National Policy Statement 40
Timely Disclosure

A. INTRODUCTION

This policy statement applies to all issuers whose securities are publicly traded in Canada, including reporting issuers or the equivalent in any Canadian jurisdiction. It replaces Uniform Act Policy 2-12, and is effective as of December 1, 1987.

Where the requirements of the Policy go beyond the technical requirements of existing legislation, the securities administrators and stock exchanges request that issuers, their counsel, and market professionals regard such requirements as guidelines to follow in order to assist in the operation in Canada of an open and fair marketplace which merits the trust and confidence of the investing public.

Issuers are reminded that this policy statement does not replace the disclosure requirements set out in the provincial securities statutes and compliance with this Policy must be supplementary to compliance with the relevant provincial statutes. Moreover, if securities of an issuer are listed on one or more stock exchanges in Canada, the issuer must also comply with the rules of the relevant exchange(s) concerning timely disclosure.

Further, nothing in this Policy Statement abrogates from the discretion of a securities administrator to request information from an issuer or to issue cease trading orders or apply other sanctions within its jurisdiction where, in the view of the administrator, there is inadequate public disclosure as to the affairs of an issuer whose securities are publicly traded.

B. BASIC PRINCIPLE - DISCLOSURE OF MATERIAL INFORMATION

It is a cornerstone principle of securities regulation that all persons investing in securities have equal access to information that may affect their investment decisions. Public confidence in the integrity of the securities markets requires that all investors be on an equal footing through timely disclosure of material information concerning the business and affairs of reporting issuers and of companies whose securities trade in secondary markets. Therefore, immediate disclosure of all material information through the news media is required.

C. DETERMINING THE RELEVANT REGULATORY AUTHORITY FOR CONSULTATION, DISCLOSURE AND FILING OF MATERIAL INFORMATION

The following sections discuss the meaning of “material information” and how such information is to be disclosed. This section discusses the general rules for determining which securities administrator and/or stock exchange is to be consulted for requirements relating to, and the disclosure and filing of, material information. Any references to “the relevant securities regulator” in the following commentary should refer to this part of the policy statement.

It is intended that the number of regulatory authorities that must be consulted in a particular matter be kept to a minimum. There are six general principles in determining the relevant securities regulator for consultation on, disclosure, and filing of material information. The particular rules that apply depend on the jurisdiction, whether the security is listed and, if so, the particular exchange on which the security is listed. These rules are as follows:

1. In the case of unlisted securities, the relevant securities regulator is the administrator in the jurisdiction having the principal market for the unlisted security.

2. In the case of securities listed on The Toronto Stock Exchange ("TSE"), the Montreal Exchange ("ME"), or the Vancouver Stock Exchange ("VSE") the stock exchange is the relevant securities regulator, although the issuer may consult with the securities administrator of the particular jurisdiction.

3. In the case of securities listed on any other Canadian stock exchange, both the stock exchange and the securities administrator in the jurisdiction having the principal market for the listed security are considered to be the relevant securities regulators.

4. In the case of securities listed on two or more Canadian stock exchanges, each stock exchange is a relevant securities regulator, and must be dealt with. The issuer may also consult with the securities administrator in the jurisdiction having the principal market for the listed security.

5. Material change reports and media releases must be filed in accordance with the requirements of legislation in jurisdictions having such legislation. See Part D.

6. The rules of all stock exchanges upon which securities are listed must be observed.

These rules for determining the relevant securities regulator for consultation, disclosure, and filing of material information are fundamental to the commentary that follows. For example, where a news release is required these rules will determine the relevant securities regulator(s) for disclosure and the jurisdiction(s) in which the news release must be filed.

D. MATERIAL INFORMATION

The requirement to disclose material information supplements the provisions of the Securities Acts of Alberta, British Columbia, Ontario, Quebec and Nova Scotia which require disclosure of any "material change" by issuing a press release, and filing with the securities administrator the press release in the case of Quebec, and the press release and a material change report in the case of Alberta, British Columbia, Ontario and Nova Scotia.

Definition

Material information is any information relating to the business and affairs of an issuer that results in or would reasonably be expected to result in a significant change in the market price or value of any of the issuer's securities.

Material information consists of both material facts and material changes relating to the business and affairs of an issuer. The market price or value of an issuer's securities is sometimes affected by, in addition to material information, the existence of rumours and speculation. Where this is the case, the issuer may be required to make an announcement as to whether such rumours and speculation are factual or not.

It is the responsibility of each issuer to determine what information is material according to the above definition in the context of the issuer's own affairs. The materiality of information varies from one issuer to another according to the size of its profits, assets and capitalization, the nature of its operations and many other factors. An event that is “significant” or major” in the context of a smaller issuer's business and affairs is often not material to a larger issuer. The issuer itself is in the best position to apply the definition of material information to its own unique circumstances.

Consultation with Regulatory Authorities

Decisions on disclosure require careful subjective judgments and issuers are encouraged to consult on a confidential basis the relevant regulatory authority and, where applicable, the relevant exchange when in doubt as to whether disclosure should be made.
Immediate Disclosure

An issuer is required to disclose material information concerning its business and affairs forthwith upon the information becoming known to management, or in the case of information previously known, forthwith upon it becoming apparent that the information is material. Issuers are required to provide the relevant regulatory authority with a copy of any news release concurrently upon dissemination to the public.

Immediate release of information is necessary to ensure that it is promptly available to all investors and to reduce the risk that persons with access to that information will act upon undisclosed information. Unusual trading marked by significant changes in the price or trading volumes of any of an issuer's securities prior to the announcement of material information is embarrassing to management and damaging to the reputation of the securities market since the investing public may assume that certain persons benefited from access to material information which was not generally disclosed.

In restricted circumstances disclosure of material information may be delayed for reasons of corporate confidentiality. See Part G.

Developments to be Disclosed

Issuers are not generally required to interpret the impact of external political, economic and social developments on their affairs. However, if an external development will have or has had a direct effect on the business and affairs of an issuer that is both material (in a sense outlined above) and uncharacteristic of the effect generally experienced by other issuers engaged in the same business or industry, the issuer is urged to explain, where practical, the particular impact on them. For example, a change in government policy that affects most issuers in a particular industry does not require an announcement, but if it affects only one or a few issuers in a material way, such issuers should make an announcement.

The market price or value of an issuer's securities may be affected by factors relating directly to the securities themselves as well as by information concerning the issuer's business and affairs. For example, changes in an issuer's issued capital, stock splits, redemptions and dividend decisions may all impact upon the market price of a security.

Actual or proposed developments that are likely to give rise to material information and thus to require prompt disclosure include, but are not limited to, the following:

1. Changes in share ownership that may affect control of the issuer.

2. Changes in corporate structure, such as reorganizations, amalgamations etc.

3. Take-over bids or issuer bids.

4. Major corporate acquisitions or dispositions.

5. Changes in capital structure.

6. Borrowing of a significant amount of funds.

7. Public or private sale of additional securities.

8. Development of new products and developments affecting the issuer's resources, technology, products or market.

9. Significant discoveries by resource companies.

10. Entering into or loss of significant contracts.

11. Firm evidence of significant increases or decreases in near-term earnings prospects.

12. Changes in capital investment plans or corporate objectives.

13. Significant changes in management.

14. Significant litigation.

15. Major labour disputes or disputes with major contractors or suppliers.

16. Events of default under financing or other agreements.

17. Any other developments relating to the business and affairs of the issuer that would reasonably be expected to significantly affect the market price or value of any of the issuer's securities or that would reasonably be expected to have a significant influence on a reasonable investor's investment decision.

Disclosure is only required where a development is material according to the definition of material information. Announcements of an intention to proceed with a transaction or activity should be made when a decision has been made to proceed with it by the issuer's board of directors, or by senior management with the expectation of concurrence from the board of directors. However, a corporate development in respect of which no firm decision has yet been made but that is reflected in the market place may require prompt disclosure. See “Rumours” under Part E and Part G “Confidentiality”.

Forecasts of earnings and other financial forecasts need not be disclosed, but where a significant increase or decrease in earnings is indicated in the near future, such as in the next fiscal quarter, this fact must be disclosed. Forecasts should not be provided on a selective basis to certain investors not involved in the management of the affairs of the issuer. If disclosed, they should be generally disclosed. Reference should be made to National Policy Statement No. 48, “Future-Oriented Financial Information”.

E. DISCLOSURE

Decisions as to the dissemination of information and the temporary halting of trading are, in the case of listed securities, usually made by the relevant stock exchange, with or without consultation with the securities administrator of the jurisdiction. However, in certain circumstances, trading in a listed security may be halted as a result of a cease trading order issued by a securities administrator. Decisions relating to unlisted securities are made by securities administrators.

Timing of Announcements

The general principle is that significant announcements are required to be released immediately. This rule is subject to exception in certain situations for issuers whose securities are listed for trading on a stock exchange or other organized market (at this time only CDN in Ontario). Subject to the approval of the relevant securities regulator, release of certain announcements may be delayed until the close of trading, provided the material information is not reflected in the price of the stock. Issuer officials are encouraged to seek assistance and direction from the relevant securities regulator as to when an announcement should be released and whether trading in the issuer's securities should be halted for dissemination of an announcement.

Pre-Notification

The policy of immediate disclosure frequently requires that media releases be issued during trading hours, especially when an important corporate development has occurred. Where this is so, it is essential that issuer officials notify the relevant securities regulator by telephone prior to issuance of a media release. The relevant securities regulator will then be able to determine whether trading in any of the issuer's securities should be temporarily halted.

Where a media release is to be issued during trading hours, securities administrators of provinces in which there is a market for the securities and stock exchanges or where securities are listed should be supplied with a copy forthwith upon its release.

Trading Halts

If an announcement is to be made during trading hours, trading in the stock may be halted until the announcement is made public and disseminated. The relevant securities regulator will determine the amount of time necessary for dissemination in any particular case, which determination will be dependent upon the significance and complexity of the announcement. Issuers should understand that a trading halt does not reflect upon the reputation of an issuer's management nor upon the quality of its securities, but is simply for the purpose of providing for adequate dissemination of the relevant information.

In order to determine whether a trading halt is justified, the relevant securities regulator will consider the impact which the announcement is expected to have on the market for the issuer's securities. Any trading halts that are imposed are normally for less than a two hour duration. Where an issuer's securities are listed or traded elsewhere, those exchanges or other markets will coordinate trading halts. There is a convention among exchanges, NASDAQ and CDN that trading in a security traded or listed in more than one market shall be halted and resumed at the same time in each market.

Rumours

Unusual market activity is often caused by the presence of rumours. If the issuer makes a public statement about a rumoured activity, the disclosure must be accurate and not misleading. It is impractical to expect management to be aware of, and comment on, all rumours, but when market activity indicates that trading is being unduly influenced by rumour the relevant securities administrator will request that the issuer make a clarifying statement. A trading halt may be imposed pending a “no corporate developments” statement from the issuer. If a rumour is correct in whole or in part, the issuer, in response to the request, must make immediate disclosure of the relevant material information and a trading halt may be imposed pending release and dissemination of that information.

F. DISSEMINATION

Transmission to Media

A media release should be transmitted to the media by the quickest possible method and in a manner which provides for wide dissemination. Media releases should be made to news services that disseminate financial news nationally, to the financial press and to daily newspapers that provide regular coverage of financial news.

Content of Announcements

Announcements of material information should be factual and balanced, neither over-emphasizing favourable news nor under-emphasizing unfavourable news. Unfavourable news must be disclosed just as promptly and completely as favourable news. While it is clear that news releases may not be able to contain all the details that would be included in a prospectus or similar document, news releases should contain sufficient detail to enable media personnel and investors to appreciate the true substance and importance of the information so that investors may make informed investment decisions. The guiding principle should be to communicate clearly and accurately the nature of the information, without including unnecessary details, exaggerated reports or editorial commentary designed to colour perception of the announcement. The issuer should be prepared to supply further information when appropriate; the name and telephone number of the company official available for comment should be provided in the release.

Misleading Announcements

While all material information must be released immediately, the timing of an announcement of material information must be handled carefully, since either premature or late disclosure may damage the reputation of the securities market. Misleading disclosure activity designed to influence the price of a security is improper. Misleading news releases send signals to the investment community which are not justified by an objective examination of the facts, and may detract from the issuer's credibility. Announcements of an intention to proceed with a transaction or activity should not be made unless the issuer has the ability to carry out the intent (although proceeding may be subject to contingencies) and a decision has been made to proceed with the transaction or activity by the issuer's board of directors, or by senior management with the expectation of concurrence from the board of directors.

G. CONFIDENTIALITY

When Information May be Kept Confidential

In certain circumstances disclosure of material information concerning an issuer's business and affairs may be delayed and kept confidential temporarily where immediate release of the information would be unduly detrimental to the issuer's interests. In such a situation, issuers are required under the law of certain provinces to disclose to the securities administrator on a confidential basis, information that is not being disclosed immediately to the public. Issuers are reminded of subsection 75(4) of the Securities Act (Ontario), subsection 67(3) of the Securities

Act (British Columbia), subsection 118(3) of the Securities Act (Alberta), subsection 84(3) of the Securities Act, 1988 (Saskatchewan), subsection 81(4) of the Securities Act (Nova Scotia), and subsection 76(4) of the Securities Act (Newfoundland) which stipulate that a reporting issuer that wishes to keep information confidential must renew that request every 10 days. Subsection 118(4) of the Securities Act (Alberta) also provides, however, that a reporting issuer must file and issue a news release and file a material change report not later than 180 days from the day such changes became known to the issuer. Section 74 of the Securities Act (Quebec) provides that a reporting issuer need not prepare a press release where senior management has reasonable grounds to believe not only that disclosure would be seriously prejudicial to the issuer, but also that no transaction in the issuer's securities has been or will be carried out on the basis of the information not generally known. The issuer must issue and file a press release only once the circumstances justifying non-disclosure have ceased to exist.

Examples of instances in which disclosures might be unduly detrimental to an issuer's interests are where:

(1) Release of the information would prejudice the issuer's ability to pursue specific and limited objectives or to complete a transaction or series of transactions that are under way. For example, premature disclosure of the fact that an issuer intends to purchase a significant asset may increase the cost of the acquisition.

(2) Disclosure of the information would provide competitors with confidential corporate information that would significantly benefit them. Such information may be kept confidential if the issuer is of the opinion that the detriment to it resulting from disclosure would outweigh the detriment to the market in not having access to the information. A decision to release a new product, or details on the features of a new product, may be withheld for competitive reasons, but such information should not be withheld if it is available to competitors from other sources.

(3) Disclosure of information concerning the status of ongoing negotiations would prejudice the successful completion of those negotiations. It is unnecessary to make a series of announcements concerning the status of negotiations with another party concerning a particular transaction. If it seems that the situation is going to stabilize within a short period, public disclosure may be delayed until a definitive announcement can be made. Disclosure should be made once “concrete information” is available, such as a final decision to proceed with the transaction or, at a later point in time, finalization of the terms of the transaction.

Withholding of material information on the basis that disclosure would be unduly detrimental to the issuer's interests can only be justified where the potential harm to the issuer or to investors caused by immediate disclosure may reasonably be considered to outweigh the undesirable consequences of delaying disclosure. While recognizing that there must be a trade-off between an issuer's legitimate interest in maintaining secrecy and the investing public's right to disclosure of corporate information, securities administrators and stock exchanges discourage delaying disclosure for a lengthy period of time since it is unlikely that confidentiality can be maintained beyond the short term.

Maintaining Confidentiality

Where disclosure of material information is delayed, the issuer must maintain complete confidentiality. In the event that such confidential information, or rumours respecting the same, is divulged in any manner (other that in the necessary course of business), the issuer is required to make an immediate announcement on the matter. The relevant securities regulator must be notified of the announcement, in advance, in the usual manner. During the period before material information is disclosed, market activity in the issuer's securities should be closely monitored by the issuer. Any unusual market activity probably means that news of the matter is being disclosed and that certain persons are taking advantage of it. In such case, the relevant securities regulator should be advised immediately and a halt in trading will be imposed until the issuer has made disclosure on the matter.

At any time when material information is being withheld from the public, the issuer is under a duty to take precautions to keep such information completely confidential. Such information should not be disclosed to any of the issuer's officers, employees or advisers, except in the necessary course of business. The directors, officers and employees of an issuer should be reminded on a regular basis that confidential information obtained in the course of their duties must not be disclosed.

H. Insider Trading

Issuers should make insiders and others who have access to material information about the issuer before it is generally disclosed aware that trading in securities of the issuer while in possession of undisclosed material information or tipping such information is an offence under the securities laws of a number of jurisdictions, and may give rise to civil liability.

In any situation where material information is being kept confidential because disclosure would be unduly detrimental to the issuer's best interests, management is under a duty to take every possible precaution to ensure that no trading whatsoever takes place by any insiders or persons in a “special relationship” with the issuer in which use is made of such information before it is generally disclosed to the public.

In the event that a stock exchange or securities administrator is of the opinion that insider or improper trading may have occurred before material information has been disclosed and disseminated, that stock exchange or securities administrator may require that an immediate announcement be made disclosing such material information.

I. RECIPIENTS OF COMMUNICATIONS

Material change reports and media releases should be delivered to the Market Surveillance Branch or the equivalent in all jurisdictions where there is a legal requirement to file such reports and media releases.

Confidential communications should be made as follows:

British Columbia Securities Commission -
Deputy Superintendent, Registration & Statutory Filings or, if unavailable,
Deputy Superintendent, Compliance & Enforcement, or Superintendent of Brokers

Alberta Securities Commission - Director, Market Standards

Saskatchewan Securities Commission - Registrar or, if unavailable, Chairman
Manitoba Securities Commission - Director or, if unavailable, Chairman or Senior Counsel

Ontario Securities Commission - Office of the General Counsel

Commission des valeurs mobilières du Québec - Directeur du contentieux, or, if unavailable Vice-President or President

Government of New Brunswick - Administrator of the Securities Act

Nova Scotia Securities Commission - Director, Securities

Government of Newfoundland and Labrador - Director of Securities

Government of Prince Edward Island - Registrar

Office of the Registrar of Securities for the Northwest Territories - Registrar

Office of the Registrar of Securities for Yukon Territory - Registrar of Securities or, if unavailable, Deputy Registrar of Securities

It is suggested that confidential written communications be made in sealed envelopes within outer envelopes.