

Notice and Request For Comment: Proposed Policy Statement 11-201 respecting Electronic Delivery of Documents

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Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for a 60-day comment period proposed amendments (the Proposed Amendments) to National Policy 11-201 *Delivery of Documents by Electronic Means* and, in Québec, *Notice 11-201 related to the Delivery of Documents by Electronic Means* (Policy 11-201 or the Policy). If these Proposed Amendments are adopted, they would replace the current version of Policy 11-201. In Québec, Policy 11-201 and the Proposed Amendments will become *Policy Statement 11-201 respecting Electronic Delivery of Documents*.

Proposed Text

The proposed text of the Policy is published with this notice.

Background and Provisions of Canadian Securities Legislation to which the Policy Relates

The CSA recognize that the use of electronic communications can enable securities industry participants to disseminate information in a more cost-efficient, timely and widespread manner than by paper.

Policy 11-201 states the views of the CSA on how the obligations imposed under Canadian securities legislation to deliver documents can be satisfied by electronic means. The original version of Policy 11-201 *Delivery of Documents by Electronic Means* came into effect on January 1, 2000. The Policy was amended on February 14, 2003 to include guidance on proxy solicitation.

Since the implementation of Policy 11-201 in 2000, there have been changes to legislation affecting electronic commerce and transactions, including amendments to corporate legislation and the introduction of legislation governing electronic transactions and protection of personal information. Electronic communications have also become much more common than when the Policy was first drafted.

Substance and Purpose of the Proposed Amendments

We think that it is time to review and update Policy 11-201 to recognize the changes to other non-securities legislation and the increased familiarity of securities industry participants and investors with the electronic delivery of documents.

The following are the key changes that would result from the Proposed Amendments:

- Alerting stakeholders to other legislation that addresses the electronic delivery of documents.
- Simplifying guidance on the form and substance of securityholder consents
- Reducing technology-related language to avoid references to particular technologies that may become obsolete.
- Renaming Policy 11-201 as Policy Statement 11-201 respecting Electronic Delivery of Documents.

Summary of the Proposed Amendments

Interaction with Other Legislation

Since we originally developed Policy 11-201, there have been numerous legislative changes that concern electronic delivery of documents. Some of the relevant legislative changes include:

- All jurisdictions except the Northwest Territories have passed electronic commerce legislation (ECAs) that governs electronic transactions.
- Certain corporate legislation now provides explicit guidance on the electronic delivery of documents. For example, the regulations to the *Canada Business Corporations Act* provide guidance on the electronic delivery of documents for corporations governed by that act. The corporate laws of Ontario and of Alberta adopt the requirements under the ECA of the respective jurisdiction for sending electronic documents.
- Self regulatory organizations like the MFDA and IIROC have also issued guidance on the electronic delivery of documents.
- The federal government and governments in other jurisdictions have adopted privacy legislation.

We are proposing to amend the Policy to note the interaction of securities legislation with this other legislation. We do not propose to provide guidance on the interpretation or application of non-securities legislation in relation to electronic delivery.

Consent and the Consent Form

Currently, Policy 11-201 discusses in detail the manner and form for getting consent from securityholders to facilitate electronic delivery. However, securities legislation does not require a deliverer to obtain the consent of the intended recipient nor does it prescribe the form or content of any consent. Securities legislation instead focuses on requirements to deliver various documents.

Statutory requirements concerning consent are generally provided for in electronic commerce legislation or corporate law. This legislation may require an express consent or may permit a deliverer to rely on an inferred consent for an electronic delivery to be effective.

We therefore propose to reduce most of the guidance to stakeholders on the form and content of a consent, including the sample consent form in Appendix A of the current Policy 11 201.

However, we propose to emphasize that the process of obtaining express consent, and then delivering the document in accordance with that consent, may enable the deliverer to achieve some of the basic components of electronic delivery that we have identified in the Policy.

Unpublished Materials

In proposing the amendments to Policy 11-201, we have not relied on any significant unpublished study, report, or other written materials.

Local Notices and Amendments

Certain jurisdictions will publish with this notice other information required by local securities legislation.

Request for Comments

We welcome your comments on the proposed amendments to Policy 11-201. In addition to any general comments you may have, we also invite comments on the following specific questions:

For Industry

- Do you believe that the Policy presents any impediments to electronic delivery?
- The Policy describes four basic components for electronic delivery. Do the requirements of other legislation, including electronic commerce legislation and corporate legislation, impact your ability to satisfy the four basic components for electronic delivery described in the Policy?
- We have proposed amendments to remove guidance on the recommended form and substance of a consent to electronic delivery. Please comment on this proposal.

For Investors

- Are you receiving documents electronically? If not, would you prefer to do so?
- Do you agree that the four basic components for electronic delivery provide an appropriate framework for electronic delivery?
- We have proposed amendments to remove guidance on the recommended form and substance of a consent to electronic delivery. Please comment on this proposal.

Please submit your comments in writing on or before **June 29, 2011**. If you are not sending your comments by e-mail, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
 Alberta Securities Commission
 Saskatchewan Financial Services Commission
 Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 New Brunswick Securities Commission
 Office of the Attorney General, Prince Edward Island
 Nova Scotia Securities Commission
 Securities Commission of Newfoundland and Labrador
 Registrar of Securities, Northwest Territories
 Registrar of Securities, Yukon Territory
 Registrar of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA.

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Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of the following:

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