

# ALBERTA SECURITIES COMMISSION POLICY 51-601

## DEFAULTING REPORTING ISSUERS

### 1. GENERAL

- 1.1 The *Securities Act* (Act) provides you with the ability to determine whether an issuer is a reporting issuer and, if so, whether the reporting issuer is in default of filing any issuer profile supplement or financial statements, or paying prescribed fees and charges as required by the regulations made under the Act (regulations).
- 1.2 Section 141(2) of the Act requires the Alberta Securities Commission (Commission) to maintain a list of defaulting reporting issuers for public inspection. You may rely on this list to determine if a reporting issuer is in default of filing any issuer profile supplement or financial statements, or paying fees and charges as required by the regulations.
- 1.3 Section 141(1) of the Act allows you to apply to the Executive Director of the Commission for a certificate for the purpose of determining whether an issuer is a reporting issuer and, if so, whether the reporting issuer is in default of filing any issuer profile supplement or financial statements, or paying fees and charges as required by the regulations.
- 1.4 You may rely on the list or the certificate issued under section 141 of the Act unless you know or should know that the reporting issuer is in default.
- 1.5 This policy sets out the guidelines the Commission considers to determine if a reporting issuer is in default and the procedure for obtaining a certificate. This policy applies only to reporting issuers that are reporting issuers in Alberta.

### 2. LIST OF DEFAULTING REPORTING ISSUERS

- 2.1 The Commission maintains a list of defaulting reporting issuers. This list is limited to the following specific defaults:
  - Failure to file an issuer profile supplement as required by National Instrument 55-102 *System for Electronic Disclosure by Insiders* (SEDI).
  - Failure to file financial statements within the time prescribed by sections 148 and 149 of the Act and National Instrument 51-102 Continuous Disclosure Obligations, as applicable.
  - Failure to pay prescribed fees and charges required by the Schedule to the Securities Regulation (AR 115/95).

- The Commission or the Executive Director on the advice and direction of the Commission under section 30 of the Act, determines that there is a default.

Reporting issuers in default of these specific requirements are placed on the list until such time as the reporting issuer remedies the default by filing or by payment of the prescribed fee or charge.

You should not rely on the list of defaulting reporting issuers to determine whether a defaulting reporting issuer is in contravention of any other provision of securities legislation.

- 2.2 The list of defaulting issuers is available on the ASC web site ([www.albertasecurities.com](http://www.albertasecurities.com)) under “Company Disclosure and Compliance”, “Defaulting Reporting Issuers”. The list is compiled as of the close of business each Wednesday and appears on the website by noon the following Friday.
- 2.3 The list of defaulting reporting issuers is also available for public inspection in the offices of the Commission during its normal business hours.
- 2.4 Every effort is made to ensure the accuracy of this list. A reporting issuer that appears on this list in error should contact the Commission promptly.

### **3. FILING CONSIDERATION FOR REPORTING ISSUERS**

- 3.1 National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) provides for the electronic transmission of documents to the Commission for filing. The date of filing a document in electronic format for the purpose of securities legislation is determined in accordance with section 2.7 of SEDAR. Reporting issuers affected by this policy are advised to review the provisions of SEDAR to determine applicable filing requirements.
- 3.2 Staff review information in a reporting issuer’s “filer profile” or “SEDAR profile” in order to determine if an issuer is in default of filing financial statements. Reporting issuers are advised to review requirements for filing a filer profile under SEDAR, an issuer profile supplement under SEDI and any amendments to the filer profile or issuer profile supplement.
- 3.3 A reporting issuer that sends documents to the Commission by mail is considered to have filed that document on actual receipt of the document by the Commission. Reporting issuers affected by this policy are advised to review section 221 of the Act.
- 3.4 A reporting issuers name will be removed from the list of defaulting reporting issuers once the default has been remedied. This will be reflected in the list of defaulting reporting issuers when the website list is updated each week.

#### **4. AVAILABILITY AND FORM OF CERTIFICATE**

- 4.1 Generally, the Commission recommends that you consult the list to determine whether a reporting issuer is in default of filing any issuer profile supplement or financial statements, or paying prescribed fees and charges as required by the regulations. However, if you wish to confirm whether an issuer is a reporting issuer and whether the reporting issuer is, or is not, in default, you should apply to the Executive Director for a certificate.
- 4.2 Any person may apply to the Executive Director for a certificate. An application should be made in writing. From the date of application, applicants should allow two days for a certificate to be issued.
- 4.3 The form of certificate issued under section 141(1) is set out in the Appendix.
- 4.4 The Executive Director may vary the form of certificate as the circumstances require.

#### **5. EFFECTIVE DATE**

- 5.1 This Policy is effective July 14, 2004.

*The ASC Policy 2.4 – Certificates of no Default and List of Defaulting Reporting Issuers Under Section 113 of the Securities Act is repealed.*

*Blanket Order 93/05/18 - Alberta Securities Commission Policy 2.4 - Certificates of No Default and List of Defaulting Reporting Issuers under Section 113 of the Securities Act is repealed.*

## APPENDIX

### FORM OF CERTIFICATE OF DEFAULT/NO DEFAULT (SECTION 141 OF THE SECURITIES ACT)

#### NAME OF ISSUER:

1. On the basis of a review of the information filed with the Commission, the above named issuer is/is not a reporting issuer
2. **Applicable only if the issuer is a reporting issuer indicated in paragraph 1.**

The above named reporting issuer is/is not included in the list of defaulting reporting issuers maintained by the Commission under section 141(2) of the Act.

A reader of this certificate is encouraged to consult ASC Policy 51-601 for further details relevant to the issuance of this certificate.

This certificate only relates to defaults in respect of certain provisions of the Act and the regulations. It has no bearing on compliance with other provisions of securities legislation or on the financial position of the issuer.

No person that knows or ought reasonably to know that the reporting issuer is in default may rely on this certificate.

This certificate only applies to Alberta reporting issuers.

Dated at the City of Calgary, in the Province of Alberta this \_\_\_\_ day of \_\_\_\_, 200\_

ALBERTA SECURITIES COMMISSION

(Signature)

Name and Title