

## **ALBERTA SECURITIES COMMISSION POLICY 12-601**

### ***APPLICATIONS TO THE ASC***

**April 1, 2007**

#### **1. INTRODUCTION**

- 1.1 This policy provides guidance on how to make an application to the Alberta Securities Commission (the "ASC") including applications for exemptive relief.
- 1.2 This policy applies to all applications made to the ASC under the provisions of the *Securities Act* (Alberta) (except those relating to Parts 2 and 16 of the Act), ASC Rules (General), the *Business Corporations Act* (Alberta) and national and multilateral instruments.
- 1.3 Throughout this policy, the applicant is sometimes referred to as "you" and the ASC and ASC staff are sometimes referred to as "we".

#### **2. THE APPLICATION PACKAGE**

- 2.1 Generally, an application package should consist of the following:
  - (a) a letter prepared by or on behalf of the applicant containing submissions as to why relief or approval should be granted, (see Part 3 for guidelines for application submissions);
  - (b) for applications involving Alberta only, a draft order;
  - (c) for multiple jurisdiction applications, where Alberta is the principal regulator:
    - (ii) if the application is being made under National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (the "MRRS Policy"), a draft decision document that conforms to Schedule A of the MRRS Policy; or
    - (iii) if the application is being made under Multilateral Instrument 11-101 *Principal Regulator* ("MI 11-101") a draft decision document that conforms to MI 11-101;
  - (d) no draft order is required for applications related to escrowed shares or relief from the requirement to provide a valuation (eg: pursuant to ASC Rules (General) s. 171);
  - (e) a separate e-mail containing an electronic version of the draft order or decision document (see paragraph 3.6 below for transmission instructions);
  - (f) relevant supporting documents (e.g. a copy of any disclosure documents prepared in conjunction with the transaction);

- (g) a statement signed by the applicant that:
  - (i) if the application was prepared by an agent, confirms the authority of the agent to prepare and file the application; and
  - (ii) confirms the truth of the facts contained in the application; and
- (h) a cheque in the amount of the prescribed fee for each head of relief sought in the application, payable to the ASC. Appendix 1 to this policy sets out the prescribed fees as at April 1, 2007. The policy and appendix will be updated to reflect any other changes to the fees as they occur.

### **3. GUIDELINES FOR APPLICATION SUBMISSIONS**

3.1 Include in your submissions all information that would be relevant to staff's determination of whether they should recommend that relief or approval be granted. The following information is generally essential to this determination:

- (a) a description of the transaction or circumstances;
- (b) the section number(s) of both the requirement(s) pursuant to which relief or approval is sought and the exempting provision(s), if applicable;
- (c) a description of any other approval or discretionary exemptive relief the applicant is seeking, or expects to seek, from requirements of securities legislation in other jurisdictions. If the relief sought from another province is comparable but you are not making your application under the MRRS Policy or MI 11-101, explain why;
- (d) full details of any pre-filing discussions with staff of the ASC, other commissions, or exchanges, including the name of the staff member with whom such discussions were held and the dates of the discussions;
- (e) submissions as to whether the applicable test in Alberta securities laws has been met;
- (f) if exemptive relief is requested, copies and discussion of any recent and relevant ASC decisions. All ASC decisions issued since January 1999 are available on the ASC website at [www.albertasecurities.com](http://www.albertasecurities.com). Earlier decisions are available in the Alberta Securities Commission Weekly Summary or from commercial services. If there are no prior ASC decisions, please include relevant decisions of other Canadian securities regulatory authorities. Although these decisions are helpful, the ASC is not bound by precedent and any application for discretionary exemptive relief is considered on its particular facts;
- (g) if expedited treatment has been requested, an explanation of why expedited treatment is required and why the application was not made sooner. Please see sections 4.4 and 4.5 below and CSA Staff Notice 12-310, dated March 23, 2007 for additional guidance on requests for expedited treatment; and

- (h) if confidential treatment has been requested, an explanation of why confidential treatment is required (see Part 5 below for additional guidance on requests for confidential treatment).
- 3.2 Most applications to the ASC are processed by staff in one of two departments: Corporate Finance or Market Regulation. Appendix 1 lists which applications are processed by which department. If your application involves both Corporate Finance and Market Regulation, please send it to Corporate Finance.
- 3.3 Applications to the Director, Corporate Finance are generally brought seeking exemptions from issuer-related requirements, such as prospectus and continuous disclosure requirements.
- 3.4 Applications to the Director, Market Regulation are generally brought seeking exemptions from registrant-related requirements, such as registration or trade confirmation requirements.
- 3.5 The address for all applications is: 4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue SW, Calgary, AB., T2P 3C4.
- 3.6 Submit the draft order or decision document referred to in section 2.1(b) or (c) by email to [legalapplications@seccom.ab.ca](mailto:legalapplications@seccom.ab.ca). If you do not have email access, please include a diskette containing the draft order or decision document with the application. Please note that only the draft order or decision document may be submitted by email. We require a hard copy of the remainder of the application.
- 3.7 If the application is urgent, we strongly recommend that you fax or email it so that we can start reviewing it pending receipt of a hard copy and the filing fee. The fax number for Corporate Finance is (403) 297-3982. The fax number for Market Regulation is (403) 297-4113.
- 3.8 Binding your application hinders our internal processing of your material. Please use bindings that can be taken apart and reassembled easily (i.e., clips, staples or three ring binders as opposed to plastic coils).

#### **4. REVIEW OF APPLICATIONS**

- 4.1 Applications are assigned to a staff member for review. Staff will begin their review once all necessary supporting documents have been received. The Commission will not issue an order or decision document until all required fees have been paid.
- 4.2 Staff may contact you for further information or clarification. You should co-operate fully with staff and respond promptly to staff comments and questions. Failure to do so may result in staff notifying you that they intend to treat the application as abandoned.
- 4.3 Applications are generally reviewed in the order they are received. We endeavour to complete our review of an application within three weeks from the date we receive complete materials, but we cannot guarantee this.

- 4.4 We receive many requests for expedited treatment. By requesting expedited treatment, you are asking that your application be considered before applications that have been submitted on a timely basis. We therefore will not expedite an application unless the request for expedited treatment is reasonable and due to circumstances beyond the applicant's control. Staff recognize that such circumstances do arise, and we make every effort to accommodate appropriate requests for expedited treatment. Once you anticipate that exemptive relief or an approval may be necessary, we strongly encourage you to contact a staff member from the appropriate department to discuss your situation.
- 4.5 Applicants filing under the MRRS Policy should keep in mind that under section 6.3 of NP 12-201, non-principal regulators can refuse to abridge the 5-day opt-in period. Even if the ASC is the principal regulator, ASC staff have no control over another jurisdiction's position regarding an abridgement request.
- 4.6 Once staff's review is complete, staff will recommend that the Commission or the Executive Director, where appropriate, either grant or deny the relief requested. If staff's recommendation to grant an application is accepted, the order will be signed and provided to the applicant.
- 4.7 If staff recommend that the Commission deny an application, staff will provide the applicant with reasons for their recommendation. The applicant may then either withdraw the application or request a hearing before the Commission. The Commission generally prefers to deal with such hearings solely on the basis of written submissions. If the applicant and staff cannot agree on the written material to be presented to the Commission, or if either party requests an oral hearing, an appearance will be scheduled before a Commission panel to deal with the matter. If the applicant and staff agree on the written material to be presented to the Commission, that material will be forwarded to a Commission panel. The panel has the discretion to request additional information or submissions before rendering its decision.

## **5. CONFIDENTIALITY**

- 5.1 All material filed with your application may be made available for public inspection. Upon receipt of an application, one copy will be placed immediately in the public file unless confidentiality is specifically requested.
- 5.2 A request for confidentiality is itself an application under the Act. Please specify a date for the termination of confidential treatment of the application. Your application must contain submissions that both support the period requested and overturn the presumption that it is in the public interest that all application materials be made available for public inspection. There is a fee for requests for confidentiality. See Appendix 1.
- 5.3 Confidentiality is generally granted only during the staff review period. It is very unusual for the Commission to grant a request for confidentiality of the application beyond the staff review period or to grant a request for confidentiality of the resulting order or decision document for any period.

**6. EXCEPTION FOR APPLICATIONS UNDER SECTION 153 OF THE ACT**

6.1 An applicant seeking relief under section 153 of the Act:

- (a) whose outstanding securities, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
- (b) whose securities are not traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- (c) that is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- (d) that is not in default of any of its obligations under Alberta securities laws as a reporting issuer;

may request relief:

- (e) by following the procedures set out in [CSA Staff Notice 12-307](#) *Ceasing to be a Reporting Issuer under the Mutual Reliance Review System for Exemptive Relief Applications*; and
- (f) by complying with subsection 2.1(g) and (h) of this policy.

6.2 If any of the conditions in 6.1 are not met, the ASC may request further information.

**7. EXCEPTION FOR DOCUMENTS REQUIRED BY NP 43-201**

If the application relates to a document required to be filed under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* (the "MRRS Prospectus Policy"), submit the application in accordance with Part 9 of the MRRS for Prospectus Policy rather than Parts 2 - 4 of this policy.

**APPENDIX 1 TO POLICY 12-601, EFFECTIVE APRIL 1, 2007**

<b>Section Number in Act, Rule or Instrument</b>	<b>Description</b>	<b>Fee</b>	<b>Department</b>	<b>Section Number in Fee Schedule to Alta. Reg 115/95 - Securities Regulation, as amended</b>
<b>SECURITIES ACT, R.S.A. 2000, c. S-4</b>				
36(1)	Appeals to the Commission	\$300	Secretary, General Counsel's Office	13
90(1)	Requirements for confirmation of trade	\$650	Market Regulation	14(3), 16
121(9)	Lapse date extension	\$650	Corporate Finance	14(3)
144(1)	Prospectus and/or registration exemption	\$650	Corporate Finance or Market Regulation	14(1)
144(2)	Deemed distribution	\$650	Corporate Finance	14(1)
144(3)	Declaration re: Distribution	\$650	Corporate Finance	14(1)
145(1)	Application for reporting issuer status	\$650	Corporate Finance	14(3)
153	Application to be deemed to have ceased to be a reporting issuer	\$650	Corporate Finance	14(3)
179(1)	Order re: non-compliance with Part 14 of the Act	\$650	Corporate Finance	14(2)
179(2)	Take-over bid and issuer bid relief	\$650	Corporate Finance	14(2)
189(2)	Mutual fund related parties	\$650	Corporate Finance	14(3)
191(2)	Filing by mutual fund management company	\$650	Corporate Finance	14(3)
213	General exemptive relief	\$650	Corporate Finance or Market Regulation	14(3)

<b>Section Number in Act, Rule or Instrument</b>	<b>Description</b>	<b>Fee</b>	<b>Department</b>	<b>Section Number in Fee Schedule to Alta. Reg 115/95 - Securities Regulation, as amended</b>
214(1)	Revocation or variation of decision of Commission	\$650	Department that processed initial order	14(3)
214(2)	Revocation or variation of decision of Chair	\$650	Department that processed initial order	14(3)
221(5)	Confidentiality of materials deposited with the Secretary or the Executive Director	\$650 or as ordered	Department handling associated application	14(3)
<b>ASC RULES (GENERAL)</b>				
16(c )	Categories of registration of dealers	\$650	Market Regulation	14(3), 16
21	No direct or indirect interest	\$650	Market Regulation	16
69(1)	Application for recognition as an exempt purchaser	\$650	Corporate Finance	14(3), 16
92(2)(i)	Application to extend prospectus offering period	\$650	Corporate Finance	16
105(7)	Financial Statements to be included in a prospectus	\$650 (no payment if no decision document required)	Corporate Finance	16
171(2)	Waiver of valuation requirement	\$650	Corporate Finance	16

<b>Section Number in Act, Rule or Instrument</b>	<b>Description</b>	<b>Fee</b>	<b>Department</b>	<b>Section Number in Fee Schedule to Alta. Reg 115/95 - Securities Regulation, as amended</b>
<b>BUSINESS CORPORATIONS ACT, R.S.A. 2000, c. B-9</b>				
3(3)	Distribution to the public	\$300	Corporate Finance	22
151	Proxy solicitation	\$300	Corporate Finance	22
156(2)	Omissions from financial statements	\$300	Corporate Finance	22
171(3)	Dispensing with audit committee	\$300	Corporate Finance	22
<b>NATIONAL AND MULTILATERAL INSTRUMENTS<sup>1</sup></b>				
6.1	NI 31-102 National Registration Database	\$650	Market Regulation	14(3), 16
5.1	NI 33-105 Underwriting Conflicts	\$650	Market Regulation	14(3), 16
7.1	NI 33-109 Registration Information	\$650	Market Regulation	14(3), 16
5.1	NI 41-101 Prospectus Disclosure Requirements	\$650	Corporate Finance	14(3), 16
9.1	NI 43-101 Standards of Disclosure for Mineral Projects	\$650	Corporate Finance	14(3), 16
8.1	NI 44-101 Short Form Prospectus Distributions	\$650	Corporate Finance	14(3), 16
11.1	NI 44-102 Shelf Distributions	\$650	Corporate Finance	14(3), 16
6.1	NI 44-103 Post Receipt Pricing	\$650	Corporate Finance	14(3), 16

<sup>1</sup> All exemptions from requirements in National or Multilateral Instruments fall under s. 14(3), 16 of the fee schedule and currently require a fee of \$650. We have separately listed in Appendix 1 only the instruments from which exemption relief is most commonly requested.

<b>Section Number in Act, Rule or Instrument</b>	<b>Description</b>	<b>Fee</b>	<b>Department</b>	<b>Section Number in Fee Schedule to Alta. Reg 115/95 - Securities Regulation, as amended</b>
10.2	NI 45-101 Rights Offerings	\$650	Corporate Finance	14(3), 16
3.1	MI 45-102 Resale of Securities	\$650	Corporate Finance	14(3), 16
6.1	NI 45-106 Report of Exempt Distribution	the greater of \$115 or the appropriate percentage of distribution proceeds	Corporate Finance	5(1)
6.1	NI 45-106 Report of Exempt Distribution (no change in beneficial ownership)	\$115	Corporate Finance	5(2)
13.1	NI 51-102 Continuous Disclosure Obligations	\$650 (no payment if no decision document required)	Corporate Finance	14(3), 16
11.1	NI 62-103 The Early Warning System and Related Take-over Bid and Insider Reporting Issues	\$650	Corporate Finance	14(3), 16
21.1	NI 71-101 The Multijurisdictional Disclosure System	\$650	Corporate Finance	14(3), 16
19.1	NI 81-102 Mutual Funds	\$0 <sup>2</sup>	Corporate Finance	14(3), 16
19.1	NI 81-102 Mutual Funds	\$650	Market Regulation	14(3), 16

<sup>2</sup> Corporate Finance does not charge a fee under NI 81-102 when a fee has already been collected for the filing of a prospectus.

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9.1	NI 81-105 Mutual Fund Sales Practices	\$650	Market Regulation	14(3), 16
17.1	NI 81-106 Investment Fund Continuous Disclosure	\$650	Corporate Finance	14(3), 16