

# **NATIONAL POLICY**

**11-201**

## **DELIVERY OF DOCUMENTS BY ELECTRONIC MEANS**

### **PART 1 GENERAL**

#### **1.1 Definitions**

In this Policy

"delivered" means sent, delivered or otherwise communicated, and "deliver", "delivery" and similar words have corresponding meanings;

"delivery requirements" means the requirements in securities legislation that documents be delivered; and

"electronic delivery" means the delivery of documents by facsimile, electronic mail, CD-ROM, diskette, the Internet or other electronic means;

"securities legislation" means the statutes and other instruments listed in Appendix B of National Instrument 14-101 Definitions;

"securities regulatory authorities" means the securities commissions and similar regulatory authorities listed in Appendix C of National Instrument 14-101 Definitions;

#### **1.2 Purpose of this Policy**

- (1) Developments in information technology provide market participants with the opportunity to disseminate documents to securityholders and investors in a more timely, cost-efficient, user-friendly and widespread manner than by use of paper-based methods. The securities regulatory authorities recognize that information technology is an important and useful tool in improving communications to securityholders and investors, and wish to ensure that the provisions of securities legislation that impose delivery requirements are applied in a manner that recognizes and accommodates technological developments without undermining investor protection.
- (2) Securities legislation contains many delivery requirements. In some cases, the method of delivery is mandated by the 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).

### **1.3 Application of this Policy**

- (1) Subject to subsections (3) and (4), this Policy applies 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 this Policy, 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, this Policy applies in the circumstances described in subsection (1), and therefore applies 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 Policy Statement No. 41 and any successor instrument thereto, including depositories, participants in depositories, intermediaries and service providers to those persons or companies.

- (3) 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.
- (4) This Policy does not apply to documents filed with or delivered by or to a securities regulatory authority or regulator.

## **1.4 No Waiver**

**No Waiver** - This Policy addresses only the method of delivery of documents and issues relating to the delivery of documents. 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.

## **1.5 National Policy 47-201**

**National Policy 47-201** - Market participants are referred to National Policy 47-201 Trading Securities Using the Internet and Other Electronic Means, which states the views of the securities regulatory authorities on issues relating to the use of the Internet and other electronic means of communication to facilitate trading in securities.

# **PART 2 ELECTRONIC DELIVERY OF DOCUMENTS**

## **2.1 Basic Components of Electronic Delivery of Documents**

- (1) The securities regulatory authorities are of the view that electronic delivery of a document may be effected in a manner that satisfies the delivery requirements.
- (2) There are four basic components to the electronic delivery of a document. Those components are as follows:
  1. The recipient of the document receives notice that the document has been, or will be, sent electronically or otherwise electronically made available, as described in section 2.2.
  2. The recipient of the document has easy access to the document, as described in section 2.3.
  3. The deliverer of the document has evidence that the document has been delivered or otherwise made available to the recipient, as described in section 2.4.
  4. The document that is received by the recipient is not different from the document delivered or made available by the deliverer, as described in section 2.6.
- (3) An electronic delivery of a document would satisfy the delivery requirements if each of the four components were satisfied. If any one of these components were absent, however, the effectiveness of the delivery would be uncertain.
- (4) A deliverer generally may satisfy the notice, evidence and, subject to subsections 2.3(3) to (6), the access components of electronic delivery by obtaining, in accordance with section 2.5, the informed consent of an intended recipient to the electronic delivery of a document, and then delivering the document in accordance with the consent. The process of seeking and obtaining a consent is suggested as a mechanism to permit the deliverer to inform the recipient of the manner in which the deliverer proposes to make electronic delivery of a document or documents, and to permit the recipient to consider and agree to that manner of delivery. Once given, a consent is evidence that the deliverer and the recipient have agreed on all relevant aspects concerning the manner of the electronic delivery of a document. Therefore, the consent gives rise to the inferences that, if a document is sent by electronic delivery in accordance with the terms of a consent
  - (a) the recipient will receive notice of the electronic delivery of the document;
  - (b) the recipient has the necessary technical ability and resources to access the document; and

- (c) the recipient will actually receive the document.
- (5) A deliverer may effect electronic delivery without the benefit of a consent, but does so at the risk of bearing a more difficult evidentiary burden of proving that the intended recipient had notice of, and access to, the document, and that the intended recipient actually received the document, than if a consent had been obtained.
- (6) In addition to the methods of electronic delivery described in this Policy, a deliverer may use any means it has at its disposal to deliver a document, subject to securities legislation. Deliverers are reminded that if a question arises as to whether a deliverer is in compliance with delivery requirements, a deliverer will have to satisfy the securities regulatory authorities and, in some cases, a court that it has used appropriate and reasonable means to effect delivery.
- (7) An attempt to deliver documents by referring an intended recipient to a third party provider of the document, such as SEDAR, will likely not constitute valid delivery of the document, in the absence of consent given by the intended recipient to such method of delivery. However, the CSA are of the view that valid delivery can be made by a third party provider where it has agreed to act as agent for the deliverer in connection with the delivery of documents and actually effects the delivery.

## 2.2 Notice

- (1) As stated in paragraph 1 of subsection 2.1(2), one of the basic components of electronic delivery of a document is that an intended recipient of the document have notice of the electronic delivery of the document. Notice can be effected in any manner, electronic or non-electronic, that advises the recipient of the proposed electronic delivery. Examples of ways that notice can be provided are electronic mail, telephone or communication in paper form.
- (2) Some forms of electronic delivery, such as delivery by electronic mail, may not require a separate notice, as the transmission of the electronic mail delivery itself will be sufficient notice to a recipient. On the other hand, a deliverer intending to effect electronic delivery by placing a document on a website and permitting intended recipients to retrieve or download the document should not assume that the availability of the document will be known to recipients without separate notice of its availability being given.
- (3) As described in section 2.1, it is recommended that a deliverer of a document obtain the

consent of an intended recipient to electronic delivery, and deliver the document in accordance with the terms of the consent, in order to satisfy the notice component. The consent could set out the steps that the deliverer will take to give notice to the recipient that a document is being delivered by way of electronic delivery. If a deliverer intended to effect electronic delivery by placing a document on a website, the consent would indicate this fact and indicate how the deliverer would bring to the attention of the intended recipient that a document was available. Alternatively, the consent could evidence the agreement of the recipient to monitor the deliverer's website on a regular basis, thereby eliminating any need for the deliverer to provide separate notice to the recipient.

- (4) It would be appropriate, in certain circumstances, for a deliverer to provide special or additional notice of the electronic delivery of a document to a recipient, even if the recipient has agreed, for example, to monitor a website on an ongoing basis as discussed in subsection (3). This special or additional notice may be appropriate, for example, in cases of special meetings.

## **2.3 Access**

- (1) As stated in paragraph 2 of subsection 2.1(2), one of the basic components of electronic delivery of a document is that the recipient of the document have easy access to the document. As noted above, it is recommended that a consent be used to ensure that the intended recipient can acknowledge possession of the necessary technical ability and resources to access the document.
- (2) The securities regulatory authorities are of the view that there are certain aspects of access that are fundamental to electronic delivery and that cannot be waived by a consent. Regardless of the contents of a consent, the securities regulatory authorities would question the effectiveness of an electronic delivery if those components were not satisfied. Those components are described in subsections (3) to (6).
- (3) Deliverers should take reasonable steps to ensure that electronic access to documents is not burdensome or overly complicated for recipients. In that respect, the electronic systems employed by deliverers should be sufficiently powerful to ensure quick downloading, appropriate formatting and general availability. For example, a deliverer delivering a document by posting it on a website should ensure that the server for the website is capable of handling the volume of recipients attempting to access the document.

- (4) A document should remain available to intended recipients for whatever period of time is appropriate and relevant, given the nature of the document. For example, meeting materials delivered by way of posting to a website should remain posted until at least the date of the meeting.
- (5) A document sent by electronic delivery should be sent in a way that enables the recipient to retain a permanent record of the document, as is the case with paper delivery of a document, if the recipient so chooses.
- (6) It is recommended that deliverers make a paper version of every document delivered by electronic means available at no cost to a recipient upon request by such recipient, regardless of the form in which the document was originally delivered. However, the CSA are aware that some market participants may wish to set up entirely paperless systems. The CSA are of the view that registrants (i.e., brokers and dealers) may use such a business model for newly established businesses or business divisions, but caution that such registrants remain responsible for complying with all of their obligations under securities legislation. The CSA remain of the view that it is not appropriate at this time for issuers, and for market participants who are or may be required to deliver documents on behalf of issuers, to use an entirely paperless business model. It is recommended that such parties continue to make available at no cost to investors paper versions of documents delivered electronically if requested to do so.

## **2.4 Evidence of Delivery**

- (1) As stated in paragraph 3 of subsection 2.1(2), if a deliverer receives a consent given in accordance with this Policy to the electronic delivery of a document, the deliverer is entitled to infer that a recipient actually received the document if it was sent in accordance with the terms of the consent.
- (2) In the absence of consent received from an intended recipient, the securities regulatory authorities emphasize the importance of deliverers obtaining evidence of delivery of a document to a recipient.

## **2.5 Consent to Electronic Delivery**

- (1) As described in subsection 2.1(4), the receipt by a deliverer of a consent by an intended

recipient to electronic delivery, before the delivery of the document, satisfies the notice, evidence and, subject to subsections 2.3(3) to (6), access components of electronic delivery described in subsection 2.1(2) if the electronic delivery is made in accordance with the terms of the consent.

- (2) In order to ensure the adequacy and informed nature of a consent, it is recommended that a consent deal with the following matters:
  1. A list of the types of documents that are electronically deliverable.
  2. A detailed explanation of the electronic delivery process, including whether separate notice will be provided and, if so, how and when that notice will be provided.
  3. Technical requirements for proper electronic retrieval of a document.
  4. Software requirements for proper viewing of a document.
  5. Notice of the availability at no cost to the recipient of a paper version of a document upon request to the deliverer, together with information about how to make this request, if a paper version is to be made available by the deliverer in accordance with the guidelines provided in subsection 2.3(6) of this Policy.
  6. Information about the length of time that a document will be available for electronic delivery.
  7. Details of the process for revoking consent to electronic delivery.
  8. Procedures to be used by the deliverer for maintaining the confidentiality of information regarding the recipient, where necessary.
  9. A statement that the intended recipient is not required to consent to electronic delivery.
- (3) A sample consent form that would evidence understanding of, and agreement to, the information listed in subsection (2) is attached to this Policy as Appendix A. The securities regulatory authorities encourage deliverers to make use of this or a similar type of consent form. A consent may be given electronically or non-electronically.
- (4) The securities regulatory authorities have no objection to a recipient consenting to the



electronic delivery of more than one type of document on an ongoing basis with the same consent form, so that repeated requests for consent will be unnecessary.

- (5) Despite subsection (4), the securities regulatory authorities suggest that blanket consents to "any documents" sent by a deliverer be used with caution, unless care has been taken to ensure that any distinctions between the delivery of different types of documents are adequately dealt with in the consent form.
- (6) The CSA suggest that a consent form address electronic delivery by only one deliverer unless:
  - a) it is clear to the recipient that consent is being sought for the delivery, including future deliveries, of documents by more than one deliverer; and
  - b) the methods of electronic delivery to be used by each deliverer are acceptable to the recipient.
- (7) It is reasonable for a deliverer to consider consent to electronic delivery provided by a recipient to be valid until the deliverer is notified otherwise by the recipient, either in writing or electronically.
- (8) The securities regulatory authorities would not consider a request by a recipient for a paper version of a document to constitute a revocation of prior consent to receive documents by electronic delivery if there is no other indication of revocation of consent.
- (9) The securities regulatory authorities consider it inappropriate for a deliverer to require that a recipient agree to electronic delivery.

## 2.6 Delivery of an Unaltered Document

- (1) As described in paragraph 4 of subsection 2.1(2), effective electronic delivery of a document requires that the document that is received by the recipient not be different from the document delivered or made available by the deliverer. The deliverer should ensure, to the extent possible, that no alteration or corruption of a document occurs during the electronic delivery process. Deficiencies in the completeness or integrity of an electronically delivered document will raise questions as to whether the document has in fact been delivered.
- (2) The issue of the completeness of a document that has been sent by electronic delivery is

one that cannot be dealt with by obtaining consents from intended recipients. Deliverers should ensure that all reasonably appropriate and necessary technical steps are taken to ensure that documents sent by electronic delivery arrive at their destination in a complete and unaltered form. These steps may entail adopting appropriate security measures to ensure that a third party cannot tamper with the document.

## 2.7 Inability to Effect Electronic Delivery

**Inability to Effect Electronic Delivery** - If electronic delivery of documents is attempted by a deliverer but cannot be accomplished for any reason, delivery should be accomplished by an alternative method, such as delivery of the document in paper form.

## 2.8 Timing of Electronic Delivery

**Timing of Electronic Delivery** - Electronic delivery of materials to recipients should be made contemporaneously with the mailing of the paper version of such materials even though the deliverer may be capable of electronically delivering such materials sooner.

### PART 3

## MISCELLANEOUS ELECTRONIC DELIVERY MATTERS

### 3.1 Form and Content of Documents

- (1) For the sake of consistency, documents sent by electronic delivery may follow the formatting requirements set out in the SEDAR Filer Manual, and the securities regulatory authorities have no objection to a document delivered by electronic delivery being altered from the paper version in accordance with these formatting requirements. For example, signatures may appear in typed form rather than graphical signature and text that is required to be in red ink may be presented in capital letters using bold face type. Documents need not necessarily be in SEDAR-acceptable electronic format.
- (2) As with documents filed under SEDAR, documents proposed to be sent by electronic delivery should be recreated in electronic format, rather than scanned into electronic format. This is recommended because scanned documents can be difficult to transmit,

store and retrieve on a cost-efficient basis and may be difficult to view upon retrieval.

## 3.2 Confidentiality of Documents

**Confidentiality of Documents** - Some documents that may be sent by electronic delivery, such as trade confirmations, are confidential to the recipients. Deliverers should take all reasonably necessary steps to ensure that the confidentiality of those documents is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to clients under securities legislation.

## 3.3 Hyperlinks

- (1) The hyperlink function can provide the ability to access information instantly, in the same document or in a different document on the same or another website.
- (2) The use of hyperlinks within a document may not be appropriate for the reasons described in subsection (3), unless the hyperlink is to another point in that same document.
- (3) A deliverer that provides a hyperlink in a document to information outside the document risks incorporating that hyperlinked information into the document and thereby becoming legally responsible for the accuracy of that hyperlinked information. Also, the existence of hyperlinks in a document delivered by electronic delivery to a separate document raises the question of which documents are being delivered - only the base document, or the base document and documents to which the base document is linked. This issue may be particularly relevant in the delivery of a prospectus, in which case care should be taken to ensure that it is clear to a recipient which of the documents being delivered constitute the prospectus.
- (4) For documents sent by electronic delivery that contain hyperlinks to other documents, deliverers are encouraged to clearly distinguish which of the documents are governed by statutory disclosure requirements, and which documents are not. This may be effected, for example, by the use of appropriate headings on each page of the document.
- (5) Deliverers are also reminded that paragraph 7.2(e) of the SEDAR Filer Manual prohibits hyperlinks between documents.

## 3.4 Multimedia Communications

- (1) Multimedia communications are sometimes used to present information in varied combinations of text, graphics, video, animation and sound. It is recommended that any information presented through multimedia communications that cannot be reproduced identically in non-electronic form not be included in statutorily required disclosure documents. This will ensure that all recipients receive the same statutorily required information, regardless of their multimedia capabilities.
- (2) Issuers may use multimedia communications to compile and disseminate publicly available information.
- (3) Deliverers are reminded that multimedia communications are subject to any applicable promotional or advertising restrictions contained in securities legislation. These restrictions may be relevant, for example, when the multimedia communications appear on a deliverer's website or are hyperlinked to a deliverer's website.

## PART 4 EFFECTIVE DATE

### 4.1 Effective Date

**Effective Date** - This National Policy comes into force on January 1, 2000.

# APPENDIX A

## SAMPLE CONSENT FORM

### CONSENT TO ELECTRONIC DELIVERY OF DOCUMENTS

Securityholder Name:

TO: Name of Deliverer[s]

I have read and understand this "Consent to Electronic Delivery of Documents" and consent to the electronic delivery of the documents [and/or types of documents] listed below that the deliverer[s] elect[s] to deliver to me electronically, all in accordance with my instructions below.

1. [list the documents and/or types of documents which are covered by this consent to electronic delivery]
2. [give a detailed explanation of the electronic delivery process, including whether separate notice will be provided, and if so, how and when that notice will be provided]
3. [state the technical requirements for proper electronic retrieval of documents]
4. [state the software requirements for proper viewing of a document]
5. I acknowledge that I may receive from the deliverer a paper copy of any documents delivered electronically at no cost if I contact the deliverer by telephone, regular mail or electronic mail at [insert phone, address, electronic mail, etc.] *(may not be applicable in certain circumstances)*.
6. [describe the length of time that a document will be available for viewing and downloading]
7. I understand that I will be provided with a paper copy of any documents delivered electronically if electronic delivery fails.
8. [explain procedures to be used to maintain confidentiality of information regarding the recipient, where necessary]
9. I understand that my consent may be revoked or changed, including any change in the

electronic mail address to which documents are delivered (if I have provided an electronic mail address), at any time by notifying the deliverer of such revised or revoked consent by telephone, regular mail or electronic mail at [insert phone, address, electronic mail, etc.].

10. I understand that I am not required to consent to electronic delivery.

Décision 1999-C-0617 -- 14 décembre 1999

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NOT IN FORCE