

### 1.1.3 Notice of Amendment to OSC Policy 51-601 Reporting Issuer Defaults

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

##### Introduction

The Commission has, under Section 143.8 of the Securities Act (Ontario), amended Policy 51-601 *Reporting Issuer Defaults*. The amended and restated policy (the Amended Policy) is effective on May 17, 2005 and replaces the version of Policy 51-601 that became effective on October 30, 2001.

##### Substance and Purpose of the Policy

The purpose of the Amended 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 Commission does not consider any of the changes to the original policy to be material and has therefore not published the changes for comment.

##### Summary of Changes to the Current Version of Policy 51-601

The most notable changes are as follows:

- We have expanded the default list, and the related section of the Amended Policy, to indicate a greater number of reasons why reporting issuers may be in default. This reflects new requirements of the Act or regulations that have become effective since October 2001. In particular, National Instrument 51-201, *Continuous Disclosure Obligations*, introduced several significant new continuous disclosure requirements, and issuers may be in default when they do not comply with those requirements. The Amended Policy states that additional categories may be added to the default list from time to time to reflect new requirements of the Act or regulations.
- The description of how staff determines that a reporting issuer is in default, particularly when the issuer does not agree with staff's determination, has been changed. The original policy stated that in certain circumstances, the issuer might be included on the default list based on a determination of the Director, even if the issuer did not agree with staff's determination and had requested

a Commission hearing. This did not accurately represent OSC practice. The Amended Policy clarifies that when an issuer does not agree with staff that it is in default, the issuer will generally not be included on the default list at that time. In these cases, staff must determine whether to accept the issuer's position, or else to request an order from the Commission that the issuer's continuous disclosure record be amended in whatever manner is necessary to address the issues identified. In such a case, the issuer will be included on the default list only if the Commission determines that the continuous disclosure record is deficient.

##### For questions, please refer to any of:

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