

SASKATCHEWAN POLICY STATEMENT 13-601

PUBLIC AVAILABILITY OF MATERIAL IN COMMISSION RECORDS

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SASKATCHEWAN POLICY STATEMENT 13-601

PUBLIC AVAILABILITY OF MATERIAL IN COMMISSION RECORDS

PART 1 GENERAL

This policy statement sets out which documents in the records of the Saskatchewan Securities Commission (the "Commission") that are available for public inspection.

There are several categories of documents, information or material (collectively referred to as "material") maintained in the records of the Commission:

- (a) Material required to be filed under *The Securities Act, 1988* (the "Act") or *The Securities Regulations* (the "Regulations");
- (b) Material required to be filed pursuant to securities legislation or securities directions;
- (c) Material which is not technically filed but which is or was delivered under securities legislation or securities directions or in respect of a particular application to, or decision of, the Commission or the Director of the Commission (the "Director");
- (d) Material acquired, submitted or given, pursuant to an investigation order made under section 12 or 14 of the Act, an examination under section 20 of the Act, a requirement of the Director under section 34 of the Act;
- (e) Material acquired, submitted or given during any investigation which is not governed by an investigation order made under section 12 or 14, an examination under section 20, a requirement under section 34 of the Act;
- (f) Material introduced, submitted or given at a hearing or review, or which is reproduced as a result of a hearing or review.

In determining whether material is public or confidential the Commission has balanced the principle that the public should generally have access to material in the Commission's records with the following considerations:

- (a) During the registration process an applicant discloses intimate personal, financial and other information. This personal information should not be made public, except at a hearing to determine the applicant's suitability for registration;
- (b) The prospectus and exemption application review process requires candour between the staff of the Commission and the person or company submitting the material. The

Commission believes that the prospect of public availability of deficiency letters, applications, supporting material and correspondence with respect to these reviews would detract from the freedom of communication and full disclosure necessary for the review process to work effectively;

- (c) The interests of a person who or company which is the subject of an examination or investigation could be prejudiced by the release of material gathered during that examination or investigation. If the evidence does not warrant that enforcement action be taken, then the material should remain confidential. If enforcement action is taken, then any information released should only be released publicly during the course of the enforcement proceedings; and
- (d) Reporting issuers may encounter situations where it could be prejudicial to their operations to make public disclosure of certain material. The Commission has given the Director discretion under this policy statement to allow specific material to be kept confidential upon the request of an issuer.

In characterizing material as confidential in this policy statement, the Commission has determined that such material will not be made available for public inspection. However, proper regulation of the securities industry requires that certain material and information be shared with other regulatory authorities, including but not limited to other securities commissions and police forces ("regulatory authorities"). When confidential material is received, whether by way of a filing or delivery or acquired during the course of an investigation, it may be shared, but on the basis that the material is confidential. This means that the regulatory authorities which receive the information cannot disclose it to the public without the express written authority of the Commission.

Pursuant to subsection 6(3) of the Act, the Commission hereby assigns to the Director the specific authority to make a determination as to confidentiality under clauses 2.3(c), 2.4, 2.8(e), 2.18(h) and Parts 3 and 4 of this policy statement. A request for the Director to make such a determination should be made in writing to the Director, referring the material to be considered and detailing the basis for the request.

Where confidentiality is specifically requested with respect to material referred to in clauses 2.3(c), 2.4, 2.8(e), and 2.18(h), the Director may nonetheless determine that all or part of the material shall be public after giving the party requesting confidentiality an opportunity to make oral or written submissions to the Director.

Nothing in this policy statement limits the authority of the Commission to make a determination that any material in the records of the Commission should, or should not, be made publicly available.

A request for confidentiality or release from confidentiality of material, which is not otherwise covered by a specific provision of the Act, the Regulations, or this policy statement, may be made to the Commission pursuant to Saskatchewan Policy Statement 12-601 Applications to the Saskatchewan Securities Commission (“Policy Statement 12-601”), setting out the following information:

- (a) the name of the person or company on whose behalf the application is made;
- (b) specifics of the material for which confidentiality or a release from confidentiality is being requested; and
- (c) the detailed basis for the request.

PART 2 MATERIAL REQUIRED TO BE FILED AND MATERIAL DELIVERED, FURNISHED OR SUBMITTED

Section 152 of the Act requires that any material filed pursuant to the Act or the Regulations be made available for public inspection during normal business hours of the Commission. Material required to be filed under the Act or the Regulations includes prospectuses, continuous disclosure material by reporting issuers and reports filed with respect to exempt transactions.

However, section 152 allows the Commission to determine that any material or class of material be held in confidence as long as the Commission is of the opinion that it is in the public interest to do so.

Other material is not required to be filed under the Act or the Regulations but is delivered to the Commission under securities legislation or securities directions; or in respect of a particular application or decision. This category of material includes applications for registration and applications for discretionary orders and rulings of the Commission.

The Commission has determined that both:

- (a) Material required to be filed; and
- (b) Material delivered, furnished or submitted;

shall be made public or kept confidential as set out below:

2.1 Registration material which is public:

- (a) Certificates of Registration;

- (b) Amendments to Certificates of Registration;
- (c) A certified copy of a report of individual registrants listed by advisor or dealer branch;
- (d) A certified copy of a report of corporate registrants listed by category of registration;
- (e) Broker's blanket bonds and financial institution bonds;
- (f) Form 39 - surety bonds;
- (g) Director's resolutions with respect to bonding and insurance;
- (h) Statutory declarations with respect to bonding and insurance;
- (i) Financial statements of registrants;
- (j) Form 10 - Financial Questionnaire and Reports;
- (k) Form 11 - Portfolio Manager's Annual Questionnaires;

2.2 Registration material which will be kept confidential:

- (a) Applications for registration and renewal and all correspondence and supporting material relating to the application and renewal, including Forms 3, 4, 5, 6 and 7 of the Regulations;
- (b) Notices of change and all correspondence and supporting material;
- (c) Replies to R.C.M.P. records/requests;
- (d) Directions to auditors;
- (e) An application for voluntary surrender or withdrawal of registration pursuant to section 29(4) of the Act; including Form 8 of the Regulations, correspondence and supporting material;
- (f) Uniform Termination Notices.

2.3 Prospectus material which is public:

- (a) After a receipt has been issued by the Director, a prospecting syndicate agreement and all material referred to in the agreement which have been filed, delivered, furnished or submitted;
- (b) After a receipt has been issued by the Director, a preliminary prospectus, prospectus, prospectus amendment to a preliminary prospectus or prospectus, a pro forma new prospectus; and, all material incorporated by reference or referred to in such documents, which has been filed, delivered, furnished or submitted;
- (c) After a prospectus receipt has been issued by the Director, all supporting material required by the Regulations as further information in connection with the filing such as auditor's letters, legal opinions, geologist's reports, material contracts and similar data unless confidentiality has been granted by the Director.
- (d) All preliminary, amendment and final prospectus receipts;
- (e) After a prospectus receipt has been issued by the Director, escrow and pooling agreements, including Form 17 of the Regulations;
- (f) After the Commission has consented to a transfer within escrow, an acknowledgment of the transferee of securities subject to an escrow agreement, including Form 18 of the Regulations;
- (g) After the Commission has consented, a release of securities from escrow;
- (h) Reports of a natural resource issuer and accompanying certificate of the individual making the report pursuant to section 78 of the Regulations;
- (i) Certificates accompanying or preceding a prospectus pursuant to section 94(1) of the Regulations.

2.4 If a preliminary prospectus, amendment to a preliminary prospectus, or a pro forma new prospectus is withdrawn before a final receipt is issued, the originally filed preliminary prospectus, amendment, or pro forma new prospectus is public, but it will be stamped as withdrawn. The materials incorporated by reference and the supporting materials are public unless confidentiality has been granted by the Director.

2.5 Prospectus material which will be kept confidential:

- (a) Supporting material including material contracts where confidentiality has been specifically requested and the Director has determined this material to be confidential;
- (b) Comments letters, deficiency letters, police reports and correspondence relating thereto;
- (c) Correspondence with any securities and other regulatory authorities relating thereto;
- (d) Correspondence with those persons or companies responsible for the filing;
- (e) An application by a reporting issuer pursuant to subsection 71(6) of the Act with respect to extension of a lapse date, including correspondence and supporting material;
- (f) An application to the Director pursuant to subsection 72(3) of the Act for a waiver of the provisions of Part XI of the Act or Part VII of the Regulations, including correspondence and supporting material.

2.6 Offering Memoranda material which is public:

- (a) An offering memorandum required to be delivered pursuant to section 81(3) of the Act or General Ruling/Order 16 and any material referred to or incorporated by reference and which is delivered, furnished or submitted;
- (b) An approval letter with respect to an offering memorandum delivered pursuant to section 81(1)(s), (y) and (aa) of the Act;
- (c) An offering memorandum required to be filed or delivered pursuant to a decision or order, together with any material referred to in the offering memorandum which is delivered, furnished or submitted.

2.7 Offering memoranda material which will be kept confidential:

- (a) Deficiency letters and correspondence relating thereto;
- (b) Correspondence with other jurisdictions;
- (c) Correspondence with those persons or companies responsible for the filing;

- (d) Supporting material not incorporated by reference or referred to in the offering memoranda.

2.8 Registration and prospectus exemption material which is public:

- (a) A notice of proposed trade pursuant to sections 39(1)(m)(iv) and 81(1)(f)(iv) of the Act to which the Commission has not objected or which the Commission has accepted, including material referred to in the notice;
- (b) A copy of the offer or other document inviting the exercise of rights together with the accompanying certificate pursuant to sections 39(1)(o)(ii)(D) and 81(1)(h)(ii)(D) of the Act;
- (c) A rights offering circular pursuant to sections 39(1)(o)(iii) and 81(1)(h)(iii) of the Act to which the Commission has not objected or which the Commission has accepted, including material referred to in the circular;
- (d) An escrow or pooling agreement required by the Director pursuant to section 39(1)(z) and 81(1)(n) of the Act or waiver thereof;
- (e) A report of a trade pursuant to section 81(4) and (7)(d) of the Act, including Forms 19, 20 and 21 of the Regulations and any affidavits or declarations required by any Saskatchewan Policy Statement, unless confidentiality has been granted by the Director.
- (f) A report by an issuer which ceases to be a private company pursuant to section 81(8)(e) of the Act, including Form 22 of the Regulations;
- (g) A notice of intention, signed declaration, report of a trade and renewal of a notice of intention and declaration by a vendor pursuant to section 81(10)(b)(v)(A), (B) and (C) of the Act, including Forms 23, 34 and 35 of the Regulations;
- (h) Reports, documents and materials filed and written advice submitted by the Asian Development Bank and the Inter-American Development Bank pursuant to section 62 of the Regulations;
- (i) Disclosure with respect to sections 106 and 107 of the Regulations;
- (j) After it has been accepted for filing, a statement of material facts pursuant to section 82(1)(b)(ii) of the Act and any document, report or other material filed with the

statement or as required by the Director pursuant to section 116 of the Regulations, including Form 24 of the Regulations;

- (k) After it has been accepted for filing, an amendment to a statement of material facts and any document, report, or other material filed with a statement of material facts or as required by the Director, pursuant to section 116 of the Regulations.

2.9 Registration and prospectus exemption material which will be kept confidential:

- (a) An application pursuant to section 83(1) or 160 of the Act, including correspondence and supporting material with respect to the application;
- (b) An application for recognition as an exempt purchaser pursuant to section 61 of the Regulations, including Form 12 of the Regulations and correspondence and supporting material with respect to the application;
- (c) Applications, comments letters, correspondence and supporting materials with respect to any filing or use of a statutory exemption which are not otherwise covered by a specific provision of this policy statement;
- (d) Correspondence with any other jurisdictions under (a), (b) and (c);
- (e) Correspondence with those persons or companies responsible for an application under (a), (b) and (c).

2.10 Continuous disclosure material filed by reporting issuers which is public:

- (a) Press releases;
- (b) Material change reports, including Form 25 of the Regulations, unless the reports meet the confidentiality requirements set out under Part 2.11(a) below;
- (c) Interim and annual financial statements together with auditor's report;
- (d) Information circulars;
- (e) Form 26 - Annual Filing of a Reporting Issuer;
- (f) Form 27 - Finance Company Questionnaire and Financial Report, including an auditor's report and any other forms required by the Commission pursuant to section 127(2)(b) of the Regulations;

- (g) A report required by the bylaws of the Association of Canadian Financial Corporations with respect to continuous disclosure, including exhibits and all supporting papers and documents;
- (h) All material sent by a reporting issuer to its security holders, all information filed with a government of another jurisdiction or agency of that government and all information filed with a stock exchange, which is filed with the Commission;
- (i) A statement of portfolio transactions.

2.11 Continuous disclosure material filed by reporting issuers which will be kept confidential:

- (a) A material change report marked "confidential" by a reporting issuer together with the written reasons for non-disclosure and the ten-day written updates pursuant to section 84(3) of the Act. Confidentiality is dependent upon the reporting issuer providing the proper written advice to the Commission. Confidentiality will lapse upon the written advice not being provided or if it is provided outside the specified time periods;
- (b) An application pursuant to section 89 of the Act including correspondence and supporting material with respect to the application;
- (c) An application pursuant to section 92 of the Act to cease to be a reporting issuer, including correspondence and supporting material with respect to the application;
- (d) All information pursuant to section 121(1)(b) of the Regulations which has been filed on a confidential basis in all other jurisdictions in which it has been filed and for as long as the information remains confidential in all those jurisdictions.

2.12 Proxy and proxy solicitation material which is public:

- (a) Proxies, information circulars including Form 28 of the Regulations and all other material sent or delivered to security holders pursuant to section 143(a) of the Regulations;
- (b) A statement of executive compensation, including Form 38 of the Regulations.

2.13 Proxy and proxy solicitation material which will be kept confidential:

An application pursuant to section 97(2) of the Act to be exempted from the requirements of Part XV and section 90 of the Act, including correspondence and supporting material with respect to the application.

2.14 Take-over bid and issuer bid material which is public:

- (a) Any material relating to a bid that is sent by an offeror to security holders of the offeree person or company pursuant to section 102 of the Act;
- (b) A press release or report with respect to an acquisition pursuant to sections 110 and 111 of the Act;
- (c) A take-over bid, including Form 29 of the Regulations and any notice of change or variation;
- (d) An issuer bid, including Form 32 of the Regulations and any notice of change or variation;
- (e) A directors' circular including Form 30 of the Regulations and any notice of change or variation;
- (f) An individual director's or officer's circular, including Form 31 of the Regulations and any notice of change or variation;
- (g) A recommendation or decision delivered to security holders pursuant to section 109(3) of the Act;
- (h) The consent of a solicitor, auditor, accountant, engineer, appraiser or other person or company to the use of a report, appraisal or statement included or accompanying the circulars, notices of change or variations mentioned in subparagraph (a), (b), (c), (d), (e) and (f) and a recommendation or decision mentioned in (g) above;
- (i) A notice of intention to make an issuer bid, including Form 33 of the Regulations;
- (j) A formal valuation of an issuer's securities and a letter of confirmation pursuant to section 146(5) of the Regulations.

- (k) A variation or waiver consented to in writing by the Director with respect to a circular pursuant to section 146(1) of the Regulations;
- (l) Any supporting material or material referred to or incorporated by reference, in (a) to (j) above;
- (m) An acknowledgment letter with respect to the filing of a bid.

2.15 Take-over bid and issuer bid material which will be kept confidential:

- (a) An application pursuant to section 113 of the Act and any correspondence and supporting material with respect to the application;
- (b) An application pursuant to subsections 146(1) and (4) of the Regulations and any correspondence and supporting material with respect to the application.

2.16 Insider trading material which is public:

- (a) An insider report and a report of transfer by an insider, including Form 34 of the Regulations;
- (b) A report of transfer by an agent, including Form 35 of the Regulations;
- (c) A report by a management company with respect to a mutual fund, including Form 36 of the regulations;
- (d) Reports required in another jurisdiction pursuant to section 130(1) of the Act;
- (e) A written notice with respect to a corporate event pursuant to section 171(1) of the Regulations;
- (f) A written notice with respect to the acquisition of securities through a plan pursuant to section 171(2) of the Regulations.

2.17 Insider trading material which will be kept confidential:

- (a) An application pursuant to section 122 or 124 of the Act with respect to loans and investments of a mutual fund;

- (b) An application pursuant to section 126 of the Act by a management company of a mutual fund;
- (c) An application pursuant to section 127 of the Act with respect to portfolio managers;
- (d) An application pursuant to section 130 of the Act exempting a person or company from the requirements of Part XVII of the Act;
- (e) Any correspondence and supporting material with respect to an application under (a), (b) (c) and (d).

2.18 Miscellaneous material which is public:

- (a) A certificate that a reporting issuer is not in default;
- (b) A list of defaulting reporting issuers;
- (c) Dividend notices;
- (d) Notices of shareholders' meeting;
- (e) Power of attorney or documents of authority authorizing the signing of the document;
- (f) After approval by the Commission or if approval is not required, all advertising, sales literature and promotional material;
- (g) A decision of the Commission, the Chairman or the Director;
- (h) All material which is not otherwise covered by a specific provision of this policy statement and which is filed, delivered, furnished or submitted pursuant to a decision of the Commission, securities legislation or securities directions, unless the Director determines that such material shall be kept confidential.

2.19 Miscellaneous material which will be kept confidential:

- (a) A schedule to a decision of the Commission or Chairman which identifies potential investors;
- (b) Any recommendation by the staff of the Commission to the Chairman or Director with respect to the disposition of an application, except as otherwise provided for in Policy Statement 12-601;

- (c) An application pursuant to section 42(6) of the Act for an exemption from the requirements of section 42 of the Act with respect to confirmation of trades;
- (d) A request to the Director pursuant to section 44(3) of the Act with respect to prohibited representations;
- (e) Any application or request to the Commission or to the Director which has not been specifically referred to hereinbefore;
- (f) Any correspondence, supporting material and verifications with respect to an application under (c) (d) and (e).

PART 3 MATERIAL ACQUIRED PURSUANT TO AN INVESTIGATION ORDER OR AN EXAMINATION

Subsection 15(1) of the Act prohibits anyone from disclosing any information obtained or the name of any witness examined pursuant to an investigation order under sections 12 or 14.

Material acquired, submitted or given pursuant to an examination under section 20 of the Act and a requirement of the Director under section 34 of the Act is confidential.

Any application to the Commission for disclosure and any correspondence with respect to the application and the consent of the Commission is also confidential.

Pursuant to subsection 15(2) if enforcement action is taken under the Act with respect to a person or company, material acquired, pursuant to an investigation order, examination or requirement may be introduced in evidence against the person or company at the enforcement proceedings. Also pursuant to subsection 15(4), the Commission may authorize disclosure if it considers it to be in the public interest.

PART 4 MATERIAL ACQUIRED DURING AN INVESTIGATION

All material with respect to an investigation is confidential, including exhibits, witness statements, an investigator's notes and tapes, a court reporter's notes and tapes, any transcript prepared from the reporter's notes or tapes, any tapes made and recording devices used during an investigation, and any transcripts prepared from notes, tapes and recording devices. This information is not available to the public, nor will it be disclosed to the person or company who made the complaint that led to the investigation. However, disclosure may be made to other regulatory authorities and for enforcement purposes under the Act.

As in Part 3 above, if enforcement action is taken with respect to a person or company, material acquired during an investigation may, in the discretion of the Director, be introduced in evidence against the person or company at the enforcement proceedings.

PART 5 MATERIAL SUBMITTED AT A HEARING OR A REVIEW

5.1 Hearing and review material which is public:

- (a) A Notice of Hearing and any amendment thereof;
- (b) A notice or request for a review and any amendment thereof;
- (c) A Notice of Adjournment and any amendment thereof;
- (d) All material introduced and marked as an exhibit at a hearing or a review;
- (e) Briefs of law, written argument, agreed statements of fact and other written submissions filed at a hearing or a review;
- (f) A tape recording or a transcript introduced and marked as an exhibit at a hearing or a review;
- (g) A transcript prepared of a witness' testimony at a hearing or a review;
- (h) A decision of the Commission, the Chairman or the Director, including the written reasons for a decision.

5.2 Hearing and review material which will be kept confidential:

- (a) A court reporter's tapes, notes or other records unless introduced and marked as an exhibit at a hearing or a review;
- (b) Where a hearing or a review or a part of a hearing or a review is held in-camera, all material introduced, submitted or given at the in-camera proceedings is confidential, including any exhibits marked as such or transcripts of a witness' testimony;
- (c) Any notes made by members of a Commission hearing or review panel (which includes the Chairman or Director) and any correspondence between members of the Commission with respect to a hearing or a review.

PART 6 HOW TO INSPECT OR OBTAIN COPIES OF PUBLIC MATERIAL

The Director is the custodian of the records of the Commission. Pursuant to section 155(2) of Act, any person or company may obtain from the Director, on payment of the prescribed fee, a certified or uncertified copy of any decision of the Commission or any other material in the Director's custody, which is public.

The fee:

- (a) for copies of public material is \$0.50 per page;
- (b) for certification of any public material or extracts, in addition to the cost of the copy, is \$10.00 per certification,
- (c) for public transcripts is the current charge of the court reporting service which prepared the transcript;
- (d) for public exhibits other than paper material is the actual cost of reproduction.

To inspect public material or obtain a copy, please contact the receptionist of the Commission at (306) 787-5645 to make prior arrangements so that the material can be made available.

In those cases where copies of public material are requested, the material will be copied by Commission staff, upon payment of the required fees.

Adopted by the Commission effective June 6, 1990
Amended by the Commission effective March 24, 1993

"Marcel de la Gorgendière"
Marcel de la Gorgendiere, Q.C.
Chairperson