

A.S.C. POLICY 6.1
INTERPRETATION OF SECTIONS 184 AND 123 -
APPLICABILITY TO CERTAIN REPORTING ISSUERS

1. INTRODUCTION

1.1 The Alberta Securities Act (the "Act") authorizes the Alberta Securities Commission (the "Commission") to exempt reporting issuers, classes of reporting issuers or persons or companies from a number of the substantive requirements of the Act. The Act, pursuant to sections 184(l) and 123(b)(i), also provides, respectively, that

1.1.1 if reporting issuers are subject to similar requirements under the laws of their jurisdiction of incorporation, organization or continuance (their "home jurisdiction") or of a jurisdiction in which they carry on a substantial part of their business, or

1.1.2 if the laws of Alberta conflict with the laws of reporting issuers' home jurisdictions,

then those reporting issuers are automatically exempted from a number of these substantive requirements. Questions have arisen as to the interpretation and application of these exempting provisions. The purpose of this policy is to set forth the position of the Commission in respect of the blanket order dated February 25, 1987 (the "Order") made by the Commission in the exercise of its exempting powers under sections 123(b) and 184(2) to clarify the exempting provisions of sections 123(b) and 184(l), and the Commission's interpretation of certain relevant provisions.

1.2 It should be borne in mind that the comments contained in this policy are of general application and that the Commission has the right to grant other exemptions upon specific applications. Also, if it has granted general exemptions by order, the Commission has reserved the right to narrow the exemptions so that they will be unavailable to specific issuers. In this way, the Commission is in a position to modify the general statements contained in this policy so that appropriate results will be reached in specific situations.

1.3 Most of the comments in this policy relate to six categories of reporting issuers identified as categories A, B, C, D, E and F below. The definitions of the categories should be carefully studied to ensure that a particular reporting issuer is properly categorized before reliance is placed on this policy by that issuer. It is recognized that a number of reporting issuers will fall into more than one category. Subject to the language of the relevant portion of this policy and of the Order, any such reporting issuer may obtain the benefit of the more favorable treatment available for either of the categories. The categories are:

1.3.1 *Category A*

1.3.1.1 incorporated reporting issuers that are incorporated or continued under the laws of Ontario or Quebec;

1.3.1.2 unincorporated reporting issuers that are organized under the laws of one of the provinces referred to in 1.3.1.1, but only if the laws of that province make them subject to the requirements of the relevant topic (i.e., the subject matter of the particular exemption) that are equivalent to the requirements that would have been applicable had they been organized as business corporations under the relevant laws of that province;

1.3.2 *Category B*

1.3.2.1 incorporated reporting issuers that are incorporated or continued under the laws of British Columbia, Saskatchewan or Manitoba or that are incorporated or continued under, or otherwise subject to, the Canada Business Corporations Act;

1.3.2.2 unincorporated reporting issuers that are organized under the laws of one of the provinces referred to in 1.3.2.1 but only if the laws of that province make them subject to requirements on the relevant topic (i.e., the subject matter of the particular exemption) that are equivalent to the requirements that would have been applicable had they been organized as business corporations under the relevant laws of that province;

1.3.3 *Category C*

1.3.3.1 incorporated reporting issuers that are incorporated or continued under the laws of Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, the North West Territories or the Yukon;

1.3.3.2 unincorporated reporting issuers that are organized under the laws of one of the provinces or territories referred to in 1.3.3.1 but only if the laws of that province or territory make them subject to requirements on the relevant topic (i.e., the subject matter of the particular exemption) that are equivalent to the requirements that would have been applicable had they been organized as business corporations under the relevant laws of that

province or territory;

1.3.4 *Category D*

1.3.4.1 reporting issuers registered with the Securities and Exchange Commission (the "SEC") in the United States under the Securities Exchange Act of 1934, but not including reporting issuers that are exempt from the reporting requirements of that Act under rule 12g 3-2;

1.3.5 *Category E*

1.3.5.1 reporting issuers that are caught by the definition of that term in the Act only because they have an Alberta Stock Exchange listing and are not incorporated, continued or organized under the laws of Canada or a province or territory of Canada;

1.3.6 *Category F*

1.3.6.1 reporting issuers that are eligible to use the short form prospectus pursuant to the regulations made under the Act (the "Regulations");

1.4 It should be noted that some of the comments and the related paragraphs of the Order apply to reporting issuers generally. See, for example, clause 5.9 of the Order.

2. POLICY STATEMENTS

2.1 *Section 118 - Timely Disclosure*

2.1.1 The Commission is aware that only the requirements of the laws of the home jurisdictions of Category A reporting issuers are substantially the same as those in section 118 of the Act. It should be emphasized that the exemption in the Order relates only to the content of a material change report under section 118(2). The Order does not affect a reporting issuer's obligations under section 118(1) of the Act or its obligation to file the report within the time period under section 118(2). If a material change is confidential or is permitted to be kept confidential under the laws of the home jurisdiction of a Category A reporting issuer, then that reporting issuer may be permitted to keep the material change confidential only until the laws of its home jurisdiction require disclosure. In any event, however, a confidential material change must be disclosed within 180 days after the date it became known to the Category A reporting issuer. At that time, the provisions of sections 118(1) and 118(2) shall apply except as otherwise permitted by the Order.

2.1.2 The Commission is not aware of any requirement, applicable to reporting issuers

in Categories B or C, under the laws of other jurisdictions in Canada that is substantially the same as section 118. This view is, of course, subject to change upon the adoption by those jurisdictions of legislation uniform with section 118. Therefore there is no basis for an exemption from section 118 either in policy terms or on the language of section 123(b) in regards to Category B or C reporting issuers. Therefore, only Category A reporting issuers would be exempt from the requirements of section 118(2) by reason of section 123(b)(iii).

- 2.1.3 In the Commission's view, some doubt exists as to whether a corporation organized under the laws of a state in the United States and falling within Category D (i.e. SEC registered) may qualify under section 123(b) for exemption from section 118 even though the SEC requirements may be considered to require substantially the same information as does section 118. This doubt exists because the SEC requirements arise under federal law, but section 123(b) speaks to the laws "of the jurisdiction under which the reporting issuer or class of reporting issuers is incorporated, organized or continued". However, the Commission has concluded that Category D reporting issuers, other than those having a home jurisdiction of Canada or a province or territory of Canada, should be exempt from the requirements of section 118(2) (but not from the requirement to file with a stock exchange or publish in newspapers) if they file with the Commission, in duplicate, all materials required to be filed by them with the SEC. The formal order is set out in clause 5.1.2 of the Order. While Canadian reporting issuers, other than those whose home jurisdiction is Ontario or Quebec, do not qualify for the exemption, they are reminded that material filed under section 118 need not conform exactly with Form 27 of the Regulations if it contains the required information and is properly certified. Accordingly, it may be feasible for them, in many cases, to file duly certified copies of forms filed with the SEC.
- 2.1.4 It should be emphasized that the exemption in the Order relates only to the filing requirements of section 118. Nothing exempts Category D reporting issuers from the obligation to publish a notice of material change as required by section 118. In addition, Category D reporting issuers will be expected to continue to comply with the timely disclosure requirements of Uniform Act Policy 2-12.
- 2.1.5 The Commission has been concerned with the extent to which compliance with section 118 should be sought from Category E reporting issuers. On the one hand, these issuers may not be subject to an effective pattern of securities regulation under the laws of their home jurisdiction. On the other hand, Canadian investors in such issuers may be taken to be aware of this lack of regulation and to have accepted it. Further, the necessity to comply with section 118 might be regarded as a disincentive against foreign issuers electing to become listed on the Alberta Stock Exchange. On balance, the Commission has concluded that section 118 is so central to the regulatory pattern set out in the Act that a class exemption should

not be granted to Category E reporting issuers, although the situation should be kept under continuing review.

2.2 *Section 120 - Quarterly Financial Statements*

- 2.2.1 Section 120 of the Act requires the preparation and filing of quarterly financial statements and section 122 (see item 2.4) requires that they be sent to security holders other than holders of debt instruments. The Commission has concluded that a general exemption should not be granted from the statutory requirement for quarterly financial statements, except as to Category E reporting issuers discussed below.
- 2.2.2 However, the Commission recognizes that a number of issuers affected by these requirements may be subject to similar requirements under the securities or corporate laws of their home jurisdictions. While the requirements of the Act and the Regulations as to content of quarterly financial statements are comparatively general, the Commission has concluded that it would be undesirable to require a reporting issuer to prepare interim financial statements in accordance with those requirements if there are other requirements of its home jurisdiction. Also, this approach is consistent with section 123(b)(ii) of the Act. Accordingly, clause 5.2 of the Order states that compliance with the laws of the home jurisdiction, if they contain requirements as to the content of quarterly financial statements, will be accepted as compliance with the requirements of section 120 concerning the content of interim financial statements and with related requirements of the Regulations.
- 2.2.3 Certain Category D reporting issuers are required to file extensive quarterly reports with the SEC and, in some cases, with the New York Stock Exchange but are under no obligation to distribute quarterly financial statements to security holders. Apparently it is the practice of these reporting issuers to send quarterly information to security holders despite the lack of such a requirement under the laws of their home jurisdictions. In the Commission's view, provided that quarterly financial statements are being distributed to security holders within the time period provided for in section 120, Category D reporting issuers, other than those having a home jurisdiction of Canada or a province or territory of Canada, should be exempt from the requirements of section 122 with respect to quarterly financial statements if they file with the Commission the quarterly financial information which they are required to file with the SEC and if they send to security holders in Alberta the quarterly financial information which they send to security holders in the United States. Clause 5.12 of the Order provides this exemption for Category D reporting issuers other than Canadian reporting issuers conditional upon the continuing distribution of quarterly financial statements to security holders.

- 2.2.4 It should be stressed that clause 5.2 of the Order relates only to the content of quarterly financial statements; the Order does not exempt any reporting issuer from the requirements of the Act as to the timing of the filing of quarterly financial statements, so that those requirements will apply even to reporting issuers whose home jurisdiction allows a longer period to elapse after the end of the quarter before filing the quarterly financial statements. Also, the Order does not affect the provisions of the Regulations, particularly sections 6 and 144, as to compliance with generally accepted accounting principals or the provisions of National Policy 14 as to the use of foreign currencies in, financial statements filed with the Commission.
- 2.2.5 Category E reporting issuers have caused concern to the Commission similar to those described in item 2.1.5. If a Category E reporting issuer has comparatively limited connections with Alberta, the Commission has concluded that its policy should not require filing of interim financial statements not required by the home jurisdiction. This conclusion applies only to those Category E reporting issuers that have not more than 300 holders of the securities listed resident in Canada and not more than 5% of such listed securities held in Canada. This conclusion is reflected in clause 5.3 of the Order.

2.3 *Section 121 -Annual Financial Statements*

- 2.3.1 The annual financial statements are fundamental to effective relationships between an issuer and its security holders. Accordingly, the Commission believes that no general exemption relating to the annual filing obligation should be granted that permits deviation from the basic requirement of section 121 of the Act, and that the annual financial statements be prepared in accordance with generally accepted accounting principles meaning Canadian principles except where compliance with other principles is permitted by section 6(2) of the Regulations. In the Commission's view, issuers in any of the categories that are obligated by the laws of their home jurisdictions to prepare annual financial statements would be viewed under section 184(1) as being in substantial compliance with the requirements of the Act as to content of the statements.
- 2.3.2 The limiting language in section 123(b)(i), "the laws of the jurisdiction under which the reporting issuer or class of reporting issuers is incorporated, organized or continued" may occasion difficulties of interpretation for the issuer incorporated in the United States that wishes to qualify for exemption under section 123(b)(i) by reason of the application to it of SEC requirements. Accordingly, clause 5.4 of the Order states that Category D reporting issuers (other than Canadian issuers) are exempt from compliance with section 121 if required by SEC rules to prepare an annual financial statement, and if the statement so prepared is in compliance with Canadian generally accepted accounting principles or such other principles

as contemplated by section 6(2) of the Regulations. Clause 5.5 of the Order makes a similar provision as to Category E reporting issuers. This provision of the Order has no effect on the operation of National Policy No. 14 or on the right of reporting issuers organized in other jurisdictions to rely on section 6(2) of the Regulations in the preparation of their financial statements.

2.4 *Section 122 - Delivery of Financial Statements*

2.4.1 The requirement of section 122 of the Act that every interim and annual financial statement filed with the Commission be concurrently sent to security holders in Alberta causes difficulties for some category D reporting issuers. These issuers, responsive to the briefer time period permitted to elapse under SEC rules between the end of a period and the filing of statements for that period, follow the practice of filing typewritten material with the SEC. Several days may then elapse before distribution of printed material to security holders. These reporting issuers would wish to make concurrent filings with this Commission, but by doing so they would be confronted with the immediate distribution obligation of section 122. Accordingly, clause 5.6 of the Order allows a Category D reporting issuer in these circumstances to delay the distribution to Alberta security holders, if it releases a news release, in Canada concurrently with the Alberta filing summarizing or setting out the statements.

2.4.1.1 A Category F reporting issuer shall not be obligated to send to its security holders in Alberta, financial statements filed with the Commission, pursuant to section 121 of the Act concurrently with such filing, if

2.4.1.1.1 such financial statements have been filed with the Commission pursuant to section 84 of the Regulations, and

2.4.1.1.2 a press release summarizing or setting out the financial statements is released in Canada substantially concurrently with their filing with the Commission but the statements shall be distributed to security holders in Alberta as required by section 122 of the Act not later than the last day on which they could have been filed with the Commission in compliance with section 121 of the Act. This provision is reflected in Clause 5.13 of the Order.

2.4.2 Interpretation questions regarding section 122 have arisen. The first question relates to the obligations under section 122 where the reporting issuer is already required by its home jurisdiction to deliver financial statements. This is clarified by

clause 5.7 of the Order. The second question relates to the fact that this section requires a distribution of financial statements "to each holder of its securities, other than debt instruments". This means that the obligation in section 122 is extended to holders of preferred shares, rights, warrants, and similar securities to whom financial statements are not customarily distributed. The Commission has concluded that the costs involved in distributions to these classes of security holders would outweigh the benefits to be obtained. This second question is clarified in clause 5.8 of the Order. Clause 5.8 excludes mutual funds since there are some mutual funds whose publicly distributed securities are not "voting securities" as defined. However, clause 5.8 of the Order makes it clear that the exemption does not apply in respect of holders of restricted shares as defined by A.S.C. Policy 1.2. It should be noted that this exemption does not detract from the force of any obligation to distribute financial statements to holders of non-voting securities if the obligation arises in some other way - for example, under preferred share conditions or as a matter of corporate law.

2.5 *Section 124 - Filing of Information Circular or Annual Filing*

2.5.1 Questions have arisen as to the interaction among sections 124, 128 and 184(1) of the Act. The annual report requirement under section 124(2) applies to all reporting issuers other than those required to send an information circular under section 128(1)(a). It would seem that reporting issuers exempt from section 128(1)(a), whether by virtue of section 184(1) or by a Commission order, would be obliged to file an annual report under section 124(2). The Commission has concluded that this would not be an appropriate result. Clause 5.9 of the Order therefor excludes from the operation of section 124(2) those reporting issuers that are exempt from section 128(1)(a) by reason of section 184(1) or by reason of a Commission order, unless the order specifies the contrary. Clause 5.9 of the Order is subject to the condition that the material sent to security holders be filed with the Commission as if section 124(1) applied to it.

2.5.2 Another question that has arisen is the applicability of section 124 to a reporting issuer that is subject to section 128(1)(a) but fails to comply with that section. In the Commission's view, section 124(2) is applicable to such issuers. Section 124(2) uses the words "if subsection (1) is not applicable". The Commission's view is that subsection (1) is not applicable if the reporting issuer fails to file a copy of the information circular as required by the Regulations.

2.6 *Part 12 - Proxy Solicitations*

2.6.1 Questions have arisen as to the interpretation of the words "the requirements of that jurisdiction and this Act are substantially the same" as used in section 184(1)(c) in relation to proxies. The Commission has reviewed the relevant provisions of the

law in other jurisdictions and has concluded that reporting issuers in Categories A, B and D qualify for exemption under section 184(1). As noted in 2.5.1, it will be necessary for such issuers to file with the Commission the material they send to security holders as if section 124(1) was applicable. In view of concerns expressed with the possibility that the words of section 184(1) should be more narrowly interpreted, the Commission is prepared to be receptive to an application from an issuer that wishes the assurance of an order under section 184(2). However, the Commission does not consider that any such application is necessary.

- 2.6.2 In respect of proxy statements, information circulars and annual filings giving information relating to financial years ending on or before December 30, 1985, issuers in Category B shall be entitled to qualify for the exemptions under section 184(1).

2.7 *Part 14 -Reporting by Insiders*

- 2.7.1 In respect of insider reports and section 184(1)(c), the Commission interprets this provision as relating to the form of the reports as distinguished from the circumstances in which reports are to be filed. Accordingly, if the form of insider trading report in the home jurisdiction substantially corresponds with that prescribed in the Regulations, that form may be used for filing under the Act. If, however, the requirements of the Act differ from those of the home jurisdiction as to the circumstances in which reports must be filed (e.g. time periods for filing the reports), the requirements of the Act will govern.
- 2.7.2 The forms of insider trading reports required under the laws of the home jurisdiction for reporting issuers in Categories A, B, and D are, in the Commission's view, substantially the same as those required under the Act. Manually signed copies of those reports may therefore be used in satisfaction of the insider trading reporting obligations under the Act. Because of the difficulty of interpretation referred to elsewhere in this policy, as to whether the federal securities laws of the United States may be regarded as "the laws of the jurisdiction in which" reporting issuers organized under state law or the laws of another country are incorporated, organized or continued, clause 5.10 of the Order sets out this principle as to Category D reporting issuers other than Canadian organized reporting issuers.
- 2.7.3 In view of the extent of reporting requirements under SEC rules, the Commission has concluded that the costs of compliance would outweigh any additional benefits to be obtained through requiring Category D reporting issuers (other than those organized in Canada) to comply in full with the insider reporting obligations of Part 14. Accordingly, clause 5.10 of the Order also states that it will be sufficient compliance with the insider reporting obligations of Part 14 if the reporting

obligation is limited to those persons who are insiders of Category D reporting issuers within the meaning of the United States legislation, and they are required to file reports with the Commission only in the circumstances in which such reports are required under SEC rules. Canadian organized reporting issuers are excluded from this exemption; insiders of such issuers and of all other classes of reporting issuers will be subject to the requirements of the Act as to the circumstances in which reports must be filed.

2.8 *Generally Accepted Accounting Principles*

2.8.1 Financial statements required by the Act or the Regulations must be prepared in accordance with Canadian generally accepted accounting principles except where compliance with other principles is permitted by section 6(2) of the Regulations. There are a number Category D reporting issuers which are incorporated in the United States and which are required to file and distribute financial statements which have been prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP"). The Commission is of the view that the notes to the financial statements of a reporting issuer do not need to indicate compliance with U.S. GAAP as required by section 6(3) of the Regulations in cases where the reporting issuer is a Category D reporting issuer, is incorporated in the United States, has prepared the financial statements in accordance with U.S. GAAP and whose auditors are resident in the United States as indicated on the auditor's report which accompanies the financial statements. Clause 5.11 of the Order exempts such Category D reporting issuers from the requirements of section 6(3) of the Regulations to state that U.S. GAAP has been followed in the notes to the financial statements.

3. The Commission is of the opinion that if a reporting issuer relies on this policy and the attached Order, then that reporting issuer shall provide written notice (the "Notice") to the Director of the Commission advising him of that fact within 10 days after the date that reliance is made on a specific clause or clauses of the Order. The Notice shall include:

3.1 the name of the reporting issuer,

3.2 the reporting issuer's home jurisdiction,

3.3 the specific clause or clauses of the Order on which the reporting issuer relies which entitle it to an exemption from certain requirements of Part 11, 12 or 14 of the Act, and

3.4 a written undertaking executed by at least two persons

3.4.1 who are senior officers or directors of the reporting issuer, or

3.4.2 who hold some similar responsible positions as a senior officer or director with the reporting issuer and are authorized to sign on behalf of the reporting issuer,

to the effect that if there is a change in circumstances of the reporting issuer that may disqualify that reporting issuer from relying on the clause or clauses of the Order for which the Notice is sent, then the reporting issuer shall provide written notice of the change to the Director within 10 days after the date of change

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