

EXEMPTIVE RELIEF APPLICATIONS

FREQUENTLY ASKED QUESTIONS

When will the Commission declare an issuer to be no longer a reporting issuer under s. 153?

Generally, the Commission will declare an issuer to be no longer a reporting issuer if members of the public do not hold any securities of the issuer. Accordingly, an application for this relief should

- (a) describe how the issuer became a reporting issuer,
- (b) state why the issuer no longer has any of its securities held by members of the public;
- (c) indicate whether the issuer's securities traded on an exchange and the date on which they were delisted;
- (d) if the issuer has outstanding securities, provide evidence that the remaining security holders consent to no longer receiving continuous disclosure materials. If it would be impracticable to obtain these consents, provide submissions as to why the remaining holders would not be prejudiced if they no longer receive continuous disclosure materials from the issuer.

When will the Commission declare an issuer to be a reporting issuer under s. 145?

The Commission will generally declare an issuer to be a reporting issuer if it has a satisfactory continuous disclosure record from another Canadian jurisdiction and its directors are acceptable.

An issuer's continuous disclosure record is considered satisfactory if it has been a non-defaulting reporting issuer in another Canadian jurisdiction(s) for at least two years. Please indicate the date on which the issuer became a reporting issuer in the other jurisdiction(s) and provide a certificate or other evidence of non-default from those jurisdiction(s). The most recent two years of the disclosure record must be made available in Alberta by designating the ASC as a SEDAR recipient. If this is not possible, the record must be paper filed with the ASC.

We will consider alternatives to the above criteria. A spin off transaction is a common scenario where these criteria cannot be met. The Commission may declare a the new, spun-off entity to be a reporting issuer if it is originating from an issuer that has a satisfactory continuous disclosure record and two years of segmented financial reporting is available respecting the assets being spun off.

ASC staff will also perform background checks on the issuer's directors. The application should accordingly include the current full legal names (no initials), date and place of birth, and current address of each director.

When will the Commission revoke a cease trade order?

Revocation applications are extremely fact specific, so the following should be considered general guidance. The Commission will revoke a cease trade order if the revocation would not be prejudicial to the public interest.

The public interest includes consideration of the interests of both the existing security holders of the cease-traded issuer and prospective investors who may acquire securities in the company once the cease trade order is revoked. The Commission recognizes that the position of existing security holders is different from prospective investors. In addition to a complete historical record, prospective investors are entitled to have access to current and relevant information regarding the business and affairs of the company. For additional guidance regarding the Commission's view of the public interest, see the reasons for decision published for [*In the Matter of Data Trax Systems Ltd.*](#)

With the above in mind, staff of the Commission will generally recommend revocation of a cease trade order if the company satisfies each of the following four conditions:

- all continuous disclosure filings, including financial statements, have been brought up to date;
- financial statements and applicable disclosure documents (if any) have been reviewed by the Office of the Chief Accountant and any concerns have been resolved to the satisfaction of Commission staff;
- the issuer has a satisfactory plan going forward, which may involve, for example, developing existing assets or the purchase (usually through a reverse take-over) of other assets that have potential for development; and
- adequate disclosure of the business and affairs of the issuer is available to the public. For example, Commission staff may compel the issuer to complete a current disclosure document, such as a prospectus, information circular, press release, or material change report. The circumstances of each case will determine what type of disclosure and disclosure documents are warranted. Two factors that may impact this determination are the length of time the issuer was cease traded and the degree of change in terms of the issuer's business, operations, or strategic direction.

When submitting an application to revoke a cease trade order, filing counsel should include the following information and materials:

- identify all jurisdictions where the issuer is a reporting issuer;
- identify all jurisdictions where the issuer has been cease traded and provide a copy of the cease trade order issued against the issuer in each jurisdiction;

- if there are cease trade orders outstanding in other jurisdictions, advise as to the status of any applications for revocation. In particular, state the date the application was made and the name of the person (if known) who is dealing with the application in each jurisdiction;
- if a cease trade order is outstanding in another jurisdiction and an application to revoke is not being made in that jurisdiction, provide an explanation for not applying to revoke in that jurisdiction. Be aware that Commission staff may not be willing to recommend revoking a cease trade order if a cease trade order is to remain in effect in another jurisdiction;
- if a cease trade order has been revoked in another jurisdiction, provide a copy of the revocation order and the name (if known) of the person who dealt with the application in that jurisdiction;
- provide the full name, residential address, and place and date of birth each officer and director of the issuer;
- provide copies of all financial statements and continuous disclosure materials that have been filed to bring the issuer up to date. If the documents are available on SEDAR, copies of the documents do not have to be included if a list of the documents that have been filed on SEDAR is provided;
- explain why the issuer was cease traded. If the issuer was cease traded for failure to file financial statements, explain why the financial statements were not filed;
- describe the issuer's activities since the cease trade order was issued; and
- describe how the issuer intends to proceed once the cease trade order is revoked. In particular, what assets does the issuer have and how does the issuer plan to develop them? If the issuer is acquiring assets, describe the assets to be acquired, the method of acquisition, and the issuer's plans to develop or operate the assets after they are acquired.

The Commission will consider the facts of each application and staff's recommendation when rendering its decision. The Commission may impose any conditions or restrictions it feels are necessary to protect the public interest.