Canadian Securities Administrators Staff Notice 12-304
National Policy 12-201
Mutual Reliance Review System for Exemptive Relief Applications
Frequently Occurring Issues

National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (the "Policy") came into force on January 1, 2000. The Mutual Reliance Review System for Exemptive Relief Applications (the "System") has been very successful and currently the vast majority of multijurisdictional applications are filed under the System.

Over the time the System has been in place Staff has noticed frequently occurring filing practices which, if improved, would result in more efficient and timely processing of applications and therefore better service to filers. These practices are as follows:

Expedited Treatment

Subsection 6.3(2) of the Policy provides that non-principal regulator review time will only be abridged in exceptional circumstances. Subsection 8.1(2) of the Policy states that the principal regulator cannot *require* that a non-principal regulator opt in to a proposed decision in less than 7 business days; it can only request that the timing be abridged.

Staff has concerns that filers are requesting abridgements as a matter of course in their applications. Staff would like to stress that abridgements will not be granted unless the filer has made compelling arguments in the application that immediate attention is absolutely necessary and reasonable under the circumstances (s. 6.3(3) of the Policy). Filers must appreciate that, by requesting an abridgement, they are asking staff in all jurisdictions in which the application is filed to consider their applications ahead of other filings that have been submitted on a timely basis. Therefore, filers requesting abridgements must justify why their filings should receive priority over others.

Filers also should provide sufficient information in an application to enable Staff to assess how quickly the application needs to be handled. For example, if the filer has committed to take certain steps (*e.g.*, mail a disclosure document) or has scheduled a board meeting by a specific date and needs to have Staff's view or the decision makers' decision by that date, the filer should identify these time constraints in its application. Abridgements are not automatic and will be considered on a case-by-case basis. If the timing requested is unreasonable or Staff is not satisfied that an abridgement is warranted, it will not be granted.

While Staff is committed to fostering efficient capital markets and will accommodate transaction timing where possible, filers planning time-sensitive transactions should build regulatory approval time into their transaction schedules that are consistent with the review and decision making timeframes under the System. In particular, Staff would like to emphasize that the imminent expiry of a take-over bid or issuer bid, or a scheduled meeting of securityholders to consider the transaction in respect of which relief has been requested, are not sufficient grounds

for requesting expedited treatment, absent a detailed explanation as to why the application process was not commenced sooner. Filers should also be aware that, generally, applications filed outside of the System are co-ordinated among staff of the jurisdictions involved and are not processed more quickly than those filed under the System.

The foregoing discussion is applicable to applications made by mutual funds and other investment funds. In particular, many of the lapse date extensions applications filed since February 1, 2000 (the date of the coming into force of the new mutual fund rules) have not been made in a timely way and filers are routinely asking for extreme abridgements of the MRRS timelines. Mutual funds and other investment funds in continuous distribution must maintain a record of the lapse date applicable to their prospectuses[1] and should consider whether a lapse date extension will be necessary well in advance of the applicable lapse date. The imminent lapse date of an investment fund's prospectus is not sufficient grounds for requesting expedited treatment, in the absence of a detailed explanation as to why the application process was not commenced sooner. Inadvertence will not always be a sufficient explanation.

Timeliness of Applications

Staff has noted that, in many circumstances, filers are not filing applications on a timely basis. For example, Staff has received applications requesting relief from disclosure requirements applicable to take-over bid circulars after the circular has been mailed to shareholders. Filers are cautioned to commence the application process sufficiently far in advance of the proposed transactions or timelines giving rise to the need for relief to ensure that the requested relief is obtained in time. In many jurisdictions retroactive relief will not be granted.

Furthermore, investment fund applications are also often not made on a timely basis. For example, applications for relief from the requirements of National Instrument 81-102 *Mutual Funds* to permit a new mutual fund to follow a particular strategy or structure are often filed well after the date that a preliminary prospectus for the new mutual fund has been filed. Delays in filing an essential application by mutual fund filers can cause delays in the finalization of the related prospectus filing. Because applications are not made on a timely basis, Staff often find themselves pressured to give these applications attention in preference to previously filed applications. This leads to "queue jumping" by mutual fund filers, which is not desirable.

Relief from the Financial Statement Filing Requirements

Filers are reminded that applications for relief from the financial statement filing requirements should be filed sufficiently in advance of the filing deadline to give Staff and decision makers the time to consider the application and, if appropriate, grant the relief prior to the deadline. In many jurisdictions, retroactive relief will not be granted.]

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[1]The lapse date for prospectuses filed in Ontario and Quebec is based on the date of the receipt for the last final prospectus filed by the mutual fund. The lapse date in all other provinces is generally earlier – and is based on the date of the last final prospectus of the mutual fund.

Prefiling Discussions

Filers are reminded that they should use the procedures set out in Part 4 of the Policy for any prefilings related to a proposed application to be filed under the System.

More than One Principal Regulator

Subsection 5.2(2) of the Policy contains a number of examples of situations where a filer may require more than one principal regulator for an application. In particular, if no relief is needed in the principal jurisdiction under a head of relief, the filer must prepare a second draft decision document and choose a second principal regulator to deal with that aspect of the application. A principal regulator will not consider an application where no relief is necessary in that jurisdiction under a particular head of relief.

By way of example:

A. An issuer, with a head office in jurisdiction A and which is a reporting issuer in jurisdiction A, wishes to be deemed to be a reporting issuer in jurisdiction B, C, and D and also needs relief from the registration and prospectus requirements in jurisdictions A, B, C and D.

   Under the Policy, the issuer's principal regulator is jurisdiction A. Therefore, the issuer should make its application for relief from the registration and prospectus requirements in jurisdictions A, B, C and D under the System with jurisdiction A as the principal regulator. The application to be deemed a reporting issuer is not necessary in jurisdiction A (i.e. no relief is needed under that head of relief). Therefore the issuer should select one of jurisdictions B, C or D (under s. 3.2 of the Policy) to act as principal regulator for that aspect of the application. All of the relief necessary could be described in one application but two draft decision documents should be provided (one for each principal regulator).

   Alternatively, the filer may wish to request a change of principal regulator to a jurisdiction in which all of the relief is needed.

B. An issuer, with a head office in jurisdiction A, needs relief from the registration and prospectus requirements in jurisdictions A, B, C and D. However, the amount of relief needed in each jurisdiction varies. In jurisdiction A, relief is needed for one small aspect of the transaction, whereas in jurisdictions B, C and D, relief is needed for a number of trades. In this case, notwithstanding that some of the trades are exempt under the securities laws in jurisdiction A, jurisdiction A will act as principal regulator and will grant prospectus and registration relief for all of the trades because some relief is needed under the prospectus and registration head of relief in jurisdiction A. This is an example of the transaction based approach referred to in clause 5.2(2)(c) of the Policy.

Requests for Confidentiality

Filers are reminded that section 5.3 of the Policy sets out the procedures to be followed in order to request confidentiality for an application or a decision document. As part of the application, the filer must provide submissions as to why making the document public could result in serious prejudice, why confidentiality is reasonable and not contrary to the public interest and must provide proposed timelines for the lifting of any decision to grant confidentiality. If such submissions are not made, the request for confidentiality will not be considered and the application and decision document will be made public.

Filers should also be aware that the securities legislation of certain jurisdictions set out requirements that must be met by applicants seeking confidentiality of a filing. In addition, filers should familiarise themselves with other existing legislation in jurisdictions that could impact upon any decision to grant confidentiality.

Fees

Until further notice, all applications for relief from the fee requirement in the jurisdictions will be processed outside of the System.

Other Concerns with Applications

Significant numbers of applications do not contain a detailed explanation of the reasons for the relief requested and do not contain a reliable table of concordance illustrating the applicable sections where relief is necessary. All applications must contain enough analysis for Staff to be able to determine: (i) which sections are applicable; (ii) why the particular transaction will contravene the applicable sections; and (iii) why the particular relief should be granted. Filers should ensure that the draft decision document filed with an application recites all relevant facts necessary for decision making by the applicable decision makers. Draft decision documents should be consistent with the most recent MRRS precedent published.

Reference

Any questions or comments concerning this notice should be directed to any member of the CSA Mutual Reliance Review System for Exemptive Relief Applications Committee as follows:

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Any questions or comments of investment fund filers whose principal jurisdiction is the Ontario Securities Commission should contact:

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