

**July 2, 2015**

Effective July 1, 2015, the Government of Alberta has proclaimed into force certain amendments<sup>1</sup> to the *Securities Act* (Alberta), which among other things included the creation of section 198.1.

Among other things, section 198.1 provides that:

- an order made by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements on a person or company, takes effect in Alberta, without notice to that person or company and without a hearing as if it were made by the Alberta Securities Commission (ASC), with such modifications as the circumstances require;
- where a person or company is subject to sanctions, conditions, restrictions or requirements pursuant to an agreement with a securities regulatory authority in Canada, those sanctions, conditions, restrictions or requirements apply to that person or company, without notice to that person or company and without a hearing, as if the agreement had been made with the Commission, with such modifications as the circumstances require;
- if an order, or agreement, is varied, amended or revoked by a securities regulatory authority in Canada, the variation, amendment or revocation will also apply in Alberta.

Section 198.1 applies to most orders issued by, or agreements entered into with, a securities regulatory authority in Canada on and after July 1, 2015. A copy of s.198.1 is attached as Annex A to this Notice. As a consequence of section 198.1, changes have been made to ASC Policy 51-601. A blackline is attached to this Notice as Annex B.

**Questions:**

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<sup>1</sup> Bill 5, *Securities Amendment Act, 2014* (section 34), as amended by Bill 15, *Securities Amendment Act, 2015* (section 13).

## Annex A

### *Securities Act (Alberta)*

#### **198.1 Extra-Provincial Orders**

- (1) In this section,
  - (a) “securities regulatory authority in Canada” means a securities commission, or another person or body, empowered by law to regulate trading in securities or derivatives in, or to administer or enforce the securities laws of, any province or territory of Canada, or any other person or body prescribed by regulation, but does not include a self-regulatory organization, exchange, clearing agency, quotation and trade reporting system, auditor oversight body or credit rating organization;
  - (b) “securities regulatory authority outside Canada” means a securities commission, a self-regulatory organization, an exchange or another person or body, empowered by law to regulate trading in securities or derivatives in, or to administer or enforce the securities laws of, any jurisdiction outside of Canada.
- (2) Notwithstanding section 198(3), the Commission may, with or without providing an opportunity to be heard, make an order under section 198(1)(a) to (h) in respect of a person or company if the person or company
  - (a) has been convicted in Canada or elsewhere of an offence
    - (i) arising from a transaction, business or course of conduct related to securities or derivatives, or
    - (ii) under laws respecting trading in securities or derivatives,
  - (b) has been found by a court in Canada or elsewhere to have contravened laws respecting trading in securities or derivatives,
  - (c) is subject to an order made by
    - (i) a securities regulatory authority outside Canada,
    - (ii) a recognized self-regulatory organization in Canada, or
    - (iii) an exchange in Canada,imposing sanctions, conditions, restrictions or requirements on the person or company, or

- (d) has agreed with
  - (i) a securities regulatory authority outside Canada,
  - (ii) a recognized self-regulatory organization in Canada, or
  - (iii) an exchange in Canada,to be subject to sanctions, conditions, restrictions or requirements.
- (3) An order made by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements on a person or company takes effect in Alberta, without notice to that person or company and without a hearing, as if it were made by the Commission, with such modifications as the circumstances require.
- (4) Where a person or company is subject to sanctions, conditions, restrictions or requirements pursuant to an agreement with a securities regulatory authority in Canada those sanctions, conditions, restrictions or requirements apply to that person or company, without notice to that person or company and without a hearing, as if the agreement had been made with the Commission, with such modifications as the circumstances require.
- (5) An order referred to in subsection (3), or an agreement referred to in subsection (4), as the case may be, must have arisen as a result of findings or admissions of a contravention of laws respecting the trading in securities or derivatives, or conduct contrary to the public interest, in order to satisfy the requirements of subsection (3) or (4), as the case may be.
- (6) If an order referred to in subsection (3), or an agreement referred to in subsection (4), as the case may be, does not meet the requirements of subsection (5), notwithstanding section 198(3), the Commission may, with or without providing an opportunity to be heard, make an order under section 198(1)(a) to (h) in respect of the person or company that is the subject of the order or agreement, as the case may be.
- (7) If an order is made by the Commission pursuant to subsection (2) or subsection (6), the Commission must send a copy of the order to the person or company against whom the order was made.
- (8) Notwithstanding anything in subsections (3) and (4),
  - (a) no person or company shall be required to pay the Commission or any other person or company any administrative penalty, costs or other funds as a result of the operation of this section,

- (b) no order issued by, or agreement entered into with, a securities regulatory authority in Canada solely based on
  - (i) an order issued by another securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements, or
  - (ii) an agreement with another securities regulatory authority in Canada to be subject to sanctions, conditions, restrictions or requirements

satisfies the requirements of subsection (3) or (4), as the case may be,

- (c) where
  - (i) an order issued by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements is overturned, vacated, revoked or otherwise held to be of no force and effect pursuant to applicable laws, or
  - (ii) an agreement with another securities regulatory authority in Canada to be subject to sanctions, conditions, restrictions or requirements is set aside, revoked or otherwise held to be of no force and effect either pursuant to applicable laws or on consent of the parties to the agreement,

that order or agreement, as the case may be, ceases to satisfy the requirements of subsection (3) or (4), as the case may be, and

- (d) where
  - (i) an order issued by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements, other than an order excluded from this section pursuant to clause (b), is varied or amended pursuant to applicable laws, or
  - (ii) an agreement with another securities regulatory authority in Canada to be subject to sanctions, conditions, restrictions or requirements, other than an agreement excluded from this section pursuant to clause (b), is varied or amended either pursuant to applicable laws or on consent of the parties to the agreement,

that order or agreement, as the case may be, applies in Alberta as varied or amended.

- (9) On the application of
  - (a) the Executive Director in respect of a person or company who is subject to sanctions, conditions, restrictions or requirements imposed by, or agreed to with, a securities regulatory authority in Canada, or

- (b) a person or company who is subject to sanctions, conditions, restrictions or requirements imposed by, or agreed to with, a securities regulatory authority in Canada,

the Commission may, after providing the Executive Director and that person or company an opportunity to be heard, make a declaration clarifying the application of subsection (3) or (4), as the case may be, to that person or company, and that declaration is binding on that person or company and the Commission.

- (10) A person or company shall comply with an order that is deemed to have been made pursuant to subsection (3) or an agreement that is deemed to have been made with the Commission pursuant to subsection (4), including as clarified in any declaration made by the Commission pursuant to subsection (9).

## Annex B

### Alberta Securities Commission Policy 51-601

#### *Reporting Issuers List*

## 1. Introduction

- 1.1 Effective September 15, 2006, the Alberta Securities Commission (ASC) replaced its weekly list of defaulting reporting issuers and related certificates with a list of reporting issuers that is updated each business day. Interested persons can refer to the list of reporting issuers to determine whether an Alberta reporting issuer has been noted in default of certain requirements of Alberta securities laws or its securities are the subject of a general cease trade order ~~issued by the ASC~~.

## 2. List of Reporting Issuers

- 2.1 The ASC maintains a list of reporting issuers that identifies:
- (a) issuers that are reporting issuers in Alberta;
  - (b) Alberta reporting issuers that have been noted in default of certain requirements of Alberta securities laws; ~~and~~
  - (c) Alberta reporting issuers whose securities are the subject of a general cease trade order by the ASC;
  - (d) Alberta reporting issuers whose securities are the subject of a general cease trade order by another securities regulatory authority in Canada.
- 2.2 The list of reporting issuers is available on the ASC website (www.albertasecurities.com) under "~~Company Disclosure and Compliance Issuer Regulation~~" - "Reporting ~~Issuers~~ Issuer List". The list is compiled as of the close of business each business day and appears on the ASC website by 11:00 am the following business day.
- 2.3 Every effort is made to ensure the accuracy of this list. A reporting issuer that does not appear on this list or that has inappropriately been noted in default should contact the ASC promptly.

## 3. Basis for Noting in Default

- 3.1 The list of reporting issuers identifies those instances in which a reporting issuer has been noted in default for certain compliance deficiencies.

- 3.2 The absence of a default notation on the list of reporting issuers does not ensure that the reporting issuer is in full compliance with all of its obligations under Alberta securities laws because, amongst other things:
- (a) not all types of deficiency may lead to a default notation;
  - (b) the list will not reflect undetected deficiencies;
  - (c) the list will not reflect deficiencies which, though detected, have not yet resulted in a reporting issuer being noted in default as the issuer may be given advance notice of the deficiency and a time-limited opportunity to remedy the deficiency before being noted in default.
- 3.3 The ASC will generally consider a reporting issuer to be in default if the issuer:
- (a) does not file a continuous disclosure document required by Alberta securities laws;
  - (b) makes disclosure that does not comply with Alberta securities laws; or
  - (c) does not pay a fee required by Alberta securities laws.
- 3.4 Appendix A to this Policy identifies significant deficiencies in compliance with Alberta securities laws that, when detected and determined to be deficient by ASC staff, may result in the reporting issuer being noted in default on the list of reporting issuers. Appendix A will be updated periodically.
- 3.5 Section 1 of Appendix A sets out a list of failures to file significant continuous disclosure that will, when detected and determined to be a default by ASC staff, generally result in the reporting issuer being noted in default on the list of reporting issuers without prior notification.
- 3.6 Section 2 of Appendix A describes significant deficiencies in the content of a required continuous disclosure filing.

Before noting a reporting issuer in default on the list of reporting issuers for a deficiency contemplated in section 2 of Appendix A, ASC staff will notify a reporting issuer of its intention to do so. The issuer will have the opportunity, within a specified time period, either to remedy the deficiency or to satisfy ASC staff that there was no deficiency.

If the issuer remedies the deficiency or satisfies ASC staff that there was no deficiency, ASC staff will take no further action and the issuer will not be noted in default on the list of reporting issuers.

If the issuer acknowledges the deficiency but does not remedy it within the specified period, ASC staff will note the issuer in default on the list of reporting issuers.

If the issuer and ASC staff disagree as to whether the identified disclosure is deficient, the issuer will not be noted in default on that particular ground on the list of reporting

issuers. That does not preclude ASC staff from seeking a hearing under section 198 of the *Securities Act* ([Alberta](#)) for an order under clause (h) of subsection 198(1) of the *Securities Act* ([Alberta](#)) that the issuer's continuous disclosure record be amended to address the issues identified or any other appropriate order under the *Securities Act* ([Alberta](#)).

- 3.7 Section 3 of Appendix A identifies the failure to pay a fee required under Alberta securities laws as a ground of default. Such a default will also generally result in the reporting issuer being noted in default on the list of reporting issuers without prior notification.
- 3.8 Section 4 of Appendix A identifies the failure to comply with any other requirement related to continuous disclosure as a ground of default. The failure to file continuous disclosure prescribed by Alberta securities laws, and not specifically identified in section 1 of Appendix A, once detected and determined to be a default by ASC staff, will generally result in a reporting issuer being noted in default on the list of reporting issuers without prior notification.

A failure to deliver information and documents reasonably relevant to a disclosure review, as required by the Executive Director pursuant to subsection 60.2(2) of the *Securities Act* ([Alberta](#)), will also generally result in a reporting issuer being noted in default on the list of reporting issuers without prior notification.

Other failures to comply with requirements related to continuous disclosure under section 4 of Appendix A will be treated in the manner provided in section 3.6 of this Policy.

- 3.9 A notation of default on one or more of the specific grounds listed in Appendix A will be identified in the list of reporting issuers by a code referring to the item number in Appendix A.
- 3.10 Once the reporting issuer has addressed to the satisfaction of ASC staff a deficiency for which it has been noted in default, ASC staff will no longer consider the reporting issuer to be in default on that ground. The corresponding notation of the default will be removed from the list of reporting issuers when the website list is updated the next business day.

#### **4. Cease Trade Orders**

- 4.1 The list of reporting issuers will identify certain cease trade orders that prohibit all trading in Alberta of securities of a reporting issuer.
- 4.2 If an order has been issued under subsection ~~33-1(1)~~,[33.1](#), 198(1) or 198(2) of the *Securities Act* ([Alberta](#)) prohibiting all trading in securities of a reporting issuer, the existence of that order will be noted on the list of reporting issuers beside the name of the issuer as "ASC CTO" without prior notification.

- 4.2.1 As of July 1, 2015, if an order has been issued by a securities regulatory authority in Canada prohibiting any person or company from trading in securities or specified securities of a reporting issuer, ~~the existence of a cease trade order will be noted~~ and that order arose as a result of a finding or admission of a contravention of laws respecting the trading in securities or derivatives, or conduct contrary to the public interest, that cease trade order will also apply in Alberta as a result of section 198.1 of the *Securities Act* (Alberta), with such modifications as the circumstances require.
- 4.2.2 If an order is issued by another securities regulatory authority in Canada prohibiting all trading of the securities of an issuer that is a reporting issuer in Alberta, (e.g., as a result of a default referred to in Appendix A to this Policy), the existence of that order will be noted on the list of reporting issuers beside the name of the issuer as “Reciprocal CTO” without prior notification.
- 4.3 ~~Other~~ Because a management and insider cease trade order is directed at the management and insiders of a reporting issuer and is not made generally in respect of the securities of the reporting issuer, this type of cease trade order is not noted on the list of reporting issuers against the name of the issuer. Management cease trade orders issued by the ASC can be found on the ASC website (at [www.albertasecurities.com](http://www.albertasecurities.com)) under “Proceedings, Decisions & Orders – Issuers”.
- 4.4 Enforcement orders that may prohibit or restrict trading in Alberta in the securities of ~~the~~ reporting issuer by specified persons or companies will not appear on the list of reporting issuers. To determine whether a person or company is the subject of ~~this other type of an enforcement~~ cease trade order ~~(for example, a cease trade order issued against management or insiders of a reporting issuer)~~, consult the ASC website ~~(at [www.albertasecurities.com](http://www.albertasecurities.com)) using the “Search Enforcement Orders” tool under “Enforcement”~~ “under “Proceedings, Decisions & Orders - Enforcement-Orders”. ~~Because a management and insider cease trade order is directed at the management and insiders of the reporting issuer and not the securities of the reporting issuer, this type of cease trade order is not noted on the list of reporting issuers against the name of the issuer.”~~
- 4.5 For cease trade orders issued by other securities regulatory authorities in Canada that may be effective in Alberta pursuant to section 198.1 of the *Securities Act* (Alberta), refer to the national cease trade order database on the Canadian Securities Administrators website (at [www.csa-acvm.ca](http://www.csa-acvm.ca)).

## 5. Filing Consideration For Reporting Issuers

- 5.1 A reporting issuer may be noted in default if it fails to file a required document within the prescribed time period. National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (the SEDAR instrument) provides for the electronic transmission of documents to the ASC for filing. The date of filing a document in electronic format for the purpose of Alberta securities laws is determined in accordance with section 2.7 of the SEDAR instrument. Reporting issuers should review the provisions of the SEDAR instrument to determine applicable filing requirements.

5.2 A reporting issuer is responsible for creating and maintaining a current filer profile under the SEDAR instrument and a current issuer profile supplement under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (SEDI). Reporting issuers should review requirements for filing a filer profile under the SEDAR instrument, an issuer profile supplement under SEDI and any amendments to the filer profile or issuer profile supplement. Reporting issuers are reminded that the ASC relies on the contact information in the issuer's SEDAR profile to serve any notices or orders issued under section 33.1 of the *Securities Act* ([Alberta](#)).

## 6. Sample Notation

6.1 A notation of default on the list of reporting issuers will be identified in the list under the heading "Nature of Default". The notation will use coding corresponding to the relevant description in Appendix A:

Example: ABC Inc.                      Cease Traded 1a, 1b, 3

Nature of default:	1a	failure to file annual financial statements
	1b	failure to file interim financial report
	3	failure to pay a fee required by Alberta securities laws

## 7. Effective Date

7.1 This Policy is [amended](#) effective ~~September 15, 2006~~ [July 2, 2015](#).

## APPENDIX A

### Key Deficiencies Resulting in Default

1. The reporting issuer has failed to file the following continuous disclosure prescribed by Alberta securities laws:
  - (a) annual financial statements;
  - (b) interim financial report;
  - (c) annual or interim management's discussion and analysis (MD&A) or an annual or interim management report of fund performance (MRFP);
  - (d) annual information form (AIF);
  - (e) certification of annual or interim filings under ~~Multilateral~~[National](#) Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (~~MI~~[NI](#) 52-109);
  - (f) proxy materials or a required information circular;
  - (g) issuer profile supplement on the *System for Electronic Disclosure By Insiders* (SEDI);
  - (h) material change report;
  - (i) written update as required after filing a confidential report of a material change;
  - (j) business acquisition report;
  - (k) annual oil and gas disclosure prescribed by National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) or technical reports for a mineral project required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101);
  - (l) mandatory news releases;
  - (m) corporate governance disclosure as required by National Instrument 58-101 *Disclosure of Corporate Governance Practices*;
  - (n) audit committee disclosure as required by ~~Multilateral~~[National](#) Instrument 52-110 *Audit Committees*; or

- (o) disclosure in a reporting issuer's MD&A relating to disclosure controls and procedures and their effectiveness that is referred to in a certificate filed under [MNI](#) 52-109.
2. The reporting issuer's continuous disclosure is deficient because:
- (a) financial statements of the reporting issuer, or the auditor's report accompanying the financial statements, do not comply with the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) or National Instrument 52-107 *Acceptable Accounting Principles*; [and Auditing Standards](#) ~~and Reporting Currency~~;
  - (b) the reporting issuer has acknowledged that its financial statements, or the auditor's report accompanying the financial statements, may no longer be relied upon;
  - (c) the reporting issuer's AIF, MD&A, MRFP, information circular, or business acquisition reports do not contain information for each of the content items required by NI 51-102 or NI 81-106; or
  - (d) the reporting issuer's technical disclosure or other reports do not comply with the disclosure requirements of NI 43-101 or NI 51-101.
3. Failure to pay a fee required by Alberta securities laws.
4. The reporting issuer has failed to comply with any other requirement related to continuous disclosure.