

A.S.C. POLICY 2.1
APPLICATIONS TO THE ALBERTA SECURITIES COMMISSION

1. TYPES OF APPLICATIONS

1.1 The procedures set forth in this policy apply to all applications made to the Board of the Alberta Securities Commission (the 'Board') under certain sections of the Securities Act (Alberta) (the "Act"), the regulation made under the Act (the "Regulation"), Alberta Securities Commission (the "Commission") Policy Statements, National Policy Statements, and the Business Corporations Act (Alberta) (the "BCA"). The Policy does not apply to applications that have either been delegated by the Board to the Chief of Securities Administration, (the "Chief") or are to be dealt with by the Chief.

1.2 More specifically, this policy applies to the following sections of the Act, the Regulation, Commission Policy Statements, National Policy Statements, and the BCA which sections, generally speaking, contemplate orders by the Board granting relief from various statutory requirements:

<i>Section of the Act</i>	<i>Section of the Regulation</i>	<i>Commission Policy Statements</i>
107(1)(c)		
116(1), 116(4)	144(4)(b)	Section 4 of Policy
117(1)		Statement 7.1
123(b)(iii)		
125		
144(2)(c)		
154	<i>Section of the BCA</i>	<i>National Policy Statements</i>
156(2)		
158(2)	3(3)	Part XI of Policy
184(2)	145	Statement No. 41
185	165(3)	
186		
192(4)		

2. SUBMISSION OF APPLICATIONS

2.1 All applications should be addressed to:

Senior Legal Counsel
Agency of the Alberta Securities Commission
21st Floor
10025 Jasper Avenue
Edmonton, Alberta
T5J 3Z5

- 2.2 The appropriate fee set forth in Schedule 1 to the Regulation must be submitted with the application and made payable to the Provincial Treasurer of Alberta. If more than one order or decision is sought under the Act or the Regulation the single application fee prescribed by section 15(3) of Schedule I to the Regulation must be remitted. However, where the application includes a request for an order under section 116 or 144 of the Act the fee specifically prescribed by Schedule 1 for these types of applications must also be remitted. If more than one issuer is requesting the same order each issuer must remit the required fee.

Reference may be made to the Commission's Notice 8 on the method of payment of fees.

3. NUMBER OF COPIES AND CONFIDENTIALITY

- 3.1 The original executed application and one copy should be submitted. If supporting material appended to the application is bulky, only one copy of the supporting material need be filed unless the Agency of the Alberta Securities Commission (the "Agency") requests additional copies.
- 3.2 Upon receipt of an application, one copy shall be placed immediately in the public file unless confidentiality is specifically requested. If confidentiality of the application is requested,
- 3.2.1 such request shall be made pursuant to section 192(4) of the Act, and accompany the application,
- 3.2.2 the applicant should be prepared to demonstrate that such confidentiality is reasonable in the circumstances and would not be prejudicial to the public interest, and
- 3.2.3 the staff will keep the application confidential until the matter is heard by the Board and
- 3.2.3.1 if confidentiality is granted, the application and supporting material will be placed on the Commission's confidential files for a set period of time as determined by the Board, or
- 3.2.3.2 if confidentiality is not granted, the application and supporting materials shall be placed on the Commission's public files.
- 3.3 If the staff of the Agency while reviewing the application requests additional supporting material which the applicant wants to be kept confidential, the request for confidentiality shall be made pursuant to section 192(4) of the Act. Upon the request being made the additional supporting material will be dealt with in accordance with paragraph 3.2.3 above.

- 3.4 If confidentiality of the hearing is requested,
 - 3.4.1 such request shall accompany the application,
 - 3.4.2 the applicant should be prepared to demonstrate that it is in the public interest to hold the hearing in camera pursuant to section 19(m) of the Act,and
 - 3.4.3 if confidentiality is granted, matters relating to the hearing will be kept confidential,
 - or
 - 3.4.4 if confidentiality is not granted, the hearing may be adjourned until the matter is heard on a non-confidential basis.

4. CONTENTS AND FORMAT

- 4.1 Applications are to be submitted in writing, and divided into parts dealing with each of the following headings, as applicable, including the information, if relevant, indicated below.
- 4.2 *Summary*
 - 4.2.1 Include the name of the issuer, the name of the applicant (if different from the issuer), the statute, regulation or policy statement pursuant to which the application is made and the nature of the relief sought.
- 4.3 *The Issuer*
 - 4.3.1 the name of the issuer;
 - 4.3.2 jurisdiction and date of incorporation or (in the case of unincorporated entities) organization;
 - 4.3.3 capital structure - authorized and issued and outstanding capital and debt obligations;
 - 4.3.4 whether the issuer is a reporting issuer and the date it became a reporting issuer. If the issuer is a reporting issuer in another jurisdiction so state and disclose the date it became a reporting issuer in that jurisdiction;
 - 4.3.5 whether the issuer is listed on any exchange or trading over-the-counter, and

recent price and volume traded;

4.3.6 whether the issuer is in default of securities legislation in Alberta or any other jurisdiction;

4.4 *The Applicant*

4.4.1 If the applicant is not the issuer, include those items in paragraph 4.3 pertaining to the applicant which are relevant to the application and explain the applicant's relationship to the issuer.

4.5 *Arguments and Materials in Support of Application*

4.5.1 the facts on which the application is based;

4.5.2 the reasons for making the application;

4.5.3 arguments in support of granting the order requested;

4.5.4 relevant considerations including case law, prior Board decisions, other applications pending before the Board, conditions or recommendations;

4.5.5 other relevant circumstances including regulatory decisions by agencies other than the Board, applications pending before other agencies, conditions or recommendations;

4.5.6 a statement as to whether similar applications have or have not been made in other jurisdictions (applicants should refer to the Canadian Securities Administrators Notice #92/2 published in the July 31, 1992 Commission Summary);

4.5.7 supporting documents may be included as schedules or exhibits to the application. References in the application should be made to such supporting documents.

4.6 *Order or Decision Sought*

4.6.1 An applicant shall submit a draft of the order sought. In order to assist applicants in drafting the most common form of section 116, 117 or 125 orders, attached as Schedules A, B and C to this policy are samples of these orders. As well, applicants may refer to the Commission Summary for other precedents.

4.6.2 All orders shall contain as representations all the relevant major facts upon which the application is based. An order should "stand alone" in that a reader should be provided with all pertinent information without the necessity of resorting to other materials in order to understand the rationale of the order.

4.7 *Verification*

- 4.7.1 Each application must be signed by the applicant and must contain a statement certifying the truth of the facts contained therein. If the application is not signed by the applicant and is made by an agent for the applicant, the statement may be omitted if the application is accompanied by a statement made by the applicant confirming the authority of the agent to prepare and file the application and confirming also the truth of the facts contained in the application.

If the applicant is not the issuer and the applicant intends to make representations concerning the issuer, the issuer will also be required to provide a statement certifying the truth of the facts contained in the application.

Sample language in both cases might include:

“We authorize the making and filing of the attached application by _____ and confirm the truth of the facts contained therein.

DATED at _____ this _____ day of _____, 19____.

authorized officer”

5. BOARD HEARINGS PROCEDURE

- 5.1 Upon receipt of an application with the correct fee, the Agency staff will review the application. The applicant may be requested to provide further information or clarification. If the information is not provided within a reasonable time period, the application may be treated as abandoned.
- 5.2 Applications will not be considered by the Board until they are complete and all inquiries and requests for additional documentation by Agency staff have been satisfactorily answered or provided, and the Agency has formulated its position as to whether or not it will recommend to the Board that the requested order be granted. Agency staff will generally complete its initial review within 10 business days after receipt of the application.
- 5.3 If the Agency is prepared to recommend that the order be granted, then the Board may grant the application on the presentation of the Agency staff alone. However, in certain circumstances Agency staff may require the applicant to appear and make its own application to the Board. An application will not be refused without the applicant being given an opportunity to make representations to the Board.

If the Agency recommends denial of an application, the application will be set down for a hearing before the Board, and the applicant will be afforded the opportunity to present the

application to the Board. Agency staff will deliver a memorandum to the applicant setting out the reasons for its recommendation to deny the application, and will be present at the hearing to make submissions on behalf of the Agency.

- 5.4 In those cases where a clear and compelling situation exists, requests may be made to Senior Legal Counsel, prior to submitting an application to the Agency, to vary the time periods referred to in paragraph 5.2 so as to expedite the Board's consideration of the application. If a request is agreed to the application must be accompanied with the appropriate fee.

Applicants are advised that applications should be submitted sufficiently in advance of any deadlines which they may have to meet in order to ensure that they receive the relief sought within their time lines. Applications which are contentious or complex generally require more time to review.

- 5.5 The hearing is generally conducted on an informal basis with the decision being rendered orally by the Board. Questions will probably be forthcoming from the Board. Hearings are open to the public unless the Board is satisfied that there is sufficient reason to hear the matter, or part of the matter, in camera.
- 5.6 As a matter of course applications are not recorded or transcribed and therefore a request for a transcript must be made in advance. Any transcript of a hearing shall be at the expense of the party requesting that transcript.
- 5.7 An application may be withdrawn at any time before the Board considers the application without prejudice to the right of the applicant to re-apply. If the application has not been reviewed by Agency staff prior to it being withdrawn the application fee will be refunded.
- 5.8 Decisions of the Board, except orders made under section 116 and section 192(4) of the Act, may be appealed to the Court of Appeal of Alberta.
- 5.9 Applicants are entitled to be represented by counsel on any matter before the Board.

6. APPLICATIONS UNDER SECTION 116 OF THE ACT

6.1 *General Comments*

- 6.1.1 Pursuant to section 116(1), the Board has the jurisdiction to make an order exempting a trade from the registration or prospectus requirements of the Act if the Board is satisfied that it would not be prejudicial to the public interest to do so.
- 6.1.2 The Board takes the position that if an applicant is able to rely on a statutory exemption in the Act, then the Board generally will not consider the application. In addition, the Board is most reluctant to grant an order under section 116 if the

applicant is seeking the comfort of a Board order as to the use of a certain statutory exemption or exemptions or as to whether the Act applies to a certain set of facts. The Board takes the position that the applicant and its legal advisors are in the best position to determine whether the Act applies, and the availability of a particular statutory exemption.

6.1.3 The Board considers that a de minimus distribution is made in Alberta if the number of proposed security holders resident in Alberta is less than 2% of the total number of security holders of that issuer and if the number of securities proposed to be distributed to Alberta residents is less than 2% of the issued and outstanding securities of that issuer both at the time of making of the offering and upon completion of the distribution.

6.1.4 Where securities to be distributed will be free trading in another jurisdiction and the issuer is seeking to have a hold period prescribed by the Act dispensed with, the Board will consider this type of application where:

6.1.4.1 the number of proposed security holders resident in Alberta and the number of securities proposed to be distributed to Alberta residents are de minimus,

6.1.4.2 there is prejudice to the Alberta shareholders by being subject to a hold period,

6.1.4.3 the securities are listed on a recognized stock exchange in another jurisdiction, and

6.1.4.4 the first trades in the securities to be distributed are done on the floor of the stock exchange in that other jurisdiction.

6.1.5 In certain circumstances, the Board is prepared to consider applications made pursuant to section 116, to vary the criteria under the statutory exemptions at subsections 65(l)(v), (v.1), and (y) and 107(l)(p), (q), and (z) of the Act. These applications should include the general information required under paragraph 4 as well as, where applicable, the following:

6.1.5.1 the number of purchasers to be solicited. In general the Board will not grant a section 116 order where the number of purchasers in all jurisdictions including Alberta is contemplated to exceed 100;

6.1.5.2 the specific reasons for the offering necessitating more investors than is permitted under the exemption;

6.1.5.3 the aggregate acquisition cost of the securities to each purchaser. Where the application is to increase the number of purchasers permitted under a statutory exemption the Board will generally require that each investor shall be required to purchase the securities for an aggregate acquisition cost to him of at least \$25,000.

6.1.6 Generally, the Board is not prepared to consider a section 116 application to abridge a statutory hold period imposed on securities. In particular, the Board is most reluctant to grant orders which abridge the statutory hold period applicable to the holdings of a control person.

6.2 *Retroactive Orders*

6.2.1 Although section 116(4) provides that orders may come into force prior to the date of the order, the Board is reluctant to grant such orders. Therefore, as an alternative, the Agency may in appropriate circumstances determine that no action will be taken with respect to a particular transaction, and the Board will be advised of this when the application is heard.

7. APPLICATIONS UNDER SECTION 117 OF THE ACT

7.1 *General*

7.1.1 Applications made pursuant to section 117(1) permit the Board to declare an issuer to the reporting issuer under the Act provided that to grant such an order would not be prejudicial to the public interest. The granting of such an order imposes all the reporting requirements under Parts 11, 12 and 14 of the Act on the issuer and its insiders unless exempted by the Board.

7.2 In addition to the requirements under paragraph 4, an application made pursuant to section 117(1) should include the following information:

7.2.1 the jurisdiction or jurisdictions in which the applicant is a reporting issuer or the equivalent of a reporting issuer;

7.2.2 the date or dates that the issuer became a reporting issuer or the equivalent thereof in another jurisdiction or jurisdictions;

- 7.2.3 a certificate or other written evidence from the jurisdiction or jurisdictions that the issuer is not in default as a reporting issuer or the equivalent thereof,
 - 7.2.4 all materials including a base disclosure document (i.e. prospectus, listing statement, information circular, etc.) (unless the base disclosure document is outdated thereby providing little useful information), that the issuer has as a reporting issuer or the equivalent thereof filed in the other jurisdiction or jurisdictions for the 2 years prior to the date of making of the application.
- 7.3 In general, the Board will not grant a section 117(l) order if the issuer is not a reporting issuer or the equivalent of a reporting issuer in some other jurisdiction for at least 2 years.
- 7.4 *Retroactive Orders*
- 7.4.1 The Board is prepared to grant a section 117 order having a retroactive effect provided the information set out in paragraph 7.2 is contained in the application and the filing is made by the issuer in accordance with paragraph 7.2.4 for the appropriate number of years for which the issuer seeks retroactivity. For example, an issuer seeking an order that is retroactive for three years must file with the Commission all material it has filed as a reporting issuer for the past three years in another jurisdiction.
 - 7.4.2 The Board also requires that an application for an order of retroactive effect under section 117 clearly sets out the reasons for the retroactive nature of the order.

8. APPLICATIONS UNDER SECTION 125 OF THE ACT

8.1 *General*

- 8.1.1 Section 125 applications are made to the Board where the reporting issuer seeks a declaration to the effect that it is no longer a reporting issuer under the Act. The Board's jurisdiction is premised on the fact that:
 - 8.1.1.1 there are fewer than 15 security holders whose latest addresses as shown on the books of the reporting issuer are in Alberta; or
 - 8.1.1.2 where an issuer became a reporting issuer by virtue of having obtained a receipt for a prospectus, a distribution of securities was not effected by that prospectus and the prospectus lapsed.

8.1.2 If the facts in item 8.1.1 are not in existence at the time of the application, then the Board has no jurisdiction to make an order under section 125 of the Act.

8.2 In addition to the requirements under paragraph 4, a section 125 application must include the following information:

8.2.1 the manner by which the issuer became a reporting issuer in Alberta (i.e. by obtaining a receipt for a prospectus, listing on the Alberta Stock Exchange, filing of a securities exchange take-over bid, by order etc.);

8.2.2 the date the issuer became a reporting issuer;

8.2.3 the number of registered security holders, and to the best of the knowledge of the applicant, the number of non-registered security holders, of the reporting issuer whose latest address is in Alberta;

8.2.4 if there are security holders whose latest address is in Alberta, written confirmation from those security holders, both registered and non-registered, that they understand the nature of the section 125 application and have no objections to the application;

8.2.5 written confirmation from each stock exchange in Canada on which the securities of the reporting issuer are listed that the securities have been delisted;

8.2.6 if applicable, disclosure of the number of security holders of the issuer whose latest address is not in Alberta and disclosure if similar applications are being made in those other jurisdictions.

9. OTHER APPLICATIONS

9.1 As indicated earlier in this policy, there are other applications which may be made to the Board other than those under sections 116, 117 or 125 of the Act. However, the nature of such applications vary to such a degree that providing detailed comments relating to such applications in this policy is not practicable. The applicant is therefore advised to consult with his legal adviser.

10. CONCLUSION

- 10.1 Although this policy relating to applications to the Commission is intended to be a guide, it must be remembered that the Board has absolute discretion if it is satisfied that the granting of the order is not prejudicial to the public interest. Therefore, nothing in this policy should be considered as abrogating that discretion and the Commission will continue to review each application on its individual merits.

Note: The ASC published in the ASC Summary dated October 12, 1990, "A Code of Conduct and Ethics for the Alberta Securities Commission Board."

SCHEDULE A TO PARAGRAPH 4.6.1 OF A.S.C. POLICY 2.1

ALBERTA SECURITIES COMMISSION
IN THE MATTER OF THE SECURITIES ACT
(S.A. 1981, C. S-6.1, AS AMENDED) (THE "ACT")
AND
IN THE MATTER OF

ORDER
(SUBSECTION 116(l))

1. WHEREAS _____ (the " ") has made an application to the Board of the Alberta Securities Commission (the "Board") for an order pursuant to subsection 116(l) of the Act;
2. AND WHEREAS it was represented by the _____ to the Board that:
 - 2.1
 - 2.2
 - 2.3
 - 2.4
 - 2.5
 - 2.6
 - 2.7
 - 2.8
 - 2.9
 - 2.10
3. AND WHEREAS the Board is satisfied that to do so would not be prejudicial to the public interest;

4. IT IS HEREBY ORDERED pursuant to subsection 116(l) of the Act that the ____ trade of _____ by _____ is not subject to section _____ of the Act provided that:

- 4.1
- 4.2
- 4.3
- 4.4
- 4.5

Dated at the City of EDMONTON
in the Province of ALBERTA
this day of _____, 19____

SCHEDULE B TO PARAGRAPH 4.6.1 OF A.S.C. POLICY 2.1

ALBERTA SECURITIES COMMISSION
IN THE MATTER OF THE SECURITIES ACT
(S.A. 1981, C. S-6.1, AS AMENDED) (THE “ACT”)

AND
IN THE MATTER OF

ORDER
(SUBSECTION 117(1))

1. WHEREAS _____ (the “ _____ ”) has made an application to the Board of the Alberta Securities Commission (the 'Board') for an order pursuant to subsection 117(l) of the Act to be declared to be a reporting issuer under the Act
2. AND WHEREAS it was represented by the _____ to the Board that:
 - 2.1 the _____ was incorporated _____;
 - 2.2 the authorized capital of _____ is _____ and there is currently issued and outstanding _____;
 - 2.3 the shares are listed and posted for trading on _____;
 - 2.4 _____ is a reporting issuer in good standing in _____ and has been a

reporting issuer there since _____ by virtue of _____;

2.5 _____ has filed all the information that it was required to file as a reporting issuer in _____ since _____;

2.6

3. AND WHEREAS the Board is satisfied that to do so would not be prejudicial to the public interest;

4. IT IS HEREBY ORDERED pursuant to subsection 117(l) of the Act that _____ is a reporting issuer for the purposes of the Act and the regulations effective as of _____

Dated at the City of EDMONTON
in the Province of ALBERTA
this day of _____, 19__

SCHEDULE C TO PARAGRAPH 4.6.1 OF A.S.C. POLICY 2.1

ALBERTA SECURITIES COMMISSION
IN THE MATTER OF THE SECURITIES ACT
(S.A. 1981, C. S-6.1, AS AMENDED) (THE "ACT")
AND
IN THE MATTER OF

ORDER
(SECTION 125)

1. WHEREAS _____ (the "_____") has made an application to the Board of the Alberta Securities Commission (the "Board") for an order pursuant to section 125 of the Act to be declared to be no longer a reporting issuer;

2. AND WHEREAS it was represented by the _____ to the Board that:

2.1 the _____ was incorporated _____;

2.2 the authorized capital of _____ is _____ and there is currently issued and outstanding _____;

2.3 the shares are listed and posted for trading on _____;

2.4 _____ is a reporting issuer _____ since _____ by virtue of _____;

2.5 _____ has _____ security holder(s) whose latest addresses as shown on its books are in Alberta;

2.7 its securities are no longer listed on any stock exchange in Canada;

2.8

3. AND WHEREAS the Board is satisfied that to do so would not be prejudicial to the public interest;

4. IT IS HEREBY ORDERED pursuant to section 125 of the Act that _____ is declared to be no longer a reporting issuer effective as of the date of this order.

Dated at the City of EDMONTON

in the Province of ALBERTA

this _____ day of _____, 19 _____

