

ALBERTA SECURITIES COMMISSION POLICY 12-601

APPLICATIONS TO THE ASC

1. INTRODUCTION

- 1.1 This Policy provides guidance on how to make an application for exemptive relief to the Alberta Securities Commission (the “ASC”). It replaces ASC Policy 2.1.
- 1.2 This Policy applies to all applications made to the ASC for exemptive relief from provisions of the *Securities Act* (Alberta), the regulation made under the Act (the “Regulation”), ASC policy statements and rules, the *Business Corporations Act* (Alberta), and national and multilateral instruments and policies.
- 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. CONTENTS OF THE APPLICATION

- 2.1 Subject to the exceptions set out in paragraph (b) and section 2.2 below, an application package should consist of the following
 - (a) a letter in duplicate prepared by or on behalf of the applicant containing submissions as to why exemptive relief should be granted. See Part 3 for guidelines for submissions;
 - (b) a draft order or, 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. No draft order is required for applications related to escrowed shares, relief from the requirement to provide a valuation, and relief from National Instrument 81-105 *Mutual Fund Sales Practices*.
 - (c) a separate e-mail containing an electronic version of the draft order or decision document (see paragraph 4.3 below for transmission instructions);
 - (d) relevant supporting documents (e.g. a copy of any disclosure documents prepared in conjunction with the transaction);
 - (e) 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;

- (f) a cheque in the amount of the prescribed fee for each head of relief sought in the application, payable to the Alberta Securities Commission. The appendix to this Policy out the prescribed fees.

3. GUIDELINES FOR SUBMISSIONS

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

- (a) a description of the transaction in respect of which relief is being sought;
- (b) the section number(s) of both the requirement(s) from which relief is sought and the exempting provision(s);
- (c) a description of any other 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, 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 law has been met;
- (f) copies and discussion of two recent, applicable ASC decisions. All ASC decisions issued since January 1999 are available on the ASC website at 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, include up to two relevant decisions of other Canadian securities regulatory authorities;
- (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 6.4 and 6.5 below for additional guidance on requests for expedited treatment.

4. SUBMITTING AN APPLICATION

4.1 Applications to the ASC are processed by staff in one of three departments: Legal Services & Policy Development, Securities Analysis, or Registration & Compliance. The appendix lists which applications are processed by which department. If your application involves both Legal Services & Policy Development and Securities Analysis, send it to Legal Services & Policy Development.

- 4.2 An application to Legal Services & Policy Development should be sent to the Director, Legal Services and Policy Development. An application to Securities Analysis should be sent to the Manager, Securities Analysis. An application to Registration & Compliance should be sent to the Manager, Registration & Compliance. The address for all is 4th Floor, 300 – 5th Avenue S.W., Calgary, AB T2P 3C4.
- 4.3 Submit the draft order or MRRS decision document referred to in section 2.1(b) by e-mail. The e-mail address for Legal Services & Policy Development is legalapplications@seccom.ab.ca. The e-mail address for Securities Analysis is securitiesapplications@seccom.ab.ca. If you do not have e-mail 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 e-mail. We require a hard copy of the remainder of the application.
- 4.4 If the application is urgent, we strongly recommend that you fax it so that we can start reviewing it pending receipt of a hard copy and the filing fee. The fax number for Legal Services & Policy development is (403) 297-6156. The fax number for Securities Analysis is (403) 297-2082. The fax number for Registration & Compliance is (403) 297-4113.
- 4.5 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).

5. EXCEPTION FOR DOCUMENTS REQUIRED BY NP 43-201

- 5.1 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.

6. REVIEW OF APPLICATIONS

- 6.1 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.
- 6.2 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.
- 6.3 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.

- 6.4 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 may be necessary, we strongly encourage you to contact a staff member from the appropriate department to discuss your situation.
- 6.5 Applicants filing under the MRRS Policy should keep in mind that under section 6.3(2) 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.
- 6.6 Once staff's review is complete, staff will recommend that the Commission either grant or deny the relief requested. If the Commission accepts staff's recommendation to grant an application, the order will be signed and a copy will be provided to the applicant.
- 6.7 If staff recommend that the Commission deny an application, staff will provide the applicant with a memorandum setting out the 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.
- 6.8 Although section 179(3) of the Act provides that an order can be made retroactively, the Commission grants retroactive relief only in very exceptional circumstances.

7. CONFIDENTIALITY

- 7.1 The Act provides that all material filed with the Commission shall be made available for public inspection unless it would not be prejudicial to the public interest to hold materials confidential. Upon receipt of an application, one copy will be placed immediately in the public file unless confidentiality is specifically requested.
- 7.2 A request for confidentiality is itself an application under the Act. Please request a specific 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 in favour of public availability of applications. There is a fee for requests for confidentiality. See the appendix.

7.3 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.

8. QUESTIONS ABOUT SUBSTANTIVE REQUIREMENTS

8.1 Please see the linked document [“Frequently Asked Questions About Exemptive Relief Applications”](#) for guidance on the substantive requirements of some of the more common exemption applications.