



SASKATCHEWAN POLICY STATEMENT 51-601

REPORTING ISSUERS IN DEFAULT

Part 1 Definitions

In this policy statement:

“Act” means *The Securities Act, 1988*;

“cease trade order” means an order issued by the Director under Clause 134.1(2) of the Act against a reporting issuer for failure to file required continuous disclosure materials or for having filed required continuous disclosure materials that are not adequate, complete, or satisfactory;

“Director” means the Director of the SFSC’s Securities Division;

“Reporting Issuer Search” or “RIS” means the search function for reporting issuers available under the SFSC’s website; and

“SFSC” means the Saskatchewan Financial Services Commission

Part 2 Purpose

- 2.1 Circumstances may arise where prospective purchasers and sellers of securities need to determine whether a reporting issuer is in default of any requirement of the Act or Regulations. Subsection 81(1) of the Act provides that these interested parties may apply to the SFSC for a certificate stating whether an issuer is a reporting issuer and, if so, whether the reporting issuer is in default of any requirement of the Act. For determining whether a reporting issuer is in default, subsection 81(2) of the Act provides that an interested party may also rely on a list of defaulting reporting issuers that is maintained by the SFSC.
- 2.2 This Policy outlines how the SFSC determines whether a reporting issuer is in default, how to access the SFSC’s list of reporting issuers to determine if a reporting issuer is in default, and provides guidance to interested parties on how to request a certificate of no default under subsection 81(1) of the Act.

Part 3 Basis for Noting a Reporting Issuer to be in Default

- 3.1 The SFSC will consider a reporting issuer to be in default if the issuer:
- (a) does not file a continuous disclosure document required by Saskatchewan securities laws;
 - (b) makes disclosure that does not comply with the requirements of Saskatchewan securities laws; or
 - (c) does not pay the required fee prescribed in Appendix A, Table 1 of the The Securities Regulations.
- 3.2 Appendix A to this Policy identifies significant deficiencies in compliance with Saskatchewan securities laws that, when detected by SFSC staff, will result in the reporting issuer being noted in default. Appendix A is a non-exhaustive list. Other types of deficiencies may, when identified, result in the reporting issuer being noted in default.
- 3.3 Section 1 of Appendix A sets out a list of failures to file significant continuous disclosure that will, when detected by SFSC staff, generally result in the reporting issuer being noted in default without prior notification. The list of key defaults in Appendix A will be updated periodically when required.
- 3.4 Section 2 of Appendix A describes significant deficiencies in the content of a required continuous disclosure filing. An issuer will be placed in default if the SFSC staff identifies the disclosure as deficient. A reporting issuer may be given advance notice and a time-limited opportunity to remedy a deficiency before being noted in default.
- 3.5 Section 3 of Appendix A identifies the failure to pay a fee required under Appendix A, Table 1 of The Securities Regulations. Such a default will result in the reporting issuer being noted in default without prior notification.
- 3.6 Section 4 of Appendix A provides that a reporting issuer will be considered to be in default if it has failed to comply with any other requirement related to continuous disclosure.
- 3.7 Once the reporting issuer has addressed to the satisfaction of SFSC staff a deficiency for which it has been noted in default, SFSC staff will no longer consider the reporting issuer to be in default on that ground. The corresponding default will be removed from the reporting issuer's records when the website is updated each day.

Part 4 Accessing the List of Reporting Issuers

- 4.1 The SFSC has Reporting Issuer Search functionality available on its' website. The SFSC website address is www.sfsc.gov.sk.ca. Information provided on the RIS is updated each business day at 12:00 a.m.. Interested individuals can refer to the RIS to determine whether a Saskatchewan reporting issuer has been noted in default of certain requirements of Saskatchewan securities laws or whether its securities are subject to a cease trade order issued by the Director. The RIS constitutes the list of defaulting reporting issuers referred to in subsection 81(2) of the Act.
- 4.2 The RIS is available on the SFSC website under the "Search Securities Division" tab. A second

screen will appear providing a selection box of possible search types. Under Issuer Search, select “Reporting Issuer Search”. A user can then search the website for a specific company name, or instead may select one of the listed letters of the alphabet to search the alphabetic list of reporting issuers by name. The list of reporting issuers and all continuous disclosure filings submitted is compiled and updated as of the close of business each business day and the website is updated at 12:00 a.m. on the same business day.

4.3 The RIS identifies:

- (a) Issuers that are reporting issuers in Saskatchewan;
- (b) The start date that an issuer became a reporting issuer in Saskatchewan;
- (c) Reporting issuers in Saskatchewan that have been noted in default of certain requirements of Saskatchewan securities laws;
- (d) Reporting issuers in Saskatchewan whose securities are the subject of a CTO issued by the Director; and
- (e) Reporting issuers in Saskatchewan that have a head office located in Saskatchewan.

4.4 If a reporting issuer has a ‘Yes’ noted in the “In Default” column of the reporting issuer search, a user can simply click on the ‘Yes’ and an ‘Items in Default’ screen will open showing the specific defaults for the issuer.

4.5 Even if a reporting issuer has a ‘No’ in the “In Default” column of the reporting issuer search, this does not ensure that the reporting issuer is in full compliance with all of its obligations under Saskatchewan securities laws because:

- (a) the list will not reflect undetected deficiencies,
- (b) not all types of deficiency may lead to a default notation; and
- (c) a reporting issuer may be given advance notice and a time-limited opportunity to remedy a deficiency before being noted in default.

4.6 Every effort is made to ensure the accuracy of this list. A reporting issuer in Saskatchewan that does not appear on this list or that has inappropriately been noted in default should contact the staff of the SFSC Securities Division promptly.

Part 5 Cease Trade Orders

5.1 The list of reporting issuers will identify certain cease trade orders that prohibit all trading in Saskatchewan of securities of a reporting issuer.

5.2 If a cease trade order has been issued against an issuer under subsection 134.1(2) of the Act for failure to file required records or information, the cease trade order will be noted by date of issue on the RIS. The web search will also tell a user the specific date of the issuer cease trade order.

- 5.3 The Commission may issue orders pursuant to section 134 that prohibit trading in securities of a reporting issuer. The Commission issues orders under section 134 where a person or company is not complying with Saskatchewan securities laws. These section 134 orders may not appear on the list of reporting issuers. To determine whether a person or company is the subject of a section 134 cease trade order (for example, a cease trade order issued against management or registrants of a reporting issuer), consult the SFSC website and select the “Enforcement” tab, and then select “Enforcement Orders” under the “Enforcement Actions” heading. The enforcement cease trade order listing is by order date.

Part 6 Certificates of No Default

- 6.1 A certificate of no default for a specific reporting issuer will be provided under subsection 81(1) by the staff of the SFSC on request from any interested party.
- 6.2 The certificate of no default will identify whether the issuer is a reporting issuer and whether the issuer is included in a list of defaulting reporting issuers maintained by the SFSC pursuant to subsection 81(2) of the Act.
- 6.3 The certificate will identify the filing types monitored by the staff in preparation of the certificate, and further indicate that there are additional types of filings required from reporting issuers on an occurrence basis. No assurances are provided that the reporting issuer has met these additional obligations under the Act. (Refer also to 4.5).

Part 7 Filing Consideration For Reporting Issuers

- 7.1 A reporting issuer will be noted in default if it fails to file a required document within the prescribed time period. National Instrument (NI) 13-101 *System for Electronic Document Analysis and Retrieval* (the SEDAR instrument) provides for the electronic transmission of documents to the SFSC for filing. The date of filing a document in electronic format for the purpose of Saskatchewan securities laws is determined in accordance with section 2.7 of the SEDAR instrument. Reporting issuers should review the provisions of the SEDAR instrument to determine applicable filing requirements.
- 7.2 A reporting issuer is responsible for creating and maintaining a current filer profile under the SEDAR instrument and a current issuer profile supplement under NI 55-102 *System for Electronic Disclosure by Insiders* (SEDI). Reporting issuers should review requirements for filing a filer profile under the SEDAR instrument, an issuer profile supplement under SEDI and any amendments to the filer profile or issuer profile supplement. Reporting issuers are reminded that the SFSC relies on the contact information in the issuer’s SEDAR profile to serve any notices or orders issued under the Act.

8 Effective Date

- 8.1 This Policy is effective December 14, 2006.

Appendix A

Categories of default

The circumstances under which the SFSC will consider a reporting issuer to be in default are:

1. The reporting issuer has failed to file the following continuous disclosure prescribed by securities laws:
 - (a) annual financial statements;
 - (b) interim financial statements;
 - (c) annual or interim management's discussion and analysis (MD&A) or annual or interim management report of fund performance (MRFP);
 - (d) annual information form (AIF);
 - (e) certification of annual or interim filings under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109);
 - (f) proxy materials or a required information circular;
 - (g) issuer profile supplement on the System for Electronic Disclosure By Insiders (SEDI);
 - (h) material change report;
 - (i) written update after filing a confidential report of a material change;
 - (j) business acquisition report;
 - (k) annual oil and gas disclosure prescribed by National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) or technical reports for a mineral project required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101);
 - (l) mandatory news release;
 - (m) corporate governance disclosure as required by National Instrument 58-101 *Disclosure of Corporate Governance Practices*;
 - (n) audit committee disclosure as required by Multilateral Instrument 52-110 *Audit Committees* or BC Instrument 52-509 *Audit Committees*; or
 - (o) disclosure in an issuer's MD&A relating to disclosure controls and procedures and their effectiveness that is referred to in a certificate filed under MI 52-109.

2. The reporting issuer's continuous disclosure is deficient because:
 - (a) the financial statements of the reporting issuer, or the auditor's report accompanying the financial statements, do not comply with the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) or National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;
 - (b) the reporting issuer has acknowledged that its financial statements, or the auditor's report accompanying the financial statements, may no longer be relied upon;
 - (c) the reporting issuer's AIF, MD&A, MRFP, information circular or business acquisition reports do not contain information for each of the content items required by NI 51-102 or NI 81-106; or
 - (d) the reporting issuer's technical disclosure or other reports do not comply with the disclosure requirements of NI 43-101 or NI 51-101.
3. The reporting issuer has failed to pay a fee required by securities laws.
4. The reporting issuer has failed to comply with any other requirement related to continuous disclosure.