

5.1.6 Notice of Amendments to National Policy 11-201 Delivery of Documents by Electronic Means

NOTICE OF AMENDMENTS TO NATIONAL POLICY 11-201 DELIVERY OF DOCUMENTS BY ELECTRONIC MEANS

Notice of Amendments

The Commission, together with the other members of the Canadian Securities Administration (CSA) other than Quebec, is adopting amendments to National Policy 11-201 *Delivery of Documents by Electronic Means*. In Quebec, the Commission des Valeurs Mobilières du Québec is adopting equivalent amendments to "Notice 11-201 relating to the delivery of documents by electronic means" (collectively with National Policy 11-201 *Delivery of Documents by Electronic Means*, "NP 11-201"). The amendments to NP 11-201 (the "Amendments") will come into effect on February 14, 2003.

On August 9, 2002, we published the Amendments for comment. We received one submission. None of the revisions to the Amendments made as a result of the comments received are material. Accordingly, we are not republishing the Amendments for a further comment period. For a summary of the comments and our response to them, please see Appendix A to this Notice.

Purpose of the Amendments

NP 11-201 sets out general principles of how documents required to be delivered under Canadian securities law can be delivered electronically. However, securities law also contains various provisions relating to the proxy solicitation process that have raised questions as to whether the electronic delivery of proxy documents is permitted, and whether proxy documents can be in electronic format.

The CSA has identified two types of requirements in securities law that affect the electronic delivery of proxy documents and the use of electronic formats:

- requirements that a form of proxy or proxy be in written or printed form, and that a registered owner vote securities in accordance with written voting instructions (the "in writing requirements"); and
- requirements that a proxy be executed (the "proxy execution requirements").

The purpose of the Amendments is to provide guidance from the securities regulatory authorities on these issues.

Summary of Changes to the Amendments

There were no substantive changes to the Amendments from the version published on August 9, 2002. We have made the following minor changes based on the comments received:

- clarifying in subsection 4.2(1) that the use of technologies involving the telephone can satisfy the in writing requirements for proxy documents if the technology protects the integrity of the information and enables a permanent, tangible record of the information to be retained for subsequent reference, and
- clarifying in section 4.3(2) that an electronic signature used to execute or sign a proxy in electronic format that satisfies the in writing requirements in section 4.3 can satisfy the proxy execution requirements.

Text of the Amendments

The text of the Amendments follows.

February 14, 2003.

Questions

For questions, you can contact any of the following individuals:

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APPENDIX A

Summary of Comments Received on Amendments to
National Policy 11-201 Delivery of Documents by Electronic Means

A. Introduction

On August 9, 2002, the CSA published proposed amendments to NP 11-201. The comment period ended October 8, 2002.

We received one comment letter from Computershare Trust Company of Canada dated October 8, 2002.

B. Comments and Responses

1. Part 4 – Proxy Documents

The commentator supported the introduction of this section.

2. Section 4.2 – The In Writing Requirements

The commentator suggested that this section set out the Internet and telephone voting procedures set out in previously granted exemptive relief exemptions from the in writing requirements for the reporting issuer clients of certain transfer agents and an intermediary service provider. The commentator also suggested that an example of what would be considered an acceptable format to satisfy the information integrity concerns be provided under section 4.2(2).

Response: In our view, the telephone and internet voting procedures outlined in previously granted exemptive relief applications are consistent with the guidelines for satisfying the in writing requirements in section 4.2. Subsection 4.2(1) has been revised to clarify that an electronic format produced by a technology that makes use of the telephone can be consistent with the guidelines in section 4.2. The guidelines have been drafted in a general fashion to enable market participants to understand the policy concerns underlying the in writing requirements and develop appropriate processes or technologies, without being tied to specific processes or technologies.

3. Section 4.3 – Proxy Execution Requirements

The commentator requested that this section clarify whether the submission of voting instructions through a telephone proxy voting system would satisfy the proxy execution requirements. The commentator suggested providing clarification by including a description of the Internet and telephone voting procedures set out in the previously granted exemptive relief applications described in comment 2 above.

Response: In our view, the telephone and internet voting procedures outlined in the previously granted exemptive relief applications are consistent with the guidelines in section 4.3. The guidelines have been drafted in a general fashion without setting out specific processes or technologies. Section 4.3(2) has been revised to clarify that an electronic signature associated with a proxy in electronic format that follows the guidelines in section 4.2 will satisfy the proxy execution requirements.