

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

February 14, 2003

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 Valeur 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 4.2 can satisfy the proxy execution requirements.

Text of the Amendments

The text of the Amendments follows.

1. Questions

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

2. PART 1 AMENDMENTS

1.1 Amendments – National Policy 11-201 is amended by:

- (a) adding the definition ““electronic signature” means electronic information that a person creates or adopts in order to execute or sign a document and that is in, attached to or associated with the document”;
- (b) adding the definition ““proxy document” means a document relating to a meeting of a reporting issuer, and includes an information circular, a form of proxy, a request for voting instructions, and voting instructions”;
- (c) adding the definition ““securities directions” means the instruments listed in Appendix A of National Instrument 14-101 Definitions”;
- (d) deleting subsection 1.2(2) and substituting for that subsection:

“Securities legislation contains many delivery requirements. In some cases, the method of delivery is mandated by legislation; for instance, delivery may be required to be made by “prepaid mail”. In many cases, however, the method of delivery is not mandated. In light of rapid technological developments, issues have arisen as to whether, or in what circumstances, delivery of documents by electronic means would satisfy the delivery requirements of securities legislation if the method of delivery is not mandated. The purpose of this Policy is to state the views of the securities regulatory authorities on these issues in light of the general policy goals referred to in subsection (1). These views are set out in Parts 2 and 3 of this Policy.”;

- (e) adding subsection 1.2(3):

“Furthermore, securities legislation and securities directions contain 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 securities regulatory authorities have identified two types of requirements in securities law that affect the use of proxy documents in electronic format:

- 1. Requirements in certain securities directions or securities legislation that
 - (a) a form of proxy or proxy be in written or printed form (the “written proxy requirements”); and
 - (b) a registered holder of voting securities vote or give a proxy in respect of such voting securities in accordance with any written voting instructions

provided by the beneficial owner of such voting securities (the “written voting instructions requirements”) (collectively with the written proxy requirements, the “in writing requirements”).

2. Requirements in securities legislation that a proxy be executed (the “proxy execution requirements”).

Part 4 of this Policy states the views of the securities regulatory authorities on these issues.”

- (f) deleting section 1.3 and substituting for that section

“1.3 Application of this Policy

- (1) Subject to subsections (3) and (4), Parts 2 and 3 of this Policy apply to any documents required to be delivered under the delivery requirements. This includes prospectuses, financial statements, trade confirmations, account statements and proxy-related materials. Examples of documents that are not required by securities legislation to be delivered, and which are therefore not subject to Parts 2 and 3, are documents delivered by securityholders or investors to issuers or registrants, for instance, in connection with the return of completed proxies or voting instructions.
- (2) For greater certainty, Parts 2 and 3 of this Policy apply in the circumstances described in subsection (1), and therefore apply to documents delivered by
 - (a) issuers, registrants or persons or companies acting on behalf of issuers or registrants, such as transfer agents or other service providers; and
 - (b) persons or companies required to send documents under National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, including depositories, participants in depositories, intermediaries and service providers to those persons or companies.
- (3) Part 4 of this Policy applies to the use of proxy documents in electronic format.
- (4) This Policy does not apply to deliveries where the method of delivery is mandated by securities legislation and that method does not include electronic means. Market participants are also reminded that certain corporate law statutes may also impose requirements concerning the method of delivery in some circumstances, without permitting electronic means of delivery. For example, some statutes require the use of prepaid mail for the delivery of proxy-related materials. In addition, some corporate statutes may also restrict the use of proxy documents in electronic format.
- (5) This Policy does not apply to documents filed with or delivered by or to a securities regulatory authority or regulator.

- (g) deleting in subsection 2.5(6) the reference to the “CSA” and substituting therefore “securities regulatory authorities”;
- (h) deleting section 1.4 and substituting for that section

“1.4 No Waiver - This Policy addresses only the method of delivery of documents and issues relating to the delivery of documents, as well as the use of proxy documents in electronic format. This Policy does not address, and should not be construed as a waiver of, any requirements of securities legislation relating to content, accuracy, currency, amending of information or timing of delivery of documents or information. Deliverers are reminded that a document that is intended to be delivered by electronic delivery should not be less complete, timely, comprehensive or, if applicable, confidential than a paper version of the same document.”

- (i) renumbering Part 4 as Part 5, renumbering section 4.1 as section 5.1 and substituting a new Part 4 Proxy Documents:

“PART 4 PROXY DOCUMENTS

4.1 Proxy Delivery Requirements

- (1) Market participants who are required by securities legislation to deliver proxy documents and wish to use an electronic delivery method are reminded to refer to Part 2 of this Policy, which sets out the principles for delivering documents electronically.
- (2) Market participants are reminded that merely making proxy documents available for access on a website will not constitute delivery of these documents in accordance with the four components of effective delivery that are set out in Part 2 of this Policy.

4.2 The In Writing Requirements

- (1) Forms of proxy, proxies and voting instructions in electronic format (including, an electronic format that makes use of the telephone) will satisfy the in writing requirements if the electronic format used
 - (a) ensures the integrity of the information contained in the forms of proxy and proxies; and
 - (b) enables the recipient to maintain a permanent record of this information for subsequent reference.
- (2) In order to ensure the integrity of information, the electronic format of the form of proxy, proxy or voting instructions should not permit the information in the document to be easily corrupted or changed. For example, the written proxy requirements generally would not be satisfied

by sending an email with a form of proxy in WordPerfect format attached, as this format could be easily tampered with.

- (3) In order to assist a recipient to retain a permanent record of the information so as to be usable for subsequent reference, appropriate electronic formats and methods of electronic delivery should be used.

4.3 Proxy Execution Requirements

- (1) The proxy execution requirements are normally satisfied by a security holder's signature. The use of a signature indicates adoption of the information in the completed proxy, and permits authentication of the security holder's identity. The securities regulatory authorities are of the view that the use of a manual signature is one method, but not the only method, of executing a proxy.
- (2) The proxy execution requirements may be satisfied through the security holder using an electronic signature to execute a proxy, including a proxy in electronic format that satisfies the in writing requirements (see section 4.2). Any technology or process adopted for executing a proxy should create a reliable means of identifying the person using the signature and establishing that the person incorporated, attached or associated it to the proxy. The security holder's electronic signature should result from the security holder's use of a technology or process that permits the following to be verified or proven:
 1. a security holder used the technology or process to incorporate, attach or associate the security holder's signature to the proxy;
 2. the identity of the specific security holder using the technology or process; and
 3. the electronic signature resulting from a security holder's use of the technology or process is unique to the security holder."

3. Part 2 EFFECTIVE DATE

- 2.1 Effective Date** – These amendments come into force on February 14, 2003.

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.