

2.3 **Notice: Policy 34-202 & Rescission of N.P. Statement 18:**

**NOTICE OF PROPOSED MULTI-JURISDICTIONAL POLICY 34-202
AND RESCISSION OF NATIONAL POLICY STATEMENT NO. 18**

REGISTRANTS ACTING AS CORPORATE DIRECTORS

Introduction

The Commission, together with other members of the Canadian Securities Administrators (the "CSA"), is publishing for comment the text of a proposed Multi-Jurisdictional Policy governing certain conduct of registrants. The proposed Policy is an initiative of the CSA and is to be adopted as a policy in each of the jurisdictions represented by the CSA except for Québec. The proposed Multi-Jurisdictional Policy is not being proposed for adoption at this time by the Commission des valeurs mobilières du Québec. The proposed Policy is substantially similar to former National Policy Statement No. 18, which it replaces. National Policy Statement No. 18 was initially published in April 1971, and was in part based on a statement published by The Toronto Stock Exchange on December 5, 1978.

The proposed Policy contains a footnote which is not part of the policy itself, but which has been included to provide background and explanation.

Terms used in the proposed Policy that are defined or interpreted in a definition instrument in force in the jurisdiction should be read in accordance with that definition instrument, unless the context otherwise requires.

Substance and Purpose of Proposed Policy

The substance and purpose of the proposed Policy is to express the views of the CSA as to the potential for conflicts of interest arising if an individual registrant or a representative of a registrant acts as a director of or advisor to a reporting issuer.

Summary of Proposed National Policy

The proposed Policy alerts registrants to the possibilities of a conflict of interest that can arise when a registrant is acting as a director of a reporting issuer. The proposed Policy reminds those registrants that they have a fiduciary obligation not to reveal confidential information concerning the reporting issuer to anyone not authorized to receive it, including the registrant's personnel and customers. The proposed Policy states the view of the Canadian securities regulatory authorities that representatives of a registrant who are not directors of a reporting issuer but are acting in an advisory capacity to a reporting issuer have substantially the same obligations relating to confidential information as a director of the reporting issuer.

Related Instruments

The proposed Policy is related to the provisions of Canadian securities legislation that prohibit and impose liability for trading with knowledge of a material fact or material change that has not been generally disclosed and for informing others of a material fact or material change that has not been generally disclosed.

In Alberta, these provisions are contained in sections 119 and 171 of the *Securities Act* (Alberta).

The proposed Policy is also related to A.S.C. Policy 3.1, which summarizes the code of conduct and ethical practices of registrants acceptable to the Commission.

Comments

Interested parties are invited to make written submissions with respect to the proposed Policy. Submissions received by April 15, 1998 will be considered.

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

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, Government of New Brunswick
Prince Edward Island Securities Commission
Nova Scotia Securities Commission
Securities Division, Government of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Government of the Yukon Territory

c/o Daniel P. Iggers, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

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 written comments received during the comment period be published, confidentiality of submissions received cannot be maintained.

Questions may be referred to any of:

Ross McLennan
Director, Registration
British Columbia Securities Commission
(604) 899-6685

Ken Parker
Director, Capital Markets
Alberta Securities Commission
(403) 297-3251

Barbara Shourounis
Executive Director
Saskatchewan Securities Commission
(306) 787-5645

Doug Brown
Assistant Counsel
The Manitoba Securities Commission
(204) 945-0605

Richard Roberts
Registrar of Securities
Government of the Yukon Territory
(403) 667-5005

Gary MacDougall
Director of Legal Registries
Government of the Northwest Territories
(403) 873-7490

Nancy Ross
Legal Adviser - Registration, Market Operations Branch
Ontario Securities Commission
(416) 593-8154

Donne Smith
Administrator
Office of the Administrator
Government of New Brunswick
(506) 658-3060

Elaine Anne MacGregor
Deputy Director, Capital Markets
Nova Scotia Securities Commission
(902) 424-7768

Ruth DeMone
Registrations Officer
Prince Edward Island Securities Commission
(902) 368-4550

Anthony Patey
Director of Securities
Securities Division-Department of Justice
Government of Newfoundland and Labrador
(709) 729-4189

DATED: February 13, 1998

**MULTI-JURISDICTIONAL POLICY 34-202
REGISTRANTS ACTING AS CORPORATE DIRECTORS¹⁷**

- 1.1 **Introduction** - The position of a representative of a registrant acting as a director of or adviser to a reporting issuer is one that is fraught with the possibility of a conflict of interest. This arises more particularly in regard to questions of insider information and trading, and timely disclosure.
- 1.2 **Conflicts of Interest** - The Canadian securities regulatory authorities emphasize that all registrants should be most conscious of their responsibilities in these situations and weigh the burden of dealing in an ethical manner with the conflicts of interest against the advantages of acting as a director of a reporting issuer, many shareholders of which may be clients of the registrant.
- 1.3 **Disclosure of Information** - Every director of a reporting issuer has a fiduciary obligation not to reveal any confidential information to anyone not authorized to receive it. Not until there is full public disclosure of the information, including compliance with applicable Canadian securities legislation, particularly when the information might have a bearing on the market price or value of the securities of the issuer, is a director released from the necessity of keeping information of this character confidential. Any director of a reporting issuer who is a partner, director, officer or employee of a registrant should, in the view of the Canadian securities regulatory authorities, recognize that the director's first responsibility in this area is to the reporting issuer on whose board the director serves. A director should meticulously avoid any disclosure of inside information to partners, directors, officers and employees of the registrant or to its customers.
- 1.4 **Acting in Advisory Capacity** - If a representative of a registrant is not a director but is acting in an advisory capacity to a reporting issuer and discussing confidential matters, the Canadian securities regulatory authorities believe that the same care should be taken as if that person were a director. Should the matter require consultation with other personnel of the registrant, adequate measures should, in the view of the Canadian securities regulatory authorities, be taken to guard the confidential nature of the information to prevent its misuse within or outside the registrant.
- 1.5 **Fitness for Registration** - The failure of a registrant to comply with the standards described in this Policy may be considered by the Canadian securities regulatory authorities to be prejudicial to the public interest and to affect the fitness for continued registration of the registrant.
- 1.6 **British Columbia Securities Legislation** - In British Columbia, a salesperson, advising employee and advising partner, director or officer may not act as a director or officer of a reporting issuer.

¹⁷ This proposed Multi-Jurisdictional Policy is based on National Policy Statement No. 18, and will be adopted as a policy in all jurisdictions other than Quebec.