

MSC Notice 2001-17

NOTICE OF MSC RULE 2001-15 - NATIONAL INSTRUMENT 33-102 REGULATION OF CERTAIN REGISTRANT ACTIVITIES AND COMPANION POLICY 33-102CP

Notice of Rule and Companion Policy

The Manitoba Securities Commission (the "Commission") has, under section 149.1 of the *Securities Act* (Manitoba) (the "Act") made National Instrument 33-102 Regulation of Certain Registrant Activities (the "National Instrument") as a rule under the Act. The Commission has also adopted Companion Policy 33-102.

The National Instrument will be published in the Manitoba Gazette and will come into force as a rule on August 1, 2001.

Background

The National Instrument is an initiative of the Canadian securities regulatory authorities. The Commission published a draft of the National Instrument on August 11, 2000 as Commission Notice 2000-26 ("August 2000 Draft National Instrument") which was based on the following instruments:

Proposed National Instrument 33-102	Distribution of Securities at Financial Institutions
Companion Policy 33-102CP	Distribution of Securities at Financial Institutions
Proposed National Instrument 33-103	Distribution Networks
Proposed National Policy 33-201	Networking and Selling Arrangement Notices
Proposed National Instrument 33-104	Selling Arrangements
Companion Policy 33-104CP	Selling Arrangements

(collectively, "1997 Draft Instruments and Policies") along with notices that relate to each National Instrument.

The 1997 Draft Instruments and Policies were based on *Principle of Regulation 1 - Re: Distribution of Mutual Funds by Financial Institutions*, *Principle of Regulation 2- Re: Full Service and Discount Brokerage Activities of Securities Dealers in Branches of Related Financial Institutions*, and *Principle of Regulation 3- Re: Activities of Registrants Related to Financial Institutions* (the "Principles of Regulation").

For further background, please see the notice published with the July 2000 Draft National Instrument and the 1997 Draft Instruments and Policies.

Purpose of the National Instrument and Companion Policy

The purpose of the National Instrument and Companion Policy is to ensure that clients dealing with registrants are provided with certain disclosure about the products they are purchasing and the risks that they face.

Summary of Written Comments Received

The Canadian securities regulatory authorities received five comment letters in response to the publication of the August 2000 Draft National Instrument. The Canadian securities regulatory authorities thank the commenters for providing their comments. For a detailed summary of the comments received, please see Appendix A.

In response to the comments, the Canadian securities regulatory authorities have made a number of changes to the National Instrument. As the changes made to the National Instrument are not considered by the Canadian securities regulatory authorities to be material, the National Instrument is not subject to a further comment period.

Changes to the National Instrument

1. Part 3 – Disclosure of Confidential Retail Client Information

i. Responses to Comments Received

In response to comments received, the Canadian securities regulatory authorities have

- (a) amended section 3.1 (now section 3.2) to include a reference to circumstances “expressly permitted by law”;
- (b) allowed registrants to provide to a retail client a description of a class of third party in paragraph 3.2(a)(i);
- (c) added section 3.4 which provides exemptions that no consent is necessary when confidential information is disclosed in certain circumstances; and
- (d) clarified in the Companion Policy that registrants cannot use negative options to obtain consent for the disclosure of confidential client information.

ii. Non-Application of Part 3 in Québec

Part 3 of the National Instrument will not apply to registrants registered in Québec with respect to their dealings with retail clients in Québec because those registrants are subject to *An Act Respecting the Protection of Personal Information in the Private Sector* R.S.Q., c. P-39.1 (“Québec Protection of Personal Information Act”). Registrants in Québec must, with regard to the retention, use and communication of personal information, (a) ensure confidentiality of the personal information through security measures; (b) ensure that such information is accurate and up-to-date; (c) obtain the consent of the person concerned prior to using personal information when such use does not pertain to the purpose of the file or once the purpose of the personal information file has been

accomplished; (d) obtain the consent of the person concerned before communicating personal information to third parties; and (e) ensure that the consent given for the use and communication is manifest, free, enlightened, and given for a specific purpose and limited time.¹

Registrants in Québec may, exceptionally, communicate personal information without the consent of the person concerned in the case, for example, of information communicated to a third party for commercial prospecting purposes. The Québec Protection of Personal Information Act sets forth conditions for such communication. Further, it should be noted that the communication of personal information for study, research or statistical purposes without the consent of the person concerned is subject to the approval of the Commission d'accès à l'information du Québec (the «CAI»). In order for such approval to be granted, the CAI must be of the opinion that the intended use of the personal information is not frivolous and that such information will be used in a manner that will ensure its confidentiality.²

Registrants in Québec should also note that their authorized employees, mandataries or agents may have access to personal information without the consent of the person concerned only if the information is needed for the performance by these employees, mandataries and agents of their duties or the execution of their mandate. Finally, registrants in Québec should note that the Québec Protection of Personal Information Act sets forth certain conditions with regard to the communication outside Québec of personal information concerning their retail clients residing in Québec.³

The foregoing is not an exhaustive summary and registrants in Québec should address any questions they may have with respect to the protection of personal information of their retail clients to the CAI (1-888-528-7741, website: www.cai.gouv.qc.ca).

iii. Transitional Provision for Obtaining Consent from Existing Retail Clients

In section 4.4 of the Companion Policy, the Canadian securities regulatory authorities recognize that registrants have existing clients that have already provided consent for the disclosure of confidential information. Registrants who have obtained consent from existing retail clients to disclose confidential information do not have to get positive consent from those clients to continue to disclose that information. However, the registrant is required to send out a notice to all retail clients within 90 days of the implementation of the National Instrument that provides retail clients with the information set out in subsection 3.2(a) and notifies them of their right to withdraw their consent.

2. *Part 6 – Distribution of Securities in a Financial Institution*

The Canadian securities regulatory authorities have removed the requirement to provide certain disclosure in the promotional material of registrants that is distributed by or

¹ See sections 10 to 15 of the Québec Protection of Personal Information Act.

² See sections 18 and 21 of the Québec Protection of Personal Information Act.

³ See sections 20 and 17 of the Québec Protection of Personal Information Act.

displayed in an office or branch of a Canadian financial institution. This section was deleted because it is the view of the Canadian securities regulatory authorities that the National Instrument does not generally deal with promotional material and that this disclosure is currently provided to clients in other documentation received, such as a mutual fund prospectus.

Networking Arrangement Notices

The securities regulatory authority in each of British Columbia, Ontario, Manitoba, Québec and Newfoundland intends to take the necessary actions to have the requirement to file notice of a networking arrangement in its regulation, rules or policies repealed or revoked. With ten years experience, registrants are able to determine what is and is not an acceptable networking arrangement through an examination of existing securities legislation and position papers.

For details about the specific steps taken by any province or territory and the timing of the actions to be taken, please contact staff in that jurisdiction listed below.

In Manitoba, Ontario & British Columbia, upon the implementation of the National Instrument, registrants will no longer have to file a notice of a networking arrangement.

Rescission of the Principles of Regulation

“Principle of Regulation 1 - Re: Distribution of Mutual Funds by Financial Institutions, Principle of Regulation 2- Re: Full Service and Discount Brokerage Activities of Securities Dealers in Branches of Related Financial Institutions, and Principle of Regulation 3- Re: Activities of Registrants Related to Financial Institutions are rescinded.”

Questions

Questions may be referred to any of:

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The National Instrument

The text of the National Instrument and the Companion Policy follows.

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