

ASC NOTICE 32

EXPEDITED REVIEW OF SHORT FORM PROSPECTUSES AND RENEWAL AIFS

To expedite the review and receipt of short form prospectuses and the review and acceptance of renewal annual information forms ("Renewal AIFs") filed under the prompt offering qualification system (the "POP System") in more than one province or territory and to provide for continuing uniformity of administration of securities legislation, the following securities regulatory authorities (the "Participating Jurisdictions") have entered into a Memorandum of Understanding (the "Memorandum of Understanding") setting out the procedures to be followed by an eligible issuer or selling security holder (the "Issuer") to obtain a preliminary and final receipt for a short form prospectus or acceptance of a Renewal AIF on an expedited basis ("Expedited Review"):

- Alberta Securities Commission
- British Columbia Securities Commission
- Manitoba Securities Commission
- Nova Scotia Securities Commission
- Office of the Administrator of Securities, New Brunswick
- Ontario Securities Commission
- Registrar under the Prince Edward Island Securities Act
- Registrar of Securities under the Securities Act, Northwest Territories
- Registrar of Securities under the Yukon Territory Securities Act
- Saskatchewan Securities Commission
- Securities Commission of Newfoundland

The Alberta Securities Commission (the "Commission") is publishing the Memorandum of Understanding to facilitate the use of Expedited Review in Alberta in the Alberta Securities Commission Weekly Summary ("Weekly Summary") of November 4, 1994. Other Participating Jurisdictions are taking equivalent steps.

The Memorandum of Understanding is substantially the same as the proposal (the "Proposal") for expedited review that the Canadian Securities Administrators (the "CSA") published for comment in August, 1994 but reflects, as discussed below, many of the comments received by the CSA on the Proposal. The Memorandum of Understanding takes effect on November 15, 1994.

The Commission is concurrently publishing in the Weekly Summary a Permission granted by the Director under subsection 70(3) of the Securities Act (Alberta) which facilitates Expedited Review by permitting representations as to the listing or quotation of securities on a stock exchange or an automatic quotation system provided certain conditions are met.

Each Participating Jurisdiction expects Issuers to comply with all local requirements of each province or territory in which they propose to distribute securities under Expedited Review.

Coordination with the Commission des valeurs mobilières du Québec

The Commission des valeurs mobilières du Québec (the "CVMQ") has participated in the discussions relating to the Memorandum of Understanding and agrees with its basic purpose and intent. However, the CVMQ is not currently in a position to become a Participating Jurisdiction under the Memorandum of Understanding.

An Issuer filing a preliminary short form prospectus or short form prospectus with Participating Jurisdictions and the CVMQ may nonetheless elect Expedited Review and file under National Policy Statement No. 1 ("NPS 1") provided it selects its Designated Jurisdiction under Expedited Review as its Principal Jurisdiction for the purposes of NPS 1. In these circumstances, the Issuer will be dealing only with its Designated Jurisdiction and the CVMQ, unless one or more Participating Jurisdictions opt out of Expedited Review. The CVMQ has generally agreed to review any preliminary short form prospectus filed under Expedited Review within three working days.

Alternatively, an Issuer wishing to offer securities throughout Canada can file its preliminary short form prospectus under NPS 1 and the review process will be conducted in the same manner as prior to the implementation of Expedited Review. If it does so, it may select any province that is prepared to act in such capacity as its Principal Jurisdiction for the purposes of NPS 1. The Issuer may elect to receive a National Policy No. 1 Receipt that will have the same effect as prior to the implementation of Expedited Review.

Discussion of Comments

Eight comment letters were received in response to the Request for Comments which accompanied the Proposal. Copies of these comment letters, other than those regarding which confidentiality was specifically requested, are available for inspection through the public filing system maintained by or on behalf of the British Columbia, Alberta and Ontario Securities Commissions.

Commentators were generally supportive of the Proposal. Some commentators requested that the procedures be extended to apply to renewal simplified prospectuses and annual information forms filed by mutual funds under National Policy Statement No. 36 or Initial AIFs. Other commentators suggested technical changes to clarify the application and effect of Expedited Review.

The Request for Comments published along with the Proposal indicated that the CVMQ was not a Participating Jurisdiction under the Proposal and contained alternative procedures under which the CVMQ was likely to agree to participate in a system of expedited review for short form prospectuses. Several of the commentators expressed concern that the CVMQ was not a Participating Jurisdiction under the Proposal.

The Memorandum of Understanding takes into account many of the comments received concerning the Proposal. This notice discusses the significant comments received on, and changes made to the Proposal. Issuers and their advisors are encouraged to review the Memorandum of Understanding in its entirety.

Eligibility

The Participating Jurisdictions recognize that it may be appropriate to extend the procedures implemented under Expedited Review to other issuers and types of distributions, but wish to defer any expansion of the eligibility criteria until Expedited Review has been operating long enough to allow them to take their experience with Expedited Review into consideration when examining whether or not to extend it.

After considering comments received, it was decided not to extend the availability of Expedited Review to renewal simplified prospectuses and annual information forms filed by mutual fund issuers for the reason stated above and to allow consideration of this issue in light of any proposal for change that might result from the overall review of the investment funds industry currently underway in Ontario.

The Participating Jurisdictions also decided not to extend the availability of Expedited Review to Initial AIFs or the situation where an Issuer files a Renewal AIF in a Participating Jurisdiction in which it has never filed an Initial AIF because some of the Participating Jurisdictions wish to retain their individual review procedures in recognition of the fact that the Initial AIF is the foundation for entry into the POP System in a particular Jurisdiction. For similar reasons, one commentator's suggestion that a waiver under section 4.5 of National Policy Statement No. 47 ("NPS 47") be considered by only the Designated Jurisdiction was not adopted. Such a waiver if granted amounts to a variation of NPS 47 for the particular Issuer, and although certain waivers may be technical in nature, others may raise substantive issues.

The Proposal provided that Expedited Review would not be available for distributions of derivative securities. In view of concerns expressed as to the meaning of derivative securities, the Memorandum of Understanding includes a definition of derivative securities.

Effect of Opting Out by a Participating Jurisdiction

Some commentators were concerned about the ability of Participating Jurisdictions to opt out of Expedited Review. The Participating Jurisdictions reasonably expect that any uncertainty created by the opting out provisions will be reduced over time as Issuers gain experience with the limited circumstances under which the opting out provisions are used.

In response to comments received, the Memorandum of Understanding clarifies that where a Participating Jurisdiction opts out of Expedited Review for a particular preliminary short form prospectus, the preliminary expedited review receipt document remains effective for the preliminary short form prospectus filed in that Participating Jurisdiction. It also clarifies that where a Participating Jurisdiction opts out of Expedited Review the Issuer must file, as soon as is possible, the usual preliminary materials with the Participating Jurisdiction opting out. That Participating Jurisdiction will then conduct its own review of the particular short form prospectus in accordance with procedures under NPS 1.

Application of Expedited Review to Other Policy Statements

The Memorandum of Understanding clarifies that the filing procedures for a preliminary short form prospectus and short form prospectus set out in Section 6.3 of NPS 47 are subject to the filing procedures provided under the Memorandum of Understanding for Issuers electing Expedited Review.

Fees

One commentator suggested that the fees payable to Participating Jurisdictions other than the Designated Jurisdiction be reduced. Since the fees payable by a particular Issuer are designed to support the overall securities regulatory system for the benefit of the Issuer, the Issuer's security holders and other capital market participants and are not related to the workload associated with the review of a particular preliminary short form prospectus or Renewal AIF, this comment was not adopted.

Designated Jurisdiction

Schedule "A" has been updated to show the Designated Jurisdiction assigned to Issuers as at October 1, 1994.

Selective Review

In the Memorandum of Understanding the Participating Jurisdictions acknowledge that a Participating Jurisdiction may adopt and implement a system of selective review of filings that would apply to preliminary short form prospectuses under Expedited Review. The Memorandum of Understanding provides that any Participating Jurisdiction adopting a system of selective review will agree to notify the other Participating Jurisdictions if and when it adopts a system of selective review and will provide sufficient information to those Participating Jurisdictions for them to assess the scope of review under the system of selective review.

The Ontario Securities Commission and its Director have adopted a system of selective review which came into effect on October 3, 1994 and which the Participating Jurisdictions acknowledge will be applied to preliminary short form prospectuses and Renewal AIFs filed under Expedited Review. This selective review system is described in a notice entitled "Selective Review System" published in the OSC Bulletin dated September 16, 1994 at (1994), 17 OSCB 4387.

Responsibility for compliance with applicable securities legislation, policies and practices remains with Issuers and their advisors. The fact that a document is not selected for review in no way detracts from such responsibility. Issuers are cautioned that it may not be appropriate to rely on a short form prospectus or a Renewal AIF as a precedent notwithstanding that the Ontario Securities Commission, as the Issuer's Designated Jurisdiction, has issued an expedited review receipt document for it or accepted it as a Renewal AIF since not all preliminary short form prospectuses and Renewal AIFs are reviewed in the selective review system.

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