

National Policy Statement 42 (Interim)

Advertising of Securities on Radio or Television

Part I – Background

Until September 1986, the regulations established by the Canadian Radio and Television Commission (the "C.R.T.C.") prohibited the advertising of securities on radio or television, except for certain exempt securities. These restrictions were removed by the C.R.T.C. for radio as of September 19, 1986, and for television as of September 1, 1988.

In its public notice dated September 19, 1986, announcing amendments to regulations respecting radio broadcasting the C.R.T.C. stated:

"The Commission has also eliminated provisions dealing with the advertising of bonds, shares and other securities as it considers that those matters do not fall within its mandate under the Broadcasting Act."

In response to the repeal of the restrictions on advertising of securities by the C.R.T.C., the Canadian Securities Administrators issued a Draft Policy Statement No. 42 in April of 1988, and invited public comment. The effect of the Draft Policy was essentially to replace the C.R.T.C. restrictions with similar restrictions. The Draft Policy was intended to be an interim measure while a thorough study of the issues involved in the advertising of securities generally was undertaken.

Such a study involves the consideration of, among other matters, the report of the private sector committee given to the Ontario Securities Commission in October 1987, the registration requirements under securities legislation, and recent decisions of the courts, and will involve consultation with the broadcast industry.

In the meantime, in view of the September 1, 1988, repeal of the C.R.T.C. regulations in respect of the advertising of securities on television, the Canadian Securities Administrators are of the view that an Interim Policy should be finalized to restrict advertising before problems occur and economic interests arise that might be prejudiced by future restrictions.

Part II – Purpose of the Interim Policy

Provincial securities regulation serves to protect investors within the province by regulating the conduct of persons involved in the sale of securities, and by regulating disclosure in respect of both new issues and securities traded on the secondary market.

It is appropriate that securities regulation restrict the advertising of securities on the basis of investor protection, so long as the restrictions are reasonable and not unduly restrictive in the light of their objective.

The Canadian Securities Administrators are of the view that the most effective way of ensuring that advertising of securities is not false, misleading or deceptive is to restrict such advertising to the period of a distribution by way of prospectus, and to require that the advertising be placed either by registrants, who have a direct responsibility to both their clients and the securities administrators, or by the issuers that are making the distribution.

A brief advertisement of securities may have a high impact but nonetheless be misleading, although it may not be intentionally false or deceptive, as it cannot by its nature give appropriate cautions or address the issue of suitability. Accordingly, only very basic information specifically as set out in the Policy Statement may be included in advertisements of securities other than exempted securities.

Securities exempted from the Policy are those in respect to which investors have historically been viewed as not requiring registration and prospectus protections under securities legislation.

Part III – Statement of Policy

No person or company shall promote, by radio or television broadcast, investment in specific securities other than those exempted securities listed in Part IV below, except in accordance with this Policy Statement.

Advertisements of specific securities, other than exempted securities, the contents of which are restricted in accordance with Part V below, may be placed on radio or television only during a distribution of the securities pursuant to a prospectus or preliminary prospectus for which a receipt has been issued by the securities administrator in the jurisdiction in which the advertisement is placed. Advertising of such securities may be placed only by a person or company who is registered as a dealer in the jurisdiction in which the advertisement is placed and who is authorized to sell such securities, or by the issuer of the securities.

Issuers placing advertisements directly rather than through a registrant are reminded that the advertising of specific securities is considered under provincial securities legislation to be trading in securities and, accordingly, registration as a securities issuer or an exemption from registration must be obtained from the jurisdiction in which the advertisement is placed.

Where any person contravenes this Policy Statement, it may, in the discretion of the securities administrator having jurisdiction, result in the issuance of a cease trade order in respect of the security in question, the suspension or revocation of the registration of any registrant involved, or such other action as is warranted in the circumstances.

This Policy Statement is not intended to affect advertisements by issuers in respect to publicity campaigns that are aimed at either selling products or raising public awareness in respect to the issuer, provided that they are not accompanied by an advertisement for the sale of securities. In this context, a reference to a listing on an exchange is not appropriate. Further, nothing in this Policy Statement prohibits corporate or generally informative advertising by registrants.

Part IV – Exempted Securities

The following securities are exempted from this Policy Statement:

1. Bonds, debentures or other evidences of indebtedness,
 - (a) of or guaranteed by the Government of Canada or any province of Canada;
 - (b) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province and collectable by or through the municipality in which such property is situated; or
 - (c) of or guaranteed by a bank to which the Bank Act (Canada) applies, or by a trust company or loan corporation licensed or registered under provincial or federal regulatory statutes.
2. Certificates or receipts issued by a loan or trust company registered under a provincial or federal regulatory statute for moneys received for guaranteed investment.

Part V – Permitted Advertisements

Advertising of specific securities as permitted in Part III, other than exempted securities, is restricted to giving the following information:

- (a) the name of the issuer of the securities;
- (b) a concise statement of the nature of the business of the issuer;
- (c) the specific type of securities offered (e.g., common shares, subordinated shares, bonds, etc.), the number offered for subscription and their price;
- (d) a concise statement of whether the securities are qualified for special tax treatment;
- (e) the name of the registrant, if any, placing the advertisement; and
- (f) instructions for obtaining a copy of the prospectus or preliminary prospectus.

Notwithstanding section 15.02 of National Policy Statement No. 39, advertising of specific mutual funds is permitted on the same restricted basis.

Part VI – Duration of Policy

This Policy will expire on the date a comprehensive National Policy on the advertisement of securities in all media is adopted in final form.