

Ontario Securities Commission Notice 11-723 Policy Reformulation Project

This issue of the Bulletin contains the proposed rule in respect of the System For Electronic Document Analysis And Retrieval ("SEDAR"). This is the first substantive proposed rule that is being made in more than one Canadian jurisdiction. SEDAR is being described as a "National Instrument" by each jurisdiction. The adoption of National Instruments and National Policies (as described below) represents a continuation on the part of the Canadian Securities Administrators of their efforts in promoting and maintaining harmonization and consistency among jurisdictions in the context of the new rule or regulation making regimes that have now come into effect in several provinces. To assist market participants in understanding this aspect of the Policy Reformulation Project, a brief explanation is provided as to the concept of National Instruments and National Policies, and their development.

1. Those existing National Policy Statements that will be maintained as part of the Policy Reformulation Project will be replaced by National Instruments and National Policies. National Instruments will be legislative in nature and will be adopted as rules in Ontario and in most cases as rules or regulations in other jurisdictions in which the securities commission or similar body has rule or regulation making power and as policies in jurisdictions without rule or regulation making power. The manner in which a National Instrument will be made by a particular jurisdiction will vary depending on the legislative framework in place in the jurisdiction.
2. National Policies will not be legislative in nature but will set out principles or criteria relating to the exercise of discretion by the applicable securities commission or similar body or their staff, the manner in which they interpret their respective statutes and the practices generally followed by them in the performance of their duties. National Policies will be adopted as policies by all jurisdictions that adopt them.
3. A National Instrument will be made as a rule in Ontario under subsection 143(1) of the Securities Act (Ontario), as it is legislative in nature.
4. A National Policy will be adopted as a policy in Ontario under section 143.8 of the Securities Act (Ontario).
5. National Instruments and National Policies are being drafted generically so that, to the extent practicable, they can be adopted or made in the same form by each jurisdiction. Accordingly, a National Instrument or National Policy will not generally refer to a particular jurisdiction or the legislation of a particular jurisdiction. Instead, National Instruments and National Policies will make use of terms such as "securities legislation", "securities regulatory authority" and "local jurisdiction". It is contemplated that a National Instrument will be made setting out definitions of certain terms that will be used with common meaning in National Instruments and National Policies. That proposed National Instrument will define terms adopted on a national basis such as those referred to above and other terms relevant to the understanding of a National Instrument or National Policy. Until this National Instrument is published for comment, proposed National Instruments will set out the meanings of any common terms in a footnote. The proposed National Instrument for definitions will also provide that a term used in a National Instrument and defined in the securities legislation of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the securities legislation, will, for the purposes of that jurisdiction, have the meaning given to it in the securities legislation of that jurisdiction.
6. A user applying a National Instrument to matters in Ontario will read "securities legislation" to mean the Ontario statute, regulation and rules, "securities regulatory authority" to mean the Ontario Securities Commission and "local jurisdiction" to mean Ontario. A user applying a National Instrument with respect to matters in another jurisdiction will read "securities legislation" as that term is defined for that jurisdiction in the proposed National Instrument for definitions, "securities regulatory authority" to mean the securities commission or similar body in

that jurisdiction and "local jurisdiction" to mean that jurisdiction. Generally, a National Instrument will not refer to "distributing securities in the local jurisdiction" or "filing in the local jurisdiction". Instead, it will refer to "distributing securities" or "filing". In that regard, a National Instrument should be read the same way as a user read a statute, regulation or rule adopted locally which generally do not refer to the jurisdiction making them but apply based on activity in or a connection to the jurisdiction.

7. Each jurisdiction may opt out of or amend a particular provision of a National Instrument. A local instrument may be used to vary local legislation or create exemptions under this local legislation if necessary to give proper effect to the National Instrument.

8. Each National Instrument that is of a prohibitive or mandatory nature (as opposed to exemptive in nature) will contain a provision allowing one or both of the appropriate securities regulatory authority or specified staff members in a particular jurisdiction to grant an exemption to the National Instrument.