

ALBERTA SECURITIES COMMISSION
NOTICE

Defaulting Reporting Issuers – OSC Proposed Policy 57–603

On March 31, 2000, the Ontario Securities Commission (the “OSC”) published for comment a proposed OSC Policy 57–603 “Defaults By Reporting Issuers In Complying With Financial Statement Filing Requirements” (the “OSC Policy”). A full text of the OSC Policy can be found at the OSC web site at www.osc.gov.on.ca.

Background

The OSC Policy sets out an approach to deal with a reporting issuer when it defaults on the requirement to file annual or interim financial statements. This approach is significantly different from the OSC’s current practice and the Alberta Securities Commission’s (the “ASC”) current practice.

The OSC Policy is currently proposed for adoption in Ontario only but should be of interest to Alberta market participants for two reasons. First, it would affect Alberta reporting issuers that are also reporting in Ontario. Second, the Canadian Securities Administrators (the “CSA”) are determining the feasibility of developing a National Policy similar to the OSC Policy.

Section 121(1) of the *Securities Act* (Alberta) requires a reporting issuer to file annual financial statements on or before the 140th day after the end of the issuer’s most recent financial year end. Section 120(1) of the *Securities Act* (Alberta) requires a reporting issuer to file interim financial statements on or before the 60th day after the end of the issuer’s most recent 3, 6, and 9 month interim period.

The ASC is concerned about the number of reporting issuers that fail to file their annual and interim financial statements within the time period required by the legislation. In the past three years the ASC has seen an increase in the number of defaulting issuers following the May 20 filing deadline for reporting issuers with a December 31 year end.

Highlights of the OSC Policy

Where a reporting issuer in default of filing financial statements files alternate information to the marketplace as described in the OSC Policy, the OSC will, for a period not exceeding two months, generally not impose an issuer cease trade order but will instead impose a cease trade order on trading in the issuer’s securities by its officers, directors and insiders (a “Management and Insider Cease Trade Order”). In certain circumstances where a reporting issuer is the subject of insolvency proceedings, the OSC may extend the two month period.

Partial Implementation

The ASC is not implementing a policy similar to the OSC Policy at this time. However, the ASC generally will not issue a cease trade order against the securities of an issuer for failure to file financial statements if the issuer is a reporting issuer in Ontario and is complying with the OSC Policy. The alternative information filed with the OSC under the OSC Policy, however, is considered “material to investors” for the purpose of section 196 of the *Securities Rules* (Alberta) and should be filed with the ASC in the same manner that it is filed with the OSC, i.e. on SEDAR adding the ASC as a recipient agency. The ASC generally will also issue a Management and Insider Cease Trade Order if the OSC has issued such an order and the insider is a resident of Alberta.

The OSC is seeking comment on its proposed Policy 57–603 until May 31, 2000. The ASC is also seeking comment on the OSC Policy in connection with CSA’s development of a National Policy. The ASC would encourage interested parties to direct written comments to:

John Stevenson
Secretary
Ontario Securities Commission
20 Queens Street West
Suite 800, Box 55
Toronto Ontario, M5H 3S8

Copies of any submission to the Ontario Securities Commission should also be addressed to the ASC as follows:

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May 12, 2000