NOTICE OF PROPOSED NATIONAL POLICY 51-201 DISCLOSURE STANDARDS
AND
PROPOSED RESCISSION OF NATIONAL POLICY 40 TIMELY DISCLOSURE

I. INTRODUCTION

The Canadian Securities Administrators (the "CSA" or AWe@) have become increasingly concerned about the selective disclosure of material corporate information by companies to analysts, institutional investors, and other market participants. Selective disclosure occurs when a company discloses material nonpublic information to one or more individuals or companies and not broadly to the investing public. The practice of selective disclosure poses a serious threat to investor confidence in the fairness and integrity of the capital markets.

The purpose of proposed National Policy 51-201 Disclosure Standards (APolicy 51-201 @) is to: (i) describe the timely disclosure requirements and the confidential filing mechanism contained in securities legislation; (ii) provide interpretive guidance on existing legislative prohibitions against selective disclosure; (iii) highlight disclosure practices where companies take on a high degree of risk in light of the legislative prohibitions against selective disclosure; (iv) give examples of the types of information likely to be material under securities legislation; and (v) list some Abest disclosure@ practices that can be adopted by companies to ensure that they comply with securities legislation. Policy 51-201 is a CSA initiative and is expected to be implemented as a policy in all of the CSA jurisdictions.

II. BACKGROUND

The Allen Committee

In Canada, attention was focused on the practice of selective disclosure in 1995 when The Toronto Stock Exchange Committee on Corporate Disclosure (the AAllen Committee@) released its Interim Report. In the report the Allen Committee acknowledged the importance of meetings with analysts in Afostering open and thorough continuous disclosure practices@. The Allen Committee recognized that Abenefits may flow to the markets from the legitimate efforts of securities analysts who use their professional expertise to process detailed data and information into commentary that investors find useful and can digest relatively quickly and improve the flow of corporate information into the marketplace@. Nevertheless the Allen Committee remained concerned that private meetings with analysts and professional investors had resulted in Aselective disclosure of information that should have been disclosed on a general basis@. AQuite apart from any questions of compliance with securities laws@, the Allen Committee noted that this causes Aunfairness in the marketplace@.

The Allen Committee made a number of recommendations designed to equalize access to information among investors including: group analyst meetings with retail investor access; wide availability of data books and additional information; and electronic access to corporate information.

Ontario Securities Commission Staff Survey

In October 1999, as a first step in addressing the issue of selective disclosure, staff of the Continuous Disclosure Team of the Ontario Securities Commission (the AOSC@) conducted a survey of disclosure practices of public companies (the ASurvey@). Four hundred public companies were randomly selected across all industries to participate in the Survey. The Survey explored several areas including: (i) company policies surrounding meetings and discussions with analysts and other groups; (ii) company responses to requests for information that is not available on the public record; (iii) company procedures if material nonpublic information is inadvertently disclosed to select groups; and (iv) the existence of company disclosure policies that address these and related issues.

The survey was not intended to identify companies that may be selectively disclosing information. Rather the objective of the Survey was to seek input from reporting issuers on current practices and identify areas where additional guidance from the CSA would be appropriate.

The results of the Survey were published by the OSC in July, 2000.[1] In general, the results of the Survey indicated that

[1] See Ontario Securities Commission Staff Notice 53-701 Staff Report on Corporate Disclosure Survey ((2000) 23 OSCB 5098).

the extent and nature of corporate disclosure policies and practices of issuers are not sufficient to reduce the potential for selective disclosure. For example:

- 71% of the respondents do not have written corporate disclosure policies;
- 81% of the respondents reported that they have one-on-one meetings with analysts;
- 98% of the respondents reported that they typically comment in some form on draft analyst reports; and
- 27% of the respondents indicated that they express a level of comfort on earnings projections.

III. SUMMARY OF POLICY 51-201

Policy 51-201 contains six parts.

Part I contains a number of general provisions relating to the policy including our views on the practice of selective disclosure.

Part II describes the timely disclosure requirements contained in securities legislation and the confidential filing mechanism available under securities legislation.

Part III discusses legislative prohibitions against selective disclosure (Atipping@) and insider trading contained in securities legislation and sets out our views concerning the interpretation of these prohibitions. Sections 3.3 and 3.5 provide interpretive guidance on the Anecessary course of business@ exception and the Agenerally disclosed@[2] requirement. Section 3.7 provides an overview of some of the mitigating factors that we may consider in any enforcement proceedings relating to selective disclosure.

Part IV gives examples of the types of information likely to be material under securities legislation. Section 4.3 provides that information regarding a company=s ability to meet consensus earnings published by securities analysts should not be selectively disclosed by a company before the public dissemination of a company=s earnings release. If disclosed, such information should be generally disclosed.

Part V describes some high risk disclosure practices including: (i) conducting private briefings with analysts; (ii) commenting on draft analyst reports; and (iii) entering into confidentiality agreements with analysts. Section 5.5 outlines our views on companies providing their own earnings Aguidance@ and section 5.6 outlines our views on the application of National Policy Statement 48 Future-Oriented Financial Information (ANP 48") in such circumstances. Section 5.7 provides guidance dealing with forward-looking statements and the Aduty to update@. It should be noted that NP 48 is being reformulated and our reconsideration of NP 48 may have an impact on the preparation and dissemination by companies of all types of forward-looking information.

Finally, Part VI lists some Abest disclosure@ practices that companies can adopt to help ensure good disclosure practices and compliance with securities legislation.

IV. PARALLEL INITIATIVES IN OTHER JURISDICTIONS

United States

Regulation FD was adopted by the U.S. Securities and Exchange Commission in August 2000 and became effective in the United States on October 23, 2000.[3] Regulation FD requires that reporting companies disclose material information through broad non-exclusionary public means and not selectively to securities analysts and other market professionals. Regulation FD essentially provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information to specified persons, the issuer must simultaneously (for intentional disclosures) or promptly (for non-intentional disclosures) make public disclosure of that information.

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2 The Québec Securities Act requires that information must first be Agenerally known@.

3 See Release Nos. 33-7881, 34-43154, IC-24599, File No. S7-31-99 Selective Disclosure and Insider Trading.

Regulation FD represents a change in the SEC's approach to the issue of selective disclosure. Over the past thirty years or so, the SEC has framed the issue of potential liability for selective disclosure under principles of fraud law (i.e., Rule 10b-5).[4] Rule 10b-5 is a general anti-fraud rule from which U.S. courts have implied a prohibition against Atipping@ and which has evolved and been variously interpreted by U.S. courts over the past several decades. This approach led to uncertain results in establishing which type of selective disclosure is prohibited.[5] Given its recognition that issuers retain control over the precise timing, audience and forum for important corporate disclosure, the SEC has adopted Regulation FD as an issuer disclosure rule.

We considered promulgating a rule similar to Regulation FD. We believe, however, that the existing Canadian insider trading and tipping regime sets out a specific and comprehensive code which, among other things, prohibits all selective disclosures other than those made in the Anecessary course of business@.

A chart which compares the Canadian and U.S. rules on selective disclosure is contained in Appendix A to this notice.

Australia

In November 1999 the Australian Securities and Investment Commission ("ASIC") issued a draft guidance and discussion paper (*"Heard it on the Grapevine..."*) that proposed guidelines for providing investors with fair access to information and avoiding selective disclosure. While not proposing a change in regulations, the paper suggested "best disclosure practices" in keeping with existing regulatory requirements. Following the release of ASIC's draft guidance note, ASIC, together with the Australian Stock Exchange ("ASX"), embarked on a six-month continuous disclosure surveillance campaign.[6]

On August 23, 2000 ASIC released its final guidance note entitled *"Better Disclosure for Investors"*.[7] The final guidance note provides issuers with practical steps that companies can take to improve investor access to their information. The guidance principles adopted largely follow the 10 guidance principles that were first articulated in *"Heard it on the Grapevine..."*.

Policy 51-201 includes guidance which has been derived from ASIC=s ABetter Disclosure for Investors@.

V. PROPOSED RESCISSION OF NATIONAL POLICY STATEMENT 40

The OSC, together with the other members of the CSA propose to rescind National Policy Statement No. 40 Timely Disclosure (ANPS 40"). The proposed rescission of NPS 40 will be effective on the date that Policy 51-201 comes into force.

We consider that NPS 40 is no longer necessary because (i) the guidance provided in proposed Policy 51-201

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4 Rule 10b-5 provides that Ait shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or the mails or of any facility of any national stock exchange: (a) To employ any device, scheme or artifice to defraud; (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; or (c) To engage in any act, practice or cause of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security@.

5 See for example, *Dirks v. SEC*, 463 U.S. 646 (1983), in which the U.S. Supreme Court stated that an analyst tippee would be subject to insider trading liability if the tipper breached a fiduciary duty to shareholders in disclosing material non-public information and the tippee knew or should have known of the breach. As articulated by the Supreme Court, breach of a fiduciary duty exists where the "insider" will benefit, directly or indirectly, from the disclosure such as a pecuniary gain or a reputational benefit that will translate into future earnings.

6 ASX continuous disclosure rules require listed companies to reveal immediately any information that could reasonably be expected to affect the company's share price.

7 See https://www.asic.gov.au.

incorporates the guidance previously forming part of NPS 40; and (ii) the relevant exchanges have rules and policies in place concerning timely disclosure.[8]

VI. UNPUBLISHED MATERIALS

In proposing Policy 51-201, we have not relied on any significant unpublished study, report, decision or other written materials.

VII. RELATED INSTRUMENTS

In Ontario, Policy 51-201 is related to sections 75 (timely disclosure) and 76 (insider trading and tipping prohibitions) of the Securities Act (Ontario).

VIII. PROPOSED WITHDRAWAL OF OSCN CONFIDENTIAL MATERIAL CHANGE REPORTS

[8] See The Toronto Stock Exchange Statement on Timely Disclosure and Related Guidelines, the Canadian Venture Exchange Policy 3.3 Timely Disclosure, and Policy I-8 Timely Disclosure By Listed Companies of the Bourse de Montréal Inc. (formerly the Montreal Exchange).

In Ontario, the Commission proposes to withdraw Ontario Securities Commission Notice *Confidential Material Change Reports*.[9] The withdrawal will be effective on the date that Policy 51-201 comes into force.

IX. COMMENTS

Interested parties are invited to make written submissions with respect to proposed Policy 51-201 and the proposed rescission of NPS 40. In particular, we are requesting comment on:

(i) our approach to the Anecessary course of business@ exception. For example, should the Anecessary course of business@ exception cover communications made to a potential private placee? (See section 3.4 of the policy);

(ii) our approach for determining how a company may satisfy the Agenerally disclosed@ requirement under the tipping provisions. For example, are there other means of satisfying the Agenerally disclosed@ requirement? (See section 3.5 of the policy); and

(iii) the practicalities of a company implementing the recommended Abest disclosure@ practices in Part VI of the policy.

Submissions received by July 25, 2001 will be considered.

Submissions should be sent to all of the Canadian securities regulatory authorities listed below in care of the Ontario Securities Commission, in duplicate, as indicated below:

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
E-mail: **jstevenson@osc.gov.on.ca**

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

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

[9] (1992) 15 OSCB 4555.

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published, confidentiality of submissions received cannot be maintained.

Questions may be referred to any of:

Sheryl Thomson
Senior Legal Counsel
British Columbia Securities Commission
(604) 899-6778
E-mail: **sthomson@bcsc.bc.ca**

Cameron McInnis
Associate Chief Accountant
British Columbia Securities Commission
(604) 899-6767
E-mail: **cmcinnis@bcsc.bc.ca**

Jane Brindle
Legal Counsel
Alberta Securities Commission
(403) 297-4482
E-mail: **jane.brindle@seccom.ab.ca**

Barbara Shourounis
Director
Saskatchewan Securities Commission
(306) 787-5842
E-mail: **bshourounis@ssc.gov.sk.ca**

Sophie Jean
Conseillère en réglementation
Commission des valeurs mobilières du Québec
(514) 940-2199 ext#4578
E-mail: **sophie.jean@cvmq.com**

Susan Wolburgh Jenah
General Counsel
Ontario Securities Commission
(416) 593-8245
Email: **swolburghjenah@osc.gov.on.ca**

Rossana Di Lieto
Legal Counsel, General Counsel's Office
Ontario Securities Commission
(416) 593-8106
E-mail: **rdilieto@osc.gov.on.ca**

Lisa Enright
Senior Accountant
Continuous Disclosure
(416) 593-3686
E-mail: **lenright@osc.gov.on.ca**

Christopher Byers
Legal Counsel, General Counsel's Office
Ontario Securities Commission

(416) 593-8058
Email: **cbyers@osc.gov.on.ca**

X. TEXT OF POLICY 51-201

The text of Policy 51-201 follows, together with footnotes that have been included to provide further background and explanation.

May 25, 2001.

APPENDIX A
COMPARISON OF "TIPPING" PROVISIONS IN CANADIAN SECURITIES LAW AND REGULATION FD

NOTE: The "tipping" provisions contained in securities legislation are generally similar across Canada. However, the CSA caution that some differences do exist in these legislative provisions. Market participants should therefore consult the applicable legislation of each province and territory for details of the relevant prohibitions.

ELEMENTS	"TIPPING" PROVISIONS	REGULATION FD
Basic Rule or Prohibition	No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change ("privileged information" in the case of Québec) with respect to the reporting issuer before the material fact or material change has been generally disclosed	Whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding the issuer or its securities to any person described in the regulation, the issuer shall make public disclosure of the information: (1) simultaneously, in the case of an intentional disclosure; and (2) promptly, in the case of a non-intentional disclosure
Scope of Communications Covered (Communications "By")	Communications by a reporting issuer and any person or company in a special relationship with a reporting issuer "Person or company in a special relationship with a reporting issuer" includes: & directors, officers, or employees of the reporting issuer & insiders, affiliates or associates of the reporting issuer & persons or companies engaged in any business or professional activity with the reporting issuer & a person or company that learns of material information about the reporting issuer while a director, officer, employee, insider, affiliate or associate of the reporting issuer & a person or company that learns of material information about the reporting issuer from anybody else and knows, or reasonably should have known, that they are a person or company in a special relationship. Québec securities legislation extends	Communications by an issuer, or any person acting on its behalf "Person acting on behalf of an issuer" is defined as: & any senior official of the issuer or any other officer, employee, or agent of an issuer who regularly communicates with certain persons enumerated in the regulation or with holders of the issuer=s securities

ELEMENTS	ATIPPING@ PROVISIONS	REGULATION FD
	the prohibition to communications by persons: & having privileged information that, to their knowledge, was disclosed by an insider, affiliate, associate or by any other person having acquired privileged information in the course of his relations with the reporting issuer; and & by persons having acquired privileged information that these persons know to be such	

Scope of Communications Covered (Communications ATo@)	Communications made to another person or company	Communications made to securities market professionals or holders of the issuer=s securities, including: & a broker or dealer, or a person associated with a broker or dealer & an investment adviser, an institutional investment manager or a person associated with either of the foregoing & an investment company or an affiliated person, or & a holder of the issuer=s securities under circumstances in which it is reasonably foreseeable that the person will purchase or sell the issuer=s securities on the basis of the information Excluded are communications made: & to a person who owes a duty of trust or confidence to the issuer (such as an attorney, investment banker, or accountant) & to a person who expressly agrees to maintain the disclosed information in confidence & to an entity whose primary business is the issuance of credit ratings, provided that the information is disclosed solely for the purpose of developing a credit rating and the entity=s ratings are publicly available & in connection with securities offering registered under the Securities Act
Materiality	Any information Athat significantly affects, or would reasonably be expected to have a significant effect on, the market price or value@ of the securities APrivileged information@ is defined in Québec securities legislation as any information Athat has not been disclosed to the public and that could affect the	U.S. case law interprets materiality as follows: & information is material if Athere is a substantial likelihood that a reasonable shareholder would consider it important@ in making an investment decision & there must be a substantial likelihood that a fact Awould have been viewed by

	decision of a reasonable investor@	the reasonable investor as having significantly altered the >total mix= of information available@
Timing of Required Disclosure	An issuer must **first** generally disclose material information before it discloses it to any person or company Where a Amaterial change@ occurs in the affairs of a reporting issuer, the issuer must immediately issue and file a press release disclosing the nature and substance of the change, followed by a material change report filed within ten days of the date on which the change occurred	For an Aintentional@ selective disclosure, the issuer is required to publicly disclose the same information simultaneously & a selective disclosure is Aintentional@ when the issuer or person acting on their behalf either knows or is reckless in not knowing, prior to making the disclosure, that the information is both material and nonpublic When an issuer makes a non-intentional disclosure of material nonpublic information, it is required to make public disclosure Apromptly@ & Apromptly@ means as soon as reasonably practicable (but in no event after the later of 24 hours or the commencement of the next day=s trading on the New York Stock Exchange) after a senior official of the issuer learns that there has been a non-intentional disclosure that the senior official knows, or is reckless in not knowing, is both material and nonpublic

Standard of Required Disclosure	Material information must first be Agenerally disclosed@ before it can be communicated to another person or company Provincial securities legislation does not define Agenerally disclosed@ Québec securities legislation uses the term Agenerally known@	An issuer must make Apublic disclosure@ of material nonpublic information it discloses APublic disclosure@ is defined in the regulation to include: & the furnishing or filing with the Securities and Exchange Commission of a Form 8-K & in the alternative, disclosure Athat is reasonably designed to provide broad, non-exclusionary distribution of the information to the public@
ANecessary Course of Business@	Communication of material undisclosed information Ain the necessary course of business@ is exempt from the Atipping@ provisions	
Liability and Defences	Violations of the Atipping@ provisions are subject to enforcement action by the appropriate provincial securities regulatory authority These proceedings can include: & administrative proceedings before provincial tribunals for orders in the public interest, including cease trade orders, suspensions of registration, removal of exemptions and prohibitions from acting as director or	Violations of Regulation FD are subject to enforcement action by the Securities and Exchange Commission These proceedings can include: & administrative proceedings for cease-and-desist orders, or & civil proceedings for injunctive relief or fines Regulation FD does not create any new duties under the antifraud or private litigation provisions of U.S. securities law

	officer of an issuer & civil proceedings before the courts for a declaration that a person or company is not complying with provincial securities law and for the imposition of any order the courts consider appropriate, or & proceedings in provincial offences court for fines or imprisonment or both No person or company shall be found to have breached the Atipping@ provisions if they can prove that they reasonably believed that the material information in question had been generally disclosed (or, in Québec, was generally known)	& there is no liability for an issuer under Rule 10b-5 and there is no creation of private liability for issuers **solely** for violations of Regulation FD

NATIONAL POLICY 51-201 DISCLOSURE STANDARDS

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NATIONAL POLICY 51-201 DISCLOSURE STANDARDS

PART I - INTRODUCTION

1.1 *Purpose:* (1) It is fundamental that everyone investing in securities have equal access to information that may affect their investment decisions. The Canadian Securities Administrators (Athe CSA@ or AWe@) are concerned about the selective disclosure of material corporate information by companies to analysts, institutional investors, investment dealers and other market professionals. Selective disclosure occurs when a company discloses material nonpublic information to one or more individuals or companies and not broadly to the investing public. Selective disclosure can create opportunities for insider trading and also undermines retail investors= confidence in the market place as a level playing field.

(2) This policy provides guidance on Abest disclosure@ practices in a difficult area involving competing business pressures and legislative requirements. Our recommendations are not intended to be prescriptive. We encourage companies to adopt the suggested measures, but they should be implemented flexibly and sensibly to fit the situation of individual companies.

(3) The timely disclosure requirements and prohibitions against selective disclosure are substantially similar everywhere in Canada, but there are differences among the provinces and territories, so companies should carefully review the legislation which is applicable to them for the details.

PART II - TIMELY DISCLOSURE

2.1 ***Timely Disclosure:*** (1) Companies are required by law to immediately disclose a Amaterial change@[10] in their business. For changes that a company initiates, the change occurs once the decision has been made to implement it. This may happen even before a company=s directors approve it, if the company thinks it is probable they will do so. A company discloses a material change by issuing and filing a press release describing the change. A company must also file a material change report as soon as practicable, and no later than 10 days after the change occurs.[11] This policy statement does not alter in any way the timely disclosure obligations of companies.

(2) Announcements of material changes should be factual and balanced. Unfavourable news must be disclosed just as promptly and completely as favourable news. A company=s press release should contain enough detail to enable the media and investors to understand the substance and importance of the change it is disclosing. Avoid including unnecessary details, exaggerated reports or promotional commentary.

2.2 ***Confidentiality:***[12] (1) Securities legislation permits a company to delay disclosure of a material change and to keep it confidential temporarily where immediate release of the information would be unduly detrimental to the company=s interests. For example, immediate disclosure might interfere with a company=s achievement of a specific objective, with ongoing negotiations, or with its ability to complete a transaction. If the harm to a company=s business from disclosing outweighs the general benefit to the market of immediate disclosure, withholding disclosure is justified. In such cases a company may withhold public disclosure, but it must make a confidential filing with the securities commission.[13] Certain jurisdictions also require companies to renew the confidential filing every 10 days

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10 Securities legislation defines the term material change as Aa change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable@. The Québec Securities Act does not define the term Amaterial change@ and provides that Awhere a material change occurs that is likely to have a significant influence on the value or the market price of the securities of a reporting issuer and is not generally known, the reporting issuer shall immediately prepare and distribute a press release disclosing the substance of the change@. See also *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, where the Supreme Court held that a change in assay and drilling results was a material change in the company=s assets.

11 The Québec Securities Act does not, at this time, require companies to file a material change report. Material change reports will be required in Québec once Bill 57 *An Act to Amend the Securities Act* comes into force.

12 Previously Part G of National Policy Statement 40.

13 Under the Québec Securities Act a company does not have to issue a press release if senior management reasonably believes

should they want to continue to keep the information confidential.

(2) We discourage companies from delaying disclosure for a lengthy period of time as it becomes less likely that confidentiality can be maintained beyond the short term.

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that (i) disclosure would be seriously prejudicial to it; and (ii) no one has purchased or sold, or will purchase and sell its securities based on the undisclosed information. A company must issue and file a press release once the reasons for not disclosing no longer exist.

2.3 ***Maintaining Confidentiality:***[14] (1) Where disclosure of a material change is delayed, a company must maintain complete confidentiality. During the period before a material change is disclosed, market activity in the company=s securities should be carefully monitored. Any unusual market activity may mean that news of the matter has been leaked and that certain persons are taking advantage of it. If the confidential material change, or rumours about it, have leaked or appear to be impacting the market, a company should take immediate steps to ensure that a full public announcement is made. This would include contacting the relevant exchange and asking that trading be halted pending the issuance of a news release.[15]

(2) Where a material change is being kept confidential, the company is under a duty to make sure that persons with knowledge of the material change have not made use of such information in purchasing or selling its securities. Such information should not be disclosed to any person or company, except in the necessary course of business.

PART III - OVERVIEW OF THE STATUTORY PROHIBITIONS AGAINST SELECTIVE DISCLOSURE

3.1 ***Tipping and Insider Trading:*** (1) Securities legislation prohibits a reporting issuer and any person or company in a ***special relationship*** with a reporting issuer from informing, other than in the ***necessary course of business***[16], anyone of a A***material fact***@[17] or a A***material change***@ (or A***privileged information***@ in the case of Québec)[18] (collectively Amaterial information@) before that material information has been ***generally disclosed***.[19] This prohibited activity is commonly known as Atipping@.

(2) Securities legislation also prohibits anyone in a special relationship with a reporting issuer from purchasing or selling securities of the reporting issuer with knowledge of a material fact or material change about the issuer that has not been generally disclosed.[20] This prohibited activity is commonly known as Ainsider trading@.

(3) It is important to remember that the tipping and insider trading provisions apply to both material facts and material changes. A company=s timely disclosure obligations generally only apply to material changes.

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14 Previously Part G of National Policy Statement 40.

15 See The Toronto Stock Exchange Statement on Timely Disclosure and Related Guidelines, the Canadian Venture Exchange Policy 3.3 Timely Disclosure, and Policy I-8 Timely Disclosure By Listed Companies of the Bourse de Montréal Inc. (formerly the Montreal Exchange).

16 The Alberta and British Columbia Securities Acts use the phrase Ais necessary in the course of business@. The Québec Securities Act uses the phrase in the Acourse of business@.

17 Securities legislation defines a Amaterial fact@ as follows: Amaterial fact, where used in relation to securities issued or proposed to be issued means a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of such securities@. The Québec Securities Act does not define the term material fact.

See also *Re Royal Trustco Ltd. et al. and Ontario Securities Commission* ((1983), 42 O.R. (2d) 147 (Div. Ct.), affirming (1981), 2 OSCB 322C), where the Ontario Securities Commission issued a denial of exemption order against two senior officers of Royal Trustco who disclosed to officers of a Canadian chartered bank that certain shareholders of Royal Trustco did not intend to tender their Royal Trustco shares to a hostile take-over bid by Campeau Corporation. The Ontario Securities Commission held that the disclosure constituted illegal Atipping@. On appeal the Divisional Court stated that the term Afact@ should not be read Asuper-critically@ and that Ainformation@ that shareholders of Royal Trustco did not intend to tender to a hostile take-over bid by Campeau Corporation Awas sufficiently factual or a sufficient alteration of circumstances to be a material Achange@ to fall within the tipping provision.

18 APrivileged information@ is defined under the Québec Securities Act as Aany information that has not been disclosed to the public and that could affect the decision of a reasonable investor@.

19 The Québec Securities Act uses the term Agenerally known@.

20 Section 187 of the Québec Securities Act provides that Ano insider of a reporting issuer having privileged information relating to securities of the issuer may trade in such securities except in the following cases: (i) he is justified in believing that the information is generally known or known to the other party; (ii) he avails himself of an automatic dividend reinvestment plan, automatic subscription plan or any other automatic plan established by a reporting issuer, according to conditions set down in writing, before he learned the information@. Section 189 further expands the number of persons who are subject to the prohibition in section 187.

3.2 ***Persons Subject to Tipping Provisions:*** (1) The tipping provisions generally apply to anyone in a "special relationship" with a reporting issuer.[21] Persons in a special relationship include, but are not limited to:

(a) insiders as defined under securities legislation;

(b) directors, officers and employees;

(c) persons engaging in professional or business activities for or on behalf of the company; and

(d) anyone (a "tippee") who learns of material information from someone that the tippee knows or should know is a person in a special relationship with the company.

(2) The "special relationship" definition is broad. The tipping prohibition is not limited to communications made by senior management, investor relations professionals and others who regularly communicate with analysts, institutional investors and market participants. The tipping prohibition applies, for example, to unauthorized disclosures by non-management employees. Because the "special relationship" definition is so broad, it is important that companies establish corporate disclosure policies and clearly define who within the company has responsibility for corporate communications.

3.3 ***Necessary Course of Business****:* (1) The "tipping" provision allows a company to make a selective disclosure if doing so is in the "necessary course of business". The question of whether a particular disclosure is being made in the necessary course of business is a mixed question of law and fact that must be determined in each case and in light of the policy reasons for the tipping provisions. Tipping is prohibited so that everyone in the market has equal access to, and opportunity to act upon, material information. Insider trading and tipping prohibitions are designed to ensure that anyone who has access to material undisclosed information does not trade or assist others in trading to the disadvantage of investors generally.

(2) Different interpretations are being applied, in practice, to the phrase "necessary course of business".[22] We believe that it would be appropriate to provide interpretive guidance in this area for the benefit of market participants. The "necessary course of business" exception exists so as not to interfere with a company=s everyday business. For example, the "necessary course of business" exception would generally cover communications with:

(a) vendors, suppliers, or strategic partners on issues such as research and development, sales and marketing, and supply contracts;
(b) employees, officers, and board members;
(c) lenders, legal counsel, auditors, financial advisors, and underwriters;
(d) parties to negotiations;
(e) labour unions and industry associations;
(f) government agencies and non-governmental regulators; and
(g) credit rating agencies (provided that the information is disclosed for the purpose of assisting the agency to formulate a credit rating and the ratings are or will be publicly available).

(3) We believe that the "necessary course of business" exception would not generally permit a company to make a selective disclosure of material corporate information to the media, an analyst,[23] institutional investor or other market

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21 The tipping prohibition in Québec applies to insiders and persons listed in section 189 of the Québec Securities Act. The scope of the tipping provision in Québec is substantially similar to other CSA jurisdictions.

22 See *Re Royal Trustco Limited et al. and Ontario Securities Commission* (1983), 42 O.R. (2d) 147 (Div. Ct.) affirming (1981), 2 O.S.C.B. 322C. In Royal Trustco, it was alleged that two officers had revealed to a major shareholder, other than in the "necessary course of business" certain material facts in relation to the affairs of Royal Trustco that had not been generally disclosed including: (i) that approximately 60% of the shares of Royal Trustco were owned by person or companies who the officers knew or had reason to believe would not tender pursuant to a bid; and (ii) that Royal Trustco management was considering recommending to the board that the dividends payable on the Royal Trustco shares be increased. The Court held that the information disclosed fell within the category of material facts and that such material facts had been made available to such shareholder not "in the necessary course of business" from Royal Trustco's perspective.

23 There may be situations where an analyst will be "brought over the wall" to act as an advisor in a specific transaction. Where an analyst serves in such an advisory capacity, we would expect that the analyst will not be issuing research on the company as the

professional.[24]

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analyst will be a Aperson in a special relationship@ with the reporting issuer.

[24] See *In the Matter of Gary George* ((1999), 22 OSCB 717), where the Ontario Securities Commission addressed in obiter the issue of a selective disclosure made by an issuer=s chief executive officer to an analyst and the subsequent disclosure by the analyst to other members of his firm. We agree with the principles expressed by the Ontario Securities Commission:

> It would appear that some corporate officers see the maintenance of good relations with analysts as being more important than ensuring equality of material information among shareholders. The fact that it was thought that [the analyst] was about to come out with a report as to [the issuer] which would overvalue its shares would in no way justify [the President] giving the information to [the analyst] rather than publicly disseminating it. If the information was material enough to cause [the analyst] to change his projections, it should have been publicly disseminated. In general, we view one-on-one discussions between an officer of a reporting issuer and an analyst as being fraught with difficulties.

3.4 ***Necessary Course of Business Disclosures and Confidentiality:*** Disclosures by a company to a lender or in connection with a private placement, merger or acquisition are typically made in the Anecessary course of business@. If a company discloses material information under this exception, it should make sure those receiving the information understand that they cannot pass the information to anyone else (other than in the necessary course of business), or trade on the information, until it has been generally disclosed.[25]

3.5 ***Generally Disclosed:*** (1) The tipping provisions do not require companies to release all material information to the marketplace.[26] The tipping provisions instead prohibit a company from disclosing nonpublic material information to anyone (other than in the necessary course of business) before the company generally discloses the information to the market place.

(2) Securities legislation does not define the term Agenerally disclosed@. Insider trading court decisions state that information has been generally disclosed if:

(a) the information has been disseminated in a manner calculated to effectively reach the market place; and

(b) public investors have been given a reasonable amount of time to analyze the information.[27]

(3) The tipping provisions do not require use of a particular method of disclosure. In determining whether material information has been generally disclosed, we will consider all of the relevant facts and circumstances, including the company=s traditional practices for publicly disclosing information and how broadly investors and the investment community follow the company. We recognize that the effectiveness of disclosure methods varies between companies. Whatever disclosure method is used to release information, we encourage consistency in disclosure practices.[28]

(4) Companies may satisfy the Agenerally disclosed@ requirement under the tipping provisions by using one or a combination of the following disclosure methods:

(a) News releases distributed through a widely circulated news or wire service.[29]

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25 Securities legislation provides an exemption from the insider trading and selective disclosure prohibition where the person or company who trades with material undisclosed information or tips it proves that they reasonably believed that the other party to the trade or the tippee had knowledge of the information. Under the Québec Securities Act, the person or company must be justified in believing that the information is known to the other party.

26 See, however, section 2.1 regarding an issuer=s timely disclosure obligations.

27 *Green v. Charterhouse Group Can. Ltd.* (1976), 12 O.R. (2d) 280. *In the Matter of Harold P. Connor et al.* (1976) Volume II OSCB 149.

28 A sudden change from the usual method of generally disclosing material information may attract regulatory attention in certain circumstances; for example, a last minute webcast of poor quarterly results without advance notice when positive quarterly results are generally released in advance of a subsequently scheduled discussion of the results.

29 We encourage companies to file their news releases on SEDAR. Filing a news release on SEDAR alone will not constitute Ageneral disclosure@.

(b) Announcements made through press conferences or conference calls that interested members of the public may attend or listen to either in person, by telephone, or by other electronic transmission (including the Internet). A company needs to provide the public with appropriate notice of the conference or call by news release.[30] The notice should include: the date and time of the conference or call; a general description of what is to be discussed; and the means of accessing the conference or call.[31] The notice should also indicate whether, and for how long, the company will make a replay of the call available over its web site.

(5) Posting information on a company's web site will not by itself satisfy the Agenerally disclosed@ requirement as Internet access is not yet sufficiently widespread. However, we believe that information technology is an important and useful tool in improving communications to the market place. As technology evolves, we will reexamine this policy statement. In the meantime, we strongly encourage companies to utilize their web sites to improve investor access to corporate information.[32]

(6) Existing case law does not establish a firm rule as to what would be a reasonable amount of time for investors to be given to analyze information. The time period will depend on a number of factors including the circumstances in which the event arises, the nature and complexity of the information, the nature of the market for the company=s securities, and the manner used to release the information.[33]

3.6 ***Unintentional Disclosure:*** Securities legislation does not provide a safe harbour which allows companies to correct an unintentional selective disclosure of material information. If a company makes an unintentional selective disclosure it should take immediate steps to ensure that a full public announcement is made. This includes contacting the relevant stock exchange and requesting that trading be halted pending the issuance of a news release. Pending the public release of the material information, the company should also tell those parties who have knowledge of the information that the information is material and that it has not been generally disclosed.

3.7 ***Administrative Proceedings:*** (1) We will consider any number of mitigating factors in a selective disclosure enforcement proceeding including:

(a) whether and to what extent a company has implemented, maintained and followed reasonable policies and procedures to prevent contraventions of the tipping provisions;

(b) whether any selective disclosure was unintentional; and

(c) what steps were taken to disseminate information that had been unintentionally disclosed (including how quickly the information was disclosed).

If a company=s disclosure record shows a pattern of Aunintentional selective disclosures@, it will be harder to show that a particular selective disclosure was truly unintentional.

(2) Nothing in this policy statement limits our discretion to request information relating to a possible selective disclosure violation or to take enforcement proceedings within our jurisdiction where there has been a breach of the tipping provisions.

PART IV - MATERIALITY

4.1 ***Materiality Standard:*** The definitions of Amaterial fact@ and Amaterial change@ under securities legislation are

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30 This is based on guidance provided by the U.S. Securities and Exchange Commission (the ASEC@) in the adopting release to Regulation FD.

31 This might include a web site link to any software that is necessary to access the web cast.

32 See also The Toronto Stock Exchange=s Electronic Communications Disclosure Guidelines.

33 *In the Matter of Harold P. Connor et. al* 1976 Volume II OSCB 149 at pages 174-6.

based on a market impact test. The definition of "privileged information" contained in the "tipping" provision of the securities legislation of Québec is based on a reasonable investor test. Despite these differences, the two materiality standards converge, for practical purposes, in most cases.

4.2 ***Exchange Policies:*** (1) The Toronto Stock Exchange Inc. (the "TSE"), the Canadian Venture Exchange Inc. ("CDNX") and the Bourse de Montréal Inc. (the "Bourse") each have timely disclosure policy statements which include many examples of the types of events or information which may be material.[34] These include, but are not limited to:

(a) capital reorganizations, mergers or amalgamations;

(b) significant acquisitions or dispositions of assets, property or joint venture interests;

(c) the borrowing or lending of a significant amount of funds or any mortgaging or encumbering in any way of the company's assets;

(d) the development of a new product or any development which affects the company's resources, technology, products or markets;

(e) the entering into or loss of a significant contract or other developments relating to a major customer or supplier;

(f) a significant increase or decrease in near-term earnings prospects;

(g) a significant change in capital investment plans or corporate objectives;

(h) significant changes in management;

(i) significant litigation; and

(j) events regarding the company's securities (for example, an event of default under a financing; a call of securities for redemption; a declaration or omission of dividends; any stock split, share consolidation, stock dividend, exchange, redemption or other change in capital structure).

(2) We refer companies to the guidance provided in the timely disclosure policies of the TSE, CDNX and the Bourse when trying to assess the materiality of a particular fact, change or piece of information. The materiality of a particular event or piece of information may vary between companies according to their size, the nature of their operations and many other factors. An event that is "significant" or "major" for a smaller company may not be material to a larger company.

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[34] Each of the TSE's, CDNX's and the Bourse's timely disclosure policies require the timely disclosure of "material information". Material information includes both material facts and material changes relating to the business and affairs of a company. CDNX's timely disclosure policy deems certain events to be material. The policies of both the TSE and the Bourse provide examples of developments that are likely to be material and therefore require prompt disclosure.

4.3 ***Avoid Using a Technical Approach to Determine Materiality:*** (1) In making materiality judgements it is necessary to take into account a number of factors which cannot be captured in a simple bright-line standard or test. These include the nature of the information itself, the volatility of the company=s securities and prevailing market conditions. Companies should avoid taking an overly technical approach to determining materiality. For example, under volatile market conditions, apparently insignificant variances between earnings projections and actual results can have a significant impact on share price once released. In those conditions, information regarding a company=s ability to meet consensus earnings[35] published by securities analysts should not be selectively disclosed before general public release.

(2) We encourage companies to monitor the market=s reaction to information that is publicly disclosed. Ongoing monitoring and assessment of market reaction to different disclosure will be helpful when making materiality judgements in the future. As a guiding principle, if there is any doubt about whether particular information is material, we encourage companies to err on the side of materiality and release information publicly.[36]

(3) The definition of a Amaterial fact@ includes a two part materiality test. A fact is material when it (i) significantly affects the market price or value of a security; or (ii) would reasonably be expected to have a significant effect on the market price or value of a security.

PART V - RISKS ASSOCIATED WITH CERTAIN DISCLOSURES

5.1 ***Private Briefings with Analysts, Institutional Investors and other Market Professionals:***

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35 The range of earnings estimates issued by analysts following a company.

36 See also Canadian Investor Relations Institute, A*Model Disclosure Policy*@, (February 2001) where CIRI noted in its explanatory notes that ADetermining the materiality of information is clearly an area where judgement and experience are of great value. If it is a borderline decision, the information should probably be considered material and released using a broad means of dissemination. Similarly, if several company officials have to deliberate extensively over whether information is material, they should err on the side of materiality and release it publicly@.

(1) Analysts can make a valuable contribution in keeping the markets informed. The role that analysts play in seeking out information, analyzing and interpreting it and making recommendations contributes to make the marketplace more efficient. We are not suggesting that companies should stop having private briefings with analysts or that these private meetings are somehow illegal. Companies should be sensitive though to the risks involved in private meetings with analysts. Companies should have a firm policy of providing only non-material information and publicly disclosed information to analysts.[37]

(2) Companies should not disclose significant data, and in particular financial information such as sales and profit figures, to analysts, institutional investors and other market professionals selectively rather than to the market as a whole. Earnings forecasts are in the same category. Even within these constraints there is plenty of scope to hold a useful dialogue with analysts and other interested parties about a company=s prospects, business environment, management philosophy and long term strategy.

(3) Another way to avoid selective disclosure is to include, in the company=s regular periodic disclosures, details about topics of interest to analysts. For example, companies should consider expanding the scope of their interim management's discussion and analysis disclosure ("MD&A"). More comprehensive MD&A can have practical benefits including: greater analyst following; more accurate forecasts with fewer revisions; less of a range between analysts= forecasts; and increased investor interest.

5.2 ***Draft Analyst Reports:*** (1) It is not unusual for analysts to ask corporate officers to review earnings estimates that they are preparing. Analysts= reports should not be a public restatement of a company=s internal projections.

(2) A company takes on a high degree of risk of violating securities legislation if it selectively confirms that an analyst=s estimate is Aon target@ or that an analyst=s estimate is Atoo high@ or Atoo low@, whether directly or indirectly through implied Aguidance@.[38] Even when
confirming information previously made public, a company needs to consider whether the selective confirmation itself communicates information above and beyond the initial forecast and whether the additional information is material. This will depend in large part on how much time has passed between the original statement and the company=s confirmation, as well as the timing of the two statements relative to the end of the company=s fiscal period. For example, a selective confirmation of expected earnings near the end of a quarter is likely to represent guidance (as it may well be based on how the company actually performed). Materiality of a confirmation may also depend on intervening events.[39]

5.3 ***Confidentiality Agreements with Analysts:*** There is no exception to the tipping provisions for disclosures made to an analyst under a confidentiality agreement.[40] If a company discloses material undisclosed information to an analyst, it has violated the prohibition, with or without a confidentiality agreement (unless the disclosure is made in the necessary course of business). Analysts who get an advance private briefing have an advantage. They have more time to prepare and can therefore brief their firm members and clients sooner than those who did not have access to the information.

5.4 ***Analyst as ATippees@:*** (1) Analysts, institutional investors, investment dealers and other market professionals who receive material undisclosed information from a company are Atippees@. It is against the law for a tippee to trade or further inform anyone, other than in the necessary course of business, about such information.

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37 A company cannot make material information immaterial simply by breaking the information into seemingly non-material pieces. At the same time, a company is not prohibited from disclosing non-material information to analysts, even if these pieces help the analyst complete a Amosaic@ of information that, taken together, is material undisclosed information about the company (See also SEC=s adopting release to Regulation FD).

38 This position follows the position adopted by the SEC in the adopting release to Regulation FD and the position taken by the Australian Securities & Investment Commission in its guidance note ABetter Disclosure for Investors@ (http://www.asic.gov.au).

39 The guidance with respect to the materiality of confirming information previously made public is based on SEC Staff interpretive guidance on Regulation FD.

40 By comparison, Regulation FD allows an issuer to make a disclosure of material non public information to an analyst if the issuer receives an express confidentiality agreement from the analyst.

(2) We recommend that analysts, institutional investors and other market professionals adopt internal review procedures to help them identify situations where they may have received nonpublic material information and set up guidelines for dealing with such situations.

5.5 ***Earnings Guidance:*** (1) Some companies have begun to voluntarily disclose in press releases or on their web sites their own Afinancial outlooks@. These financial outlooks typically contain certain forecast information such as expected revenues, net income, earnings per share and R&D spending.[41] We encourage companies to be open about their future prospects provided that they have a reasonable basis for making such statements and include with their forward looking statements appropriate statements of risks and cautionary language. We strongly recommend that any voluntary forward looking statement (whether written or oral) also contain:

(a) a statement that the information is forward looking;

(b) the factors that could cause actual results to differ materially from the forward-looking statement; and

(c) a statement of the material factors or assumptions that were used in making the forward looking statement.[42]

(2) This disclosure should go beyond mere boilerplate. A company=s warnings should be substantive and tailored to the specific future estimates or opinions that are being forecast. For example, predictions about earnings growth might be qualified by a discussion of the effect of a loss of a key customer. Companies should also identify and quantify the risks. For example, if a company=s projected earnings growth is based on a new product introduction which requires governmental approval, the company should explain some of the obstacles to getting such approval and the consequences of not getting the approval. A statement that such approval is beyond the company=s control would not be enough.

5.6 ***Application of National Policy Statement 48:***[43] We do not intend for National Policy Statement 48 - Future Oriented Financial Information ("NP 48") to discourage the voluntary disclosure of forward looking information of the kind described above. In particular, when a company includes forward looking information in a press release, it does not need an auditor's report. However, we believe that NP 48 contains guidance relating to comparison with actual results, and updating, that may assist companies in improving the quality and clarity of voluntary forward looking information. NP 48, along with related parts of the CICA Handbook, also have useful information about cautionary language, descriptions of assumptions and other matters.

5.7 ***Duty to Update:*** (1) Once a company discloses forward looking information, the timely disclosure requirements might require the company to Aupdate@ the information by issuing a news release and filing a material change report.[44] This would happen, for example, if a company made:

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41 This type of voluntary disclosure should be distinguished from MD&A which is required disclosure under securities legislation. Both MD&A and voluntary forward-looking information may involve some prediction or projection. The difference between the two is the nature of the prediction required. MD&A is based on currently known trends, events, commitments and uncertainties that are reasonably expected to have a material impact on your business, financial condition or results of operation in the future, such as: a reduction in your product prices; erosion in your market share; or the likely non-renewal of a material contract. Voluntary or optional forward-looking disclosure instead involves making an estimation of future results.

42 The recommended disclosures are based on the proposed Asafe harbour@ provision contained in the CSA=s draft legislative proposal to introduce statutory civil liability for investors in the secondary market (See CSA Notice 53-302 - Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of "Material Fact" and "Material Change").

43 NP 48 is under consideration and is being reformulated. See proposed rule 52-101 Future Oriented Financial Information (July 18, 1997).

44 See also *Re Royal Trustco Limited, Kenneth Allan White, and John Merton Scholes* (1981) 2 OSCB 322C, where the Ontario Securities Commission considered whether the directors of a reporting issuer had an obligation to update information previously disclosed in a directors= circular in response to a take-over bid. The Ontario Securities Commission stated as follows: AThe Commission is of the view that there is in Ontario today a duty to update information previously communicated when that information in the light of subsequent events and absent further explanation, becomes misleading.@

(a) a public earnings estimate but later became aware that the outcome will be materially above or below the original forecast; or

(b) disclosure about a present plan or intention that it later abandons.

(2) We think updating earnings estimates is a good practice even where a company does not have a legal obligation to file a press release and material change report. Providing updates will help a company to maintain credibility among investors and analysts. Whatever a company=s practice is, the company should explain its update policy to investors when making an earnings estimate.

5.8 ***Selective Disclosure Violations Can Occur in a Variety of Settings:*** Selective disclosure most often occurs in one-on-one discussions (like analyst meetings) and in industry conferences and other types of private meetings and break-out sessions. But it can occur elsewhere. For example, a company should not disclose material nonpublic information at its annual shareholders meeting unless all interested members of the public may attend the meeting and the company has given adequate public notice of the meeting (including a description of what will be discussed at the meeting). Alternatively, a company can issue a news release at or before the time of the meeting.

PART VI - BEST DISCLOSURE PRACTICES

6.1 ***General:*** (1) There are some practical measures that companies can adopt to help ensure good disclosure practices and compliance with securities legislation. If companies adopt more open disclosure policies and practices, they will improve their credibility and enhance investor confidence and shareholder value.

(2) The measures recommended in this policy statement are not intended to be prescriptive. We recognize that many large listed companies have specialist investor relations staff and devote considerable resources to disclosure, while in smaller companies this is often just one of the many roles of senior officers. We encourage companies to adopt the measures suggested in this policy statement, but they should be implemented flexibly and sensibly to fit the situation of each individual company.

6.2 ***Establishing a Corporate Disclosure Policy:*** (1) Establish a written corporate disclosure policy. A disclosure policy gives you a process for disclosure and promotes an understanding of legal requirements among your directors, officers and employees. The process of creating it is itself a benefit, because it forces a critical examination of your current disclosure practices.

(2) You should design a policy that is practical to implement. Your policy should be reviewed and approved by your board of directors and widely distributed to your officers and employees. Directors, officers and employees should also be trained so that they understand and can apply the disclosure policy. Your policy should be periodically reviewed and updated, as necessary, and responsibility for these functions (i.e., review and update of the policy and education of employees and company officials) should be clearly assigned within your company.

(3) The focus of your disclosure policy should be on promoting consistent disclosure practices aimed at informative, timely and broadly disseminated disclosure of material information to the market. Every disclosure policy should generally include the following:

(a) how to decide what information is material;
(b) policy on reviewing analyst reports;
(c) how to release earnings announcements and conduct related analyst calls and meetings;
(d) how to conduct meetings with investors and the media;
(e) what to say or not to say at industry conferences;
(f) how to use electronic media and the corporate web site;
(g) policy on the use of forecasts and other forward looking information (including a policy regarding issuing updating);
(h) procedures for reviewing briefings and discussions with analysts, institutional investors and other market professionals;
(i) how to deal with unintentional selective disclosures;
(j) how to respond to market rumours;
(k) policy on trading restrictions; and

(l) policy on "quiet periods".

6.3 ***Overseeing and Coordinating Disclosure:*** Establish a committee of company personnel or assign a senior officer to be responsible for:

(a) developing and implementing your disclosure policy;
(b) monitoring the effectiveness of and compliance with your disclosure policy;
(c) educating your directors, officers and employees about disclosure issues and your disclosure policy;
(d) reviewing and authorizing disclosure (including electronic, written and oral disclosure) in advance of its public release; and
(e) monitoring your web site.

6.4 ***Authorizing Company Spokespersons:*** Limit the number of people who are authorized to speak on behalf of your company to analysts, the media and investors. Ideally, your spokesperson should be a member(s) of senior management. Spokespersons should be knowledgeable about your disclosure record and aware of analysts' reports relating to your company. Everyone in your company should know who the company spokespersons are and refer all inquiries from analysts, investors and the media to them. Having one or more company spokespersons helps to reduce the risk of:

(a) unauthorized disclosures;
(b) inconsistent statements by different people in the company; and
(c) statements that are inconsistent with the public disclosure record of the company.[45]

6.5 ***Analyst Conference Calls and Industry Conferences:***

(1) Hold analyst conference calls and industry conferences in an open manner allowing any interested party to listen either by telephone and/or through a webcast. This helps to reduce the risk of selective disclosure. You should consider using the following disclosure model when making a planned disclosure of material corporate information, such as a scheduled earnings release:

(a) issue a news release containing the information (for example, your quarterly financial results) through a widely circulated news or wire service;
(b) provide advance public notice by news release of the date and time of the call, the subject matter of the call and the means for accessing it;
(c) hold the conference call in an open manner, permitting investors to listen either by telephone or through Internet webcasting; and
(d) provide dial-in and/or web replay for a reasonable period of time after the analyst conference call.[46]

(2) Company officials should meet before an analyst conference call, private analyst meeting or industry conference. Where practical, statements and responses to anticipated questions should be scripted in advance and reviewed by the appropriate people within your company. Scripting will help to identify any material corporate information that may need to be publicly disclosed through a news release.

(3) Keep detailed records and/or transcripts of any conference call, meeting or industry conference. These should be reviewed to determine whether any unintentional selective disclosure has occurred. If so, you should take immediate steps to ensure that a full public announcement is made, including contacting the relevant stock exchange and asking that trading be halted pending the issuance of a news release.

6.6 ***Commenting on Draft Analyst Reports:*** Establish a policy for reviewing analyst reports. As noted above there is a serious risk of violating the tipping provisions if you express comfort with an analyst's model or earnings estimates. If your policy allows for the review of analyst reports, your review should be limited to identifying publicly disclosed

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[45] In some circumstances a company's designated spokesperson will not be informed of developing mergers and acquisitions until necessary, to avoid leakage of the information.

[46] This model disclosure policy was recommended by the SEC in the adopting release to Regulation FD.

factual information that may affect an analyst=s model or to pointing out inaccuracies or omissions with reference to publicly available information about your company.

6.7 ***AQuiet@ Periods:*** Observe a Aquiet@ period between the end of the quarter and the release of a quarterly earnings announcement. Many companies follow a quiet period during which they will not typically comment on the status of the current quarter=s operations or their expected results, or make any comments as to whether the company will meet, exceed or fall short of either the analysts= or its own earnings estimates. In practice, quiet periods vary by company.[47] Whatever quiet period you choose, you should consider stopping all communications with analysts, institutional investors and other market professionals during that period, not just those involving the quarterly results.

6.8 ***Insider Trading Policies and Blackout Periods:*** Adopt an insider trading policy that provides for a senior officer to approve and monitor the trading activity of all your insiders and officers. Your insider trading policy should prohibit purchases and sales at any time by insiders who are in possession of material nonpublic information. Your policy should also provide for trading Ablackout periods@ when trading by employees may not take place (for example a blackout period which surrounds regularly scheduled earnings announcements). A company=s blackout period may mirror the quiet period described above.

6.9 ***Electronic Communications:*** (1) Establish a team responsible for creating and maintaining the company web site. The web site should be up to date and accurate. You should date all material information when it is posted or modified. You should also move outdated information to an archive. Archiving allows the public to continue accessing information that may have historical or other value even though it is no longer current. You should also explain how your web site is set up and maintained. You should remember that posting material information on your website is not acceptable as the sole means of satisfying legal requirements to Agenerally disclose@ information.

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[47] Some companies adopt a quiet period beginning at the start of the third month of the quarter, and ending upon issuance of the earnings release. Other companies wait until two weeks before the end of the quarter or even the first day of the month following the end of the quarter to start the quiet period.

(2) Use current technology to improve investor access to your information. You should post on the investor relations part of your web site all supplemental information that you give to analysts, institutional investors and other market professionals. This would include data books, fact sheets, slides of investor presentations and other materials distributed at analyst or industry presentations.[48] When you make a presentation at an industry sponsored conference try to have your presentation and Aquestion and answer@ session web cast.

6.10 ***Chat Rooms, Bulletin Boards and e-mails:*** Do not participate in, host or link to chat rooms or bulletin boards. Your disclosure policy should prohibit your employees from discussing corporate matters in these forums. This will help to protect your company from the liability that could arise from the well-intentioned, but sporadic, efforts of employees to correct rumours or defend the company. Your employees should be required to report to a designated company official any discussion pertaining to your company which they find on the Internet. If your web site allows viewers to send you e-mail messages, remember the risk of selective disclosure when responding.

6.11***Handling Rumours:*** Adopt a Ano comment@ policy with respect to market rumours and make sure that the policy is applied consistently.[49] Otherwise, an inconsistent response may constitute Atipping@. You may be required by your exchange to make a clarifying statement where trading in your company=s securities appears to be heavily influenced by rumours. If material information has been leaked and appears to be affecting trading activity in your company=s securities, you should take immediate steps to ensure that a full public announcement is made. This includes contacting your exchange and asking that trading be halted pending the issuance of a news release.[50]

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48 This recommendation is based on the recommendations contained in The Toronto Stock Exchange Committee on Corporate Disclosure=s final report issued in March 1997 and in the TSE=s Electronic Communications Disclosure Guidelines. See also the guidance note ABetter Disclosure for Investors@ issued by the Australian Securities & Investment Commission (http://www.asic.gov.au).

49 A Ano comment@ policy means that you respond with a statement to the effect that "it is our policy not to comment on market rumours or speculation@.

50 If the rumour relates to a material change in the company=s affairs that has, in fact, occurred, you have a legal obligation to make timely disclosure of the change.