's consent would constitute valid delivery.

7. We think additional guidance in section 3.4(1) would be helpful. The use of multimedia can be a tool to further enhance a recipient's understanding or appreciation of the information contained in a document and/or to permit the recipient to organize the information provided in a manner which the recipient may find to be more useful for their purposes. In the interests of improving communications between reporting issuers and investors, we think the Canadian Securities Administrators should encourage the use of multimedia communications, including on-line annual reports and disclosure documents with enhanced communication features, so long as the multimedia communications do not contain new information compared to the information contained in the disclosure document and the recipient accessing the multimedia communication has equal access to the disclosure document.

8. We recommend that section 3.5 be deleted. We note that electronic delivery may not be occurring in conjunction with a "mailing of the paper version", especially as there are relatively few securities law requirements that require that documents be "mailed". Secondly, the provision may be inconsistent with delivery requirements under securities legislation. For example, section 4.6 of NI 51-102 requires delivery of financial statements to a person who has made a request by the later of 10 days after filing on SEDAR and 10 days after receipt of the request, regardless of when paper copies would have been distributed to other persons. It should be sufficient that electronic delivery occur within the timing requirements applicable to the delivery of the relevant document.

9. The requirement in section 4.2(2) that the electronic form of the proxy or voting instruction not permit the information to be changed is unduly restrictive. A person giving voting instructions should be able to make changes to designate

someone other than management to represent them at the meeting and to make changes with respect to the authority to be given to that representative. The integrity concern is sufficiently met by the person sending the form of proxy or voting instructions to the person eligible to vote if the sender retains a copy of what was sent and the recipient is capable of doing so as well. Conversely, instructions received from the person who is entitled to exercise the voting rights should be given effect even if that person chooses to send their instructions in a form which could be changed.

10. In section 4.3, the policy references signatures "by a security holder". Securities legislation permits proxies to be signed "by or on behalf of a security holder" – which would include signing of a proxy by someone other than a security holder pursuant to a power of attorney, for example.

11. The second sentence in section 4.3(2) is somewhat inconsistent with the rest of section 4.3(2) and is redundant in light of the list of items that the technology or process should permit to be verified or proven. We would suggest that the second sentence in section 4.3(2) be deleted or that the words "signature and establishing that the person incorporated, attached or associated it to" be replaced with "technology or process to sign".

We are pleased to have this opportunity to comment on the Policy. If you have any questions or comments please feel free to contact Andrew MacDougall at 416-862-4732 or amacdougall@osler.com

Yours very truly,

Osler, Hoskin & Harcourt LLP
MJS:dc