

New Policy on Disclosure Standards

By Michel Servant and Johanne Duchesne

The Canadian Securities Administrators (the "CSA") have issued for comment proposed National Policy 51-201 (the "Policy") on disclosure standards. This Policy is mainly a Canadian response to Regulation FD which came into force in the United States on October 23, 2000.

This Policy provides guidance on best disclosure practices which are destined to avoid that selective disclosure of material information be communicated to analysts, institutional investors, investment dealers or other market professionals. Selective disclosure occurs when a company discloses material nonpublic information¹ to one or more individuals or companies and not broadly to the investing public.

Under securities legislation, companies are required to **immediately** disclose any material fact or change in their business by way of a press release. In some circumstances, a company can delay disclosure of a material fact or change and keep it confidential where the immediate release of the information would be unduly detrimental to the company's interests.

Securities legislation prohibits the company and any insider, officer, employee or person engaged in professional or business activities for or on behalf of the company from disclosing material information to anyone

or to trade in securities of the company on the basis of material information about that company before such information has been made public.

In order to minimize the risk of selective disclosure, the CSA recommends a set of best disclosure practices that could be adopted by companies. While these measures are not intended to be prescriptive, the CSA encourages companies to adopt them with the flexibility required to fit each company's particular circumstances. These measures are the following:

- to establish a corporate disclosure policy to be reviewed and approved by the Board of Directors and which should include the following:
 - how to decide what information is material;
 - the policy to be applied in reviewing analysts' reports;
 - how to release earnings announcements and conduct related conference calls and meetings;
 - how to conduct meetings with investors and the media;

- what to say and not to say at industry meetings;
- how to use the electronic media and the company web site;
- the policy to be applied on the use of forecasts;
- how to deal with cases of unintentional selective disclosure;
- how to respond to market rumours;
- to create a committee responsible for establishing and monitoring the disclosure policy;
- to restrict the number of persons authorized to speak to analysts, the media and investors;

¹ Information is material to the extent that it is likely to have a significant impact on the value or the market price of the issuer's securities.





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- to allow any interested party to listen to analyst conference calls and to participate in industry meetings;
- to limit the extent of comments made in reviewing analysts' reports to factual information only;
- to adopt a silent period surrounding the release of quarterly results;
- to adopt a blackout period that mirrors the silent period for trading in the company's securities by directors and officers;
- to adopt a "no comment" policy with respect to market rumours.

The CSA also recommends that all information posted on the company web site should be monitored cautiously and kept up-to-date.

Finally, financial outlooks disclosed in press releases or on the company web site should include:

- a statement that the information is prospective;
- the factors that could cause actual results to differ materially from the projected financial results; and

- a statement of the material factors or assumptions that were applied in coming to the projected financial results.

We can assist you in the development of such a policy.

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