

MSC Notice 2001-30

**NOTICE OF POLICY
UNDER THE SECURITIES ACT**

**MANITOBA SECURITIES COMMISSION POLICY 46-201
ESCROW FOR INITIAL PUBLIC OFFERINGS**

and

FORM 46-201F ESCROW AGREEMENT

Effective September 21, 2001, the Commission, together with other members of the Canadian Securities Administrators (CSA), is implementing National Policy 46-201 *Escrow for Initial Public Offerings* on an interim basis. Also effective September 21, 2001, the Director of the Commission is specifying Form 46-201F *Escrow Agreement* for use in connection with the National Policy.

We are also seeking comments on the National Policy and Form to determine whether further changes to them are necessary.

Background

The CSA have been working to develop this new escrow policy for several years. The CSA published previous proposals in May 1998 and March 2000 (see CSA Notice 46-301). In each case, the CSA permitted issuers to use the proposed escrow regime at their option. A form of escrow agreement was also published in March 2000 for escrow arrangements that conformed to the March 2000 proposal.

In June 2001, the CSA authorized amendments to existing escrow agreements to permit the release of escrow securities on the terms in the March 2000 proposal (see CSA Notice 46-302).

The new National Policy and Form replace CSA Notice 46-301 and CSA Notice 46-302.

Local Escrow Policies

After CSA Notice 46-301 was published, the Canadian exchanges began requiring issuers to enter into escrow agreements based on the March 2000 proposal as a condition of listing. Therefore, certain Canadian jurisdictions repealed their existing local escrow policies.

However, some other Canadian jurisdictions have maintained their local escrow policies. Therefore, until the CSA adopt the National Policy on a permanent basis, the securities regulator in a particular province might permit an issuer conducting an IPO in that province to rely on either the National Policy or the province's local escrow policy. Please see each local notice announcing the National Policy to determine whether a particular local policy is still in effect.

Manitoba does not have an existing escrow policy.

If an issuer wishes to follow a local escrow policy and proposes to offer securities in more than one jurisdiction, CSA members will apply mutual reliance principles.

National Policy

The National Policy contains substantially the same terms as the March 2000 proposal. The CSA have made two important changes to that proposal. These are:

- expanding the class of “exempt issuers” to include issuers with a market capitalization of at least \$100 million after their IPO and
- expanding the class of persons that may act as escrow agent to include any person that a Canadian exchange has approved to act as a transfer agent.

The CSA has also made a number of other minor changes to clarify and simplify how the National Policy will be applied and to offer added flexibility to principals of companies. In addition, the National Policy contains provisions that permit amendments to existing escrow agreements on terms that are substantially the same as those in CSA Notice 46-302.

Appendix “B” to this Notice contains a detailed discussion of all changes made to the proposed national escrow regime since 1998.

Specification of Escrow Agreement

Effective September 21, 2001, the Director of the Commission specifies Form 46-201F under subsection 61(1)(d) The *Securities Act* as the form of escrow agreement for use in connection with National Policy 46-201. The parties to an existing escrow agreement may amend it by entering into an agreement in this form.

Summary of Written Comments

A summary of the written comments received on the 1998 proposal, the CSA’s responses and a discussion of the changes incorporated in the National Policy is attached as Appendix “B” to this Notice. Appendix “A” contains a list of the commenters.

Request for Comments

You are invited to comment on National Policy 46-201 and Form 46-201F. Please submit your comments in writing on or before November 20, 2001.

Please send us two copies of your comments, addressed as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission

Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Department of Government Services and Lands, Newfoundland and Labrador
Registrar of Securities, Government of the Northwest Territories
Registrar of Securities, Government of the Yukon Territory
Registrar of Securities, Nunavut

c/o Brenda Benham
Director, Policy and Legislation
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Fax: (604) 899-6506
E-mail: bbenham@bcsc.bc.ca

Please also send your comments to the Commission des valeurs mobilières du Québec as follows:

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3

If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word).

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:

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