NOTICE OF ONTARIO SECURITIES COMMISSION
POLICY 51 - 601
REPORTING ISSUER DEFAULTS

Notice of Policy

The Commission has, under Section 143.8 of the Securities Act (Ontario) (the "Act"), adopted Policy 51-601 Reporting Issuer Defaults (the "Policy"). The Policy is effective on October 30, 2001.

Background

On December 8, 2000 the Commission published the Policy for comment (2000) 23 OSCB (8246) (the "2000 Draft"). The comment period ended February 8, 2001. No comments were received in response to the publication of the 2000 Draft. For a more detailed discussion of the contents of the Policy, please refer to the notice published with the 2000 Draft.

Capitalized terms used in this Notice are as defined in the Policy, unless otherwise indicated.
Terms used in the Policy that are defined or interpreted in the definition instruments in force in Ontario should be read in accordance with those definition instruments, unless the context otherwise requires.

Substance and Purpose of the Policy

The purpose of the Policy is to outline the guidelines followed and the factors considered by the Commission in determining if a reporting issuer is in default, maintaining a list of defaulting reporting issuers (the "Default List") and issuing certificates of no default under the Act.

The Policy will replace OSC Policy Statement No. 2.5 ("Policy 2.5") - *Certificates of No Default Under Subsection 71(8) [72(8)] and List of Defaulting Issuers Under Subsection 71(9) [72(9)] of the Securities Act.*

Summary of Changes

As a result of further consideration of the 2000 Draft, certain changes have been made to the Policy. The Commission does not consider any of the changes to be material and has therefore not published the changes for comment. The following is a description of the changes made to the Policy.

1. **References to Resale Restrictions**

The 2000 Draft indicated that one of the rationales for certificates of no default relates to the fact that securities purchased under certain prospectus exemptions cannot be resold unless, among other things, the issuer is not in default of the Act or the regulations (the "Resale Restriction"). This failed to acknowledge that subsection 2.18(3) of Rule 45-501 *Exempt Distributions* (which was formerly substantially contained in section 21 of the regulation) essentially removes the Resale Restriction, except where the seller is in a special relationship with the issuer. Changes have been made to the Policy to reflect 2.18(3) of Rule 45-501. Specifically, references to the Resale Restriction have been limited accordingly in subsections 1.1(1), 1.1(2) and 3.3(1) of the Policy.

2. **References to List of Defaulting Issuers on Web site**

A minor change has been made to subsection 3.1(2) of the Policy, to reflect the fact that the Default List is now available on the Commission's Web site.

Also, the list of categories of defaulting issuers in subsection 3.1(4) of the Policy has been revised to make it consistent with the Default List posted on the Commission's Web site.

3. **Content Deficiencies Apply to All Continuous Disclosure Documents**

The phrase "or other continuous disclosure documents" has been added to clause 3.1(4)(c) and to paragraph 3.3(2)4 to be consistent with subparagraph 3.3(2)4 (iii). This phrase was not in the equivalent provisions of Policy 2.5, which referred only to financial statements in this context. The reference to "other continuous disclosure documents" was added to subparagraph 3.3(2)4(iii) in the 2000 Draft and this addition was highlighted in the notice that was published with the 2000

Draft. It has now been added to the other two provisions as well, for consistency.

4. **Advance Notification of Default Status and Opportunity to be Heard**

Part 4 of the 2000 Draft provided that ordinarily, an issuer is only notified of its addition to the Default List if the default is as described in paragraph 3.3(2)4(iii) (content deficiencies) or subsection 3.5(3) (a default not specifically described in the Policy). The 2000 Draft also provided that a determination described in clause 3.3(2)4(iii) is ordinarily made only after a (Commission) hearing, but if the deficiency is clear and significant, the Director could determine (after giving the issuer an opportunity to be heard by the Director) that the issuer would be considered to be in default during the period before the Commission hearing.

After further consideration , the Commission has decided that, in almost all cases, an issuer will be notified in advance of any intent to treat it as being in default and the issuer may request a hearing before the Commission on this matter. The Commission has made this change because it believes issuers should receive advance notice irrespective of the type of default.

If the default is not clear and the issuer requests a hearing, then the issuer will generally not be included on the Default List pending the hearing, provided that the issuer requests a hearing within 10 days of the notification described in the preceding paragraph. Without such a time limit on the period for requesting a hearing, an issuer could postpone indefinitely the time for determination of whether the issuer should be added to the Default List.

On the other hand, if the default is clear, then, even if the issuer requests a Commission hearing, the issuer could be included on the Default List before the hearing. There is a variation to this, when the default is the type described in clause 3.3(2)4(iii) (content deficiency) or in subsection 3.3(3) (a requirement not specified in the Policy). In these 2 cases, the issuer would be given the opportunity to be heard by the Director, on the issue of whether it should be added to the Default List, before the Commission hearing. This variation is in line with what was in the 2000 Draft regarding content deficiencies (as described above) and is considered appropriate because the issue of whether a content deficiency is “clear and significant” is more debatable than whether the other defaults described in subsection 3.3(2) are “clear” and therefore the issuer should be given an opportunity to make submissions to the Director, before being added to the Default List. The opportunity to be heard by the Director regarding defaults of requirements not specified in the Policy (subsection 3.3(3) of the Policy) was not in the 2000 Draft nor in Policy 2.5. However, once again, the Commission believes this is appropriate because the issue of whether a requirement is "significant" is also more debatable.

To reflect all of the above, Part 4 of the 2000 Draft has been replaced by new subsection 3.3(4) and section 3.5 of the 2000 Draft has been replaced by subsections 3.3(3) and 3.3(4).

Rescission of Policy

The Policy will replace Policy 2.5. The Commission proposes to rescind Policy 2.5. The text of the proposed rescission is as follows:

> “OSC Policy Statement No. 2.5 entitled “Certificates of No Default Under Subsection 71(8) [72(8)] and List of Defaulting Issuers Under Subsection 71(9) [72(9)] of the Securities Act” is rescinded”.