

**A.S.C. POLICY 2.4**  
**CERTIFICATES OF NO DEFAULT AND LIST OF DEFAULTING**  
**REPORTING ISSUERS UNDER SECTION 113 OF THE SECURITIES ACT**

1. GENERAL

1.1 Securities acquired pursuant to certain exemptions under the Securities Act (Alberta) (the "Act") may be resold only if, among other things, the issuer is a reporting issuer and is not in default of any requirement of the Act or the Regulation to the Act (the "Regulation"). Section 113 of the Act states that any person or company may apply to the Chief of Securities Administration (the "Chief") for a certificate as to whether an issuer is a reporting issuer and, if so, whether the reporting issuer is not in default of any requirement of the Act or the Regulation. A person or company may rely on the certificate for the purpose of ensuring compliance with the resale restrictions contained in subsections 109(2)(a)(ii) and 112(1)(d) of the Act (insofar only as subsection 112(1)(d) requires that an issuer not be in default of the Act or the Regulation), except that such reliance is precluded by section 113(3) of the Act in the case of any person or company who knows or ought reasonably to know that the reporting issuer is in default. Further section 113(2) of the Act provides for a list of defaulting reporting issuers (the "List") for public inspection. (The Board of the Alberta Securities Commission (the "Board") granted a written authorization pursuant to section 14(3) of the Act authorizing the Chief to maintain the list of defaulting reporting issuers referred to in section 113(2).) A person or company may also rely on the List for the same purpose, subject to the restriction in section 113(3) of the Act.

2. DETERMINATION OF WHETHER A REPORTING ISSUER IS IN DEFAULT

2.1 The Act and the Regulation contain a large number of requirements, of various degrees of detail, applicable to reporting issuers. It would be impossible for the Chief to provide a policing mechanism sufficient to enable the Agency at all times to know whether there is some requirement of the Act or the Regulation that has been contravened by a reporting issuer. Also, listing a reporting issuer as in default on the basis of a minor or technical contravention might be unfair. Accordingly, the Chief proposes to treat an issuer as not being in default, for purposes of the certificate and the List, unless it is known to the Chief to be in default of one or more of the following requirements of the Act or the Regulation:

2.1.1 failure to file financial statements within the periods prescribed by sections 120 and 121;

2.1.2 filing of financial statements under sections 120 and 121 which are deficient in any of the following ways;

- 2.1.2.1 the omission of a required statement or auditor's report;
  - 2.1.2.2 the auditor's report contains a qualification indicating non-compliance with generally accepted accounting principles;
  - 2.1.2.3 the auditor's report contains a qualification relating to a limitation in the scope of the auditor's engagement imposed on the auditor by the reporting issuer or a qualification relating to the auditor's inability to obtain essential information caused by the reporting issuer's refusal to supply the auditor with such information; or
  - 2.1.2.4 the Chief determines that some other deficiency in the statements is sufficiently serious as to constitute a default. Ordinarily such determination will be made, only after a hearing before the Board and the issuer will not be treated as in default pending the hearing but, if the deficiency is clear and significant, the issuer will be treated as in default during the period prior to the hearing;
- 2.1.3 failure to pay the prescribed fees and charges set out in Schedule 1 to the Regulation;
- 2.1.4 where a reporting issuer is exempt from compliance with a requirement of the Act or the Regulation by reason of an order of the Board, its non-compliance with that requirement will not result in the issuer being considered to be in default unless the order states that the issuer is to be considered to be in default.
- 2.2 The defaults referred to in paragraph 2.1 are current defaults only. For example, if financial statements are not filed within the times limited by the Act, then the issuer will be on the List for the period from the date when the filing was due until the date that the filing took place. Even in the case of late filing, the issuer will be removed from the List.
- 2.3 While the above comments deal with the most important areas that require surveillance for the purpose of compiling a list of defaulting reporting issuers, they are far from exhaustive of the situations that might arise. Where a failure to comply with a provision of the Act or Regulation not specifically discussed above comes to the attention of the Chief and is, in the view of the Chief, a clear and significant contravention of the Act or the Regulation the reporting issuer will be treated as in default and included in the list of defaulting reporting issuers. If the default is not clear, or its significance is not obvious, the reporting issuer will be notified in advance of the intention to treat it as in default by the issuance of a Notice of Hearing. Its name will not be included on the list of defaulting reporting issuers until a conclusive determination by the Board is made as to whether a default has occurred, and

the significance of it.

- 2.4 As a general matter, it should be noted by reporting issuers that simple mailing of a document to the Chief or the Agency of the Alberta Securities Commission does not constitute compliance with filing requirements. Filing occurs only on actual receipt of the document, so that an issuer that relies on the mails may become a defaulting issuer if the mail is delayed. Reference may be made to section 192(l) of the Act.

### 3. FORM OF SECTION 113 CERTIFICATE

- 3.1 The form of certificate to be used under section 113 is set out below:

#### **AGENCY OF THE ALBERTA SECURITIES COMMISSION CERTIFICATE UNDER SECTION 113 OF THE SECURITIES ACT**

NAME:

1. On the basis of information filed, 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 a list of defaulting reporting issuers maintained by the Agency of the Alberta Securities Commission (the "Agency") pursuant to Section 113 of the Securities Act (Alberta) (the "Act") {but is, however, subject to a Cease Trade Order and/or a denial of exemptions until \*}. That list is with respect only to present defaults under sections 120 and 121 of the Act, and present defaults in paying the prescribed fees and charges set out in Schedule 1 to the Regulation to the Act (the "Regulation").

This certificate is issued in accordance with the interpretations and procedures set out in Alberta Securities Commission Policy 2.4 ("Policy 2.4"), and reference should be made to Policy 2.4 by any person or company making use of this certificate.

3. This certificate relates only to compliance with the enumerated sections of the Act and the Regulation in paragraph 2 above. It has no bearing on compliance with other laws or on the financial position of the issuer.

However, where a failure to comply with a provision of the Act or Regulation which is not enumerated in paragraph 2 above or discussed in Policy 2.4, comes to the attention of the Chief of Securities Administration (the "Chief") and is, in the view of the Chief, a clear and significant contravention of the Act or the Regulation, the reporting issuer will be included in the list of defaulting reporting issuers for the purposes of this Certificate.

4. No person or company that knows or ought reasonably to know that the reporting issuer is in default may rely on this certificate.
5. While the Alberta Securities Commission uses reasonable efforts to ensure the accuracy of this certificate, within the limits of Policy 2.4, it, disclaims any responsibility for any damage consequent upon any inaccuracy herein.

DATED at Edmonton this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Deputy Chief of Securities Administration