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POLICY STATEMENT 12-202 RESPECTING REVOCATION OF A COMPLIANCE-RELATED CEASE TRADE ORDER

PART 1 INTRODUCTION

This policy statement provides guidance for issuers that are subject to a CTO (as defined below) issued as a result of failing to comply with continuous disclosure requirements.

This policy statement explains what an issuer should do to apply for a partial or full revocation of a CTO. It describes what the issuer should file, the general type of review that the securities regulatory authorities (or "we") will perform, and explains some of the factors that we will consider when determining whether to grant a full or partial revocation of the CTO.

Although this policy statement provides guidance to issuers applying for a revocation order, the policy statement also applies, where the context permits, to a securityholder or other party applying for a revocation order.

PART 2 DEFINITIONS

In this policy statement:

"annual meeting requirement" means the requirement in applicable corporate legislation or any equivalent non-corporate requirement to hold an annual meeting of securityholders;

"application" means an application for a partial or full revocation of a CTO submitted to the applicable jurisdictions (see Appendix A for section references); in British Columbia, if the CTO has been in effect for 90 days or less, the filing of the required continuous disclosure documents constitutes the application;

"CTO" means a cease trade order issued against an issuer or its management or insiders prohibiting trading in the securities of the issuer as a result of a failure to comply with continuous disclosure requirements;

"MD&A" means management's discussion and analysis as defined in Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24);

"Regulation 52-109" means Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings (chapter V-1.1, r. 27);

"MRFP" means management's report on fund performance as defined in Regulation 81-106 respecting Investment Fund Continuous Disclosure (chapter V-1.1, r. 42); and

"partial revocation order" means an order that permits one or more issuers or individuals to conduct specific trades when a CTO is in effect.

In Quebec, "trade" is not defined in the Securities Act (chapter V-1.1) ("QSA"). This policy statement covers all securities transactions that may be the object of an order provided for in paragraph 3 of section 265 QSA.

Terms defined in Regulation 14-101 respecting Definitions (chapter V-1.1, r. 3) have the same meaning in this policy statement.

PART 3 QUALIFICATION AND CRITERIA FOR REVOCATION

3.1. Full revocations

(1) Filing requirements

Generally, we will not exercise our discretion to grant a full revocation order, subject to subsections 3.1(2) and 3.1(3), unless the issuer has filed all of its outstanding continuous disclosure. The most common deficiencies relate to disclosure required under:

(a) Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24);

(b) Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings (chapter V-1.1, r. 27);

(c) Regulation 81-106 respecting Investment Fund Continuous Disclosure (chapter V-1.1, r. 42);

(d) Regulation 43-101 respecting Standards of Disclosure for Mineral Projects (chapter V-1.1, r. 15);

(e) Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities (chapter V-1.1, r. 23);

(f) Regulation 52-110 respecting Audit Committees (chapter V-1.1, r. 28); and

(g) Regulation 58-101 respecting Disclosure of Corporate Governance Practices (chapter V-1.1, r. 32).

(2) Exceptions to interim filing requirements

In exercising our discretion to revoke a CTO, we may elect not to require the issuer to file certain outstanding interim financial reports, interim MD&A, interim MRFP or interim certificates under Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings, subject to subsection 3.1(3), if the issuer has filed:

(a) all outstanding audited annual financial statements, annual MD&A, annual MRFP and annual certificates under Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings required to be filed under applicable securities legislation;

(b) all outstanding annual information forms, information circulars and material change reports required to be filed under applicable securities legislation; and

(c) all outstanding interim financial reports (which include the applicable comparatives from the prior fiscal year), interim MD&A, interim MRFP and interim certificates under Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings for all interim periods in the current fiscal year required to be filed under applicable securities legislation.

(3) Exceptions to annual filing requirements

In certain cases, an issuer seeking a revocation order may consider that the length of time that has elapsed since the date of the CTO may make the preparation and filing of all outstanding disclosure impractical, or of limited use to investors. This may particularly apply to disclosure for periods that ended more than 3 years before the date of the application, or periods prior to a significant change in the issuer's business. An issuer seeking a revocation order in these circumstances should make detailed submissions explaining its position. In appropriate cases, we will consider whether the filing of certain outstanding disclosure might not be necessary as a precondition of a revocation order. The factors we may consider include:

(a) age of information to be contained in the continuous disclosure filing – information from older periods may be less relevant than information from more recent periods;

(b) access to records – lack of access to records may hinder compliance with some filing requirements;

(c) activity during the period – if an issuer was inactive or changed its business at any time while it was cease-traded, disclosure of information from or prior to this time may be less relevant;

(d) length of time the CTO has been in effect; and

(e) whether the historical disclosure relates to significant transactions or litigation.

We generally consider that disclosure for periods within the most recent 3 financial years of the issuer provides useful information for investors. We generally do not consider the time and cost required to prepare disclosure to be a compelling factor in our determination of the disclosure to be provided in connection with an application to revoke a CTO.

(4) Outstanding fees

Before we will issue a revocation order, the issuer must pay all outstanding fees to each relevant jurisdiction. Outstanding fees generally include, where applicable, all activity and participation fees, and late filing fees.

Depending on how long the CTO has been in effect, and whether the issuer filed its continuous disclosure documents in a timely manner while it was cease-traded, the amount of outstanding fees can be considerable. Before submitting an application, issuers should contact the relevant regulators to confirm the fees that will be payable.

(5) Annual meeting

An issuer that applies for the revocation of a CTO should ensure that it has complied with the annual meeting requirement.

If the issuer has not complied with the annual meeting requirement, we will generally not exercise our discretion to issue a revocation order unless the issuer provides an undertaking to the relevant securities regulatory authorities to hold the annual meeting within 3 months after the date on which the CTO is revoked.

Any such undertaking will not, however, relieve the issuer from any obligation it may have under the relevant legislation containing the annual meeting requirement.

(6) Recurring CTOs

An issuer that has been subject to another CTO within the 12-month period before the date of the current CTO should provide a detailed explanation in its application of the reasons for the multiple defaults.

In addition, we may request that the issuer provide to us information relating to disclosure controls and procedures that the issuer applies to ensure compliance with continuous disclosure requirements.

(7) News release

When a revocation order is issued, if the revocation of the CTO is a "material change", the issuer is required by securities legislation to issue and file a news release and material change report. If the revocation of the CTO is not a material change, the issuer should consider issuing a news release that announces the revocation of the CTO and outlines the issuer's future plans.

If the issuer has ceased to carry on an active business, or its business purpose has been abandoned, the news release should disclose this. The news release should also describe the issuer's future plans or state that the issuer has no future plans.

3.2. Partial revocations

(1) Permitted transactions

We will consider granting partial revocation orders to permit certain transactions involving trades in securities of the issuer, such as private placements or share-for-debt transactions, to allow the issuer to recapitalize or to raise sufficient funds to prepare and file outstanding continuous disclosure documents. We will generally not exercise our discretion to grant a partial revocation order unless the issuer intends to subsequently apply for a full revocation order and reasonably anticipates having sufficient resources after the proposed transaction to bring its continuous disclosure and fees up to date.

Other circumstances may arise that warrant a partial revocation order. For example, we will generally grant a partial revocation order to permit a securityholder to sell securities for a nominal amount solely to establish a tax loss.

Issuers may wish to consult their legal counsel to determine whether a particular transaction constitutes a trade and therefore requires an application for a partial revocation order. For example, in most jurisdictions, a disposition of securities by way of a bona fide gift, made in good faith and not as part of a plan or scheme to evade requirements of securities legislation, would generally not be considered a "trade" under provincial and territorial securities legislation. As such, where applicable, a partial revocation order would not typically be required in these circumstances. However, after the gift, the securities may remain subject to the CTO depending on the terms of the CTO.

(2) Acts in furtherance of a trade

The definition of trade, where applicable, includes acts in furtherance of a trade. In any particular case, it is a question of legal interpretation whether a step taken by an issuer or other party is an act in furtherance of a trade, and therefore a breach of the CTO. Issuers should consult their legal counsel whenever there is doubt as to whether a proposed action is an act in furtherance of a trade. An issuer must obtain a partial revocation order before carrying out an act in furtherance of a trade.

(3) Continuing effect of CTO

Following the completion of the trades permitted by a partial revocation of a CTO against an issuer, all securities of the issuer may remain subject to the CTO until a full revocation is granted, depending on the terms of the CTO.

PART 4 APPLICATIONS

4.1. Application for a full revocation

An issuer requesting a full revocation order should submit an application, with the application fees, to the securities regulatory authorities in all jurisdictions where the issuer's securities are cease-traded. The application should include the following information:

(a) the jurisdictions where the issuer's securities are cease traded;

(b) details of any revocation applications currently in progress in the other jurisdictions;

(c) copies of any draft material change report or news release as discussed in section 3.1(7);

(d) confirmation that all continuous disclosure documents have been filed with the relevant securities regulatory authorities or a description of the documents that will be filed;

(e) confirmation that the issuer's SEDAR and SEDI profiles are up-to-date;

(f) a draft revocation order; and

(g) a completed personal information form and authorization in the form set out in Appendix A of Regulation 41-101 respecting General Prospectus Requirements (chapter V-1.1, r. 14) for each current and incoming director, executive officer and promoter of the issuer.

If the promoter is not an individual, the issuer should provide the information for each director and executive officer of the promoter.

If the issuer is an investment fund, the issuer should also provide personal information for each director and executive officer of the manager of the investment fund.

All applications for full revocation will result in some level of review of the issuer's continuous disclosure record for compliance. If the CTO has been in effect for more

than 90 days, this review will be similar to the full review under the harmonized continuous disclosure review program described in CSA Staff Notice 51-312 (Revised)-Harmonized Continuous Disclosure Review Program.

4.2. Application for a partial revocation

(1) General

An issuer requesting a partial revocation order should submit an application, with the application fees, to the securities regulatory authorities in all jurisdictions where the issuer's securities are cease-traded and where the proposed trades would occur. The application should include the following information:

(a) the jurisdictions where the issuer's securities are cease-traded and where the proposed trades would occur;

(b) details of any revocation applications currently in progress in the other jurisdictions;

(c) a description of the proposed trades and their purpose;

(d) a draft partial revocation order that includes:

(i) a condition that the applicant will obtain and provide to the relevant securities regulatory authorities signed and dated acknowledgements from all participants in the proposed trades, which clearly state that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future; and

(ii) a condition that the applicant will provide a copy of the CTO and partial revocation order to all participants in the proposed trades;

(e) use of proceeds information as discussed in section 4.2(2), in the case of a proposed exempt financing;

(f) if applicable, details of the exemptions the issuer intends to rely on to complete the proposed trades; and

(g) if the proposed trades are the result of a decision by a court, a copy of the relevant court order.

(2) Use of Proceeds

If the purpose of a proposed partial revocation of a CTO is to permit an issuer to carry out an exempt financing, the application and the offering document, if any, should disclose:

(a) an estimate, reasonably supported, of the amount the issuer expects to raise from the financing; and

(b) a reasonably detailed explanation of the purpose of the financing and how the issuer plans to use the funds.

The issuer should also provide in the application and any proposed offering document an estimate, reasonably supported, of the total amount the issuer will need to apply for a full revocation order. That amount would include the funds needed to prepare and file the documents required to bring the issuer's continuous disclosure up to date and pay outstanding fees.

APPENDIX A
Section references for an application under local securities legislation.

British Columbia:
Securities Act (R.S.B.C. 1996, c. 418), sections 164 and 171.

***Alberta**:*
Securities Act (R.S.A. 2000, c. S-4), section 214.

***Saskatchewan**:*
The Securities Act (S.S. 1988-89, c. S-42.2), 1988: subsection 158(4).

***Manitoba**:*
Securities Act (C.C.S.M. c. S50), subsection 148(1).

***Ontario**:*
Securities Act (R.S.O. 1990, c. S. 5), section 144.

***Quebec**:*
Securities Act (chapter V-1.1), section 265.

***New Brunswick**:*
Securities Act (S.N.B. 2004, c. S-5.5), section 206.

***Nova Scotia**:*
Securities Act (R.S.N.S. 1989, c. 418), section 151.

***Prince Edward Island**:*
Securities Act (R.S.P.E.I. 1988, c. S-3), section 31.

***Newfoundland and Labrador**:*
Securities Act (R.S.N.L. 1990, c. S-13), section 142.1.

***Yukon**:*
not applicable.

***Northwest Territories**:*
Securities Act (R.S.N.W.T. 1988, c. S-5), section 43.1.

***Nunavut**:*
Securities Act (R.S.N.W.T. 1988, c. S-5), section 43.1.

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