

SASKATCHEWAN POLICY STATEMENT 12-601
APPLICATIONS TO THE SASKATCHEWAN SECURITIES COMMISSION

PART 1 INTRODUCTION

There are various provisions throughout *The Securities Act, 1988* (the "Act"), *The Securities Regulations* (the "Regulations"), national instruments and Commission regulations (collectively called "the Legislation") providing for application to the Saskatchewan Securities Commission (the "Commission") or the Director of the Commission (the "Director") for a decision exempting or waiving the requirements of the Legislation or for approval of various actions.

This policy is intended to set out uniform procedures with respect to applications to the Commission or the Director for exemptions, waivers or approvals. By doing so, it is hoped that the public will have easy, understandable access to the Commission and the Director and that the staff of the Commission (the "Staff") will have the information they require to process such applications expeditiously and efficiently.

This policy applies to all applications to the Commission or the Director for exemptions, waivers or approvals except for applications where alternate procedures are prescribed in the Legislation. **This policy does not apply to applications to the Commission or the Director pursuant to the provisions of Parts VI (Registration) and XX (Mineral Lease Brokers) of the Act.**

Nothing in this policy should be considered as abrogating the discretion of the Commission or the Director pursuant to the Act and each application will be reviewed by the Commission or the Director, as applicable, on its merits.

PART 2 GENERAL

- 2.1 While the Commission has the power to make a decision that would have retroactive effect, the Commission takes the position that it will not make such a decision except in rare circumstances. The Commission will not make a retroactive decision when the rights of purchasers or other parties would be unjustly affected. It is therefore important that applicants who wish a decision of the Commission or the Director seek such decision prior to carrying out the activity to which the decision will relate. Decisions of the Commission and the Director unless otherwise stated in the decision take effect from the date they are rendered and will not be back dated.

- 2.2 In cases where the decision requested in an application would, if granted by the Commission have retroactive effect, the Staff will in appropriate circumstances and as an alternative to such a decision issue "no action" letters. "No action" letters do not have the effect of curing a default of the Legislation. Applicants should be aware of the provisions of subsection 39(4) and section 82.1 of the Act which provide that the statutory exemptions from the registration and prospectus requirements of the Act are not available to an issuer in default of any requirement of the Legislation or a decision of the Commission and that a section 83 application may be necessary in some cases to deem an issuer to no longer be in default of a requirement of the

Act. Persons or companies in default of a requirement of the Legislation or a decision of the Commission should contact the Deputy Director, Enforcement, of the Commission to discuss remedial action.

- 2.3 The Commission has taken the position that it will not grant "comfort" decisions or decisions for greater certainty to applicants. Applicants are expected to avail themselves of the provisions of the Legislation to the greatest extent possible and only apply for a decision of the Commission or the Director where necessary and only for that part of the transaction for which a decision is needed. The Commission or the Director will entertain applications where there is a demonstrated uncertainty as to the interpretation of the Legislation.
- 2.4 Although neither the Commission nor the Director will give "advance" rulings on a proposed application, discussion with the Staff of a proposed course of action prior to the making of an application is encouraged. While the Staff will attempt to cooperate with applicants as much as possible, the Staff, given the public protection mandate and resources of the Commission, can not provide legal or business advice to applicants.
- 2.5 Refund of application filing fees on withdrawal or denial of applications are dealt with in Staff Notice 13-701 Refund of Fees.

PART 3 SUBMISSION OF APPLICATIONS

- 3.1 Applications should be forwarded to:
Deputy Director, Legal
Saskatchewan Securities Commission
800 - 1920 Broad Street
Regina, Saskatchewan
S4P 3V7
Telephone (306) 787-5879
Telecopier (306) 787-5899
- 3.2 Applications should be accompanied by the proper application filing fee and cheques should be made payable to the Minister of Finance, Government of Saskatchewan. A schedule of fees can be found in Appendix A of the Regulations.
- 3.3 Applications are dealt with by the Staff in the order in which they are received and should be submitted well in advance of the date by which the decision of the Commission or the Director is required. The Commission does not have a policy for the processing of applications on an expedited basis. For this reason, if an application is of particular urgency, it is recommended that the application be faxed to the Commission at the above mentioned number and followed up with the mailing of the hard copy of the application. The Staff will attempt to accommodate

matters of true urgency. An incomplete or improperly prepared application may result in a delay in the processing of the application.

- 3.4 An original executed application and one copy should be submitted. If the supporting material appended to the application is bulky, only one copy of the supporting material need be filed unless the Staff requests further copies. The applicant should be prepared to provide additional copies of the application and supporting material if requested by the Staff.
- 3.5 Saskatchewan Policy Statement 13-601 Public Availability of Material in Commission Records sets out the Commission's policy on confidentiality of applications and supporting material.

PART 4 CONTENTS AND FORMAT OF APPLICATIONS

4.1 Applications should be in letter form, divided into parts with the following headings as applicable and contain the following information where relevant:

(a) Summary

The name of the issuer, the name of the applicant, if different from the issuer, the provisions of the Legislation pursuant to which the application is made and the nature of the relief sought.

(b) The Issuer

- (i) the name of the issuer;
- (ii) the jurisdiction and date of incorporation or organization of the issuer;
- (iii) whether or not the issuer is a reporting issuer within the meaning of the Act and if so the date it became a reporting issuer in this province;
- (iv) other jurisdictions where the issuer is a reporting issuer and the date it became a reporting issuer in those jurisdictions;
- (v) the authorized and issued capital of the issuer, including debt securities, and the attributes of each such class of securities;
- (vi) the financial year end of the issuer;
- (vii) whether or not and which securities of the issuer are listed and posted for trading on any stock exchange or over the counter, including the market on

which the securities are listed and posted and recent price and trading volume data;

- (viii) a statement as to whether or not the issuer is not in default of any of the requirements of the Act or any other securities or corporate legislation to which it is subject;
- (ix) a statement as to whether or not the issuer or its promoters, directors or officers are the subject of any enforcement or other administrative or legal proceedings in any jurisdiction with respect to the trading or distribution of securities including an explanation of any such proceedings; and
- (x) where the decision will impose continuous disclosure requirements on the issuer, the name, address, telephone number and fax number of a contact person for the issuer with respect to these requirements.

(c) The Applicant

If the applicant is a person or company other than the issuer, disclose those items in clause (b) which are relevant to the applicant, and explain the applicant's relationship to the issuer.

(d) Order or Decision Sought

- (i) the facts upon which the application is based;
- (ii) the reason for making the application and submissions in support of the relief requested;
- (iii) relevant considerations including case law, provisions of the Act, prior Commission decisions, Commission policies and general rulings/orders and submissions with respect to the foregoing;
- (iv) other relevant circumstances including the provisions of other legislation, the policies and decisions of other regulatory bodies, other applications pending before the Commission or other regulating bodies and conditions or recommendations;
- (v) other jurisdictions in which a similar application has been made;

- (vi) if Saskatchewan is not considered the "home" or "principal" jurisdiction of the issuer, the position of the "home" or "principal" jurisdiction of the issuer and if that jurisdiction is outside Canada the position of the "home" or "principle" Canadian jurisdiction of the issuer with respect to the application or the matter which is the subject of the application;
 - (vii) the relationship of the number of security holders of the issuer resident in Saskatchewan to the total number of security holders of the issuer and to the number of security holders of the issuer holding the type of securities of the issuer to be traded;
 - (viii) the relationship of the number of securities of the issuer to be traded in Saskatchewan to the total number of securities of the issuer issued and outstanding and to the number of the securities of the issuer of the type to be traded issued and outstanding;
 - (ix) any other relevant information including submissions addressing the particular requirements of the provisions of the Act pursuant to which the application is made;
 - (x) include supporting material as schedules or exhibits to the application and references in the application may be made to such supporting material;
 - (xi) where relevant include in the supporting material certificates of good standing from the appropriate corporate and securities regulatory bodies; and
 - (xii) a draft form of decision for consideration by the Staff, the format for which can be found in the Commission's Monthly Bulletin which can be obtained from the Commission's offices. The draft form of decision may be submitted on a computer diskette which is IBM-compatible and prepared using WordPerfect.
- (e) Verification

Each application must be signed by the party or parties submitting the application and must contain a statement certifying the truth of the facts contained therein. If the application is not signed by the applicant and is made by an agent for the applicant the statement may be omitted if the application is accompanied by a statement made by the applicant confirming the authority of the agent to prepare and file the application and confirming also the truth of the facts contained in the application. Sample language might include:

"We authorize the making and filing of the attached application by _____ and confirm the truth of the facts contained therein.

DATED at this day of , 19 .

"authorized officer"

- 4.2 All references in an application to names of issuers and applicants, the types of securities, and the like should be technically and legally correct. It is important that the information and representations contained in an application be accurate and current as it is the basis upon which the Staff makes its recommendation to the Commission or the Director and upon which the Commission or the Director makes their decision.
- 4.3 If reference is made in an application to material already on file with the Commission, a copy of that material should be filed with the application.
- 4.4 Copies of applications made in other jurisdictions will not be accepted as applications in this jurisdiction. Applications should include full and proper references to the relevant provisions of the Legislation.
- 4.5 Amended applications, draft decisions or supporting material should be accompanied by black lined copies thereof.
- 4.6 If more than one decision is applied for, so indicate and remit the necessary application filing fees for each decision sought.

PART 5 PROCEDURE

- 5.1 Upon receipt of an application with the correct application filing fee, a Staff member will be assigned to review the application and recommend disposition. The Staff member will contact the applicant if further information or clarification is required.
- 5.2 Where the additional information or clarification sought is not provided within a reasonable time, the Staff, after 15 days notice in writing to the applicant, may treat the application as withdrawn. No application will be treated as withdrawn simply because a Staff member has not had an opportunity to review it.
- 5.3 An application may be withdrawn by notice in writing to the Commission at any time before a decision is rendered on the application, without prejudice to the right to reapply.

- 5.4 After review of the application, the Staff may recommend to the Commission or the Director as applicable, on an *ad hoc* basis without a hearing, that the decision requested be granted. If such recommendation is accepted, a decision is prepared and signed by the Commission or the Director without a hearing.
- 5.5 Where the Staff recommends to the Commission or the Director that an application be denied, notice in writing of such recommendation along with the reasons therefore will be forwarded to the applicant. The notice will state that the applicant is entitled to a hearing before the Commission or the Director as applicable with respect to the application, and that if a request in writing for such a hearing is not received by the Commission within 15 days of the date of the notice, a denial of the application may be processed by the Commission or the Director based on the recommendation of the Staff. If no request for a hearing is received within the prescribed time limits a denial of the application may be processed by the Commission or the Director.
- 5.6 No application will be denied by the Commission or the Director without the applicant being given an opportunity to be heard.
- 5.7 If a hearing is requested the application will, within 10 days of the date of the receipt of the request for a hearing, be set down for a pre-hearing conference before a member of the Commission or the Director as applicable. At the pre-hearing conference the application will be reviewed by the member of the Commission or the Director and either:
- (a) adjourned for further representations or submissions by the applicant or the Staff;
 - (b) referred back to the Staff for further consideration; or
 - (c) set down for hearing before the Commission or the Director as applicable.

There will be no decision made by the Commission or the Director at a pre-hearing conference with respect to the application. The purpose of a pre-hearing conference is to attempt to delineate and narrow the issues to ensure that a hearing can be held in an efficient and orderly manner and to explore the possibilities of an agreement between the Staff and the applicant. The Commission or the Director at a pre-hearing conference may give such directions as are necessary to accomplish this purpose.

- 5.8 Applicants are entitled but not required to be represented by counsel at pre-hearing conferences. Staff will generally be represented at pre-hearing conferences by the person who conducted the initial review of the application.
- 5.9 Pre-hearing conferences will be held in an informal manner. No court reporter will be present and no transcription of the proceedings will be taken. Being involved in the pre-hearing

conference does not disqualify the member of the Commission or the Director from being involved in the hearing of the application and any party objecting to this should raise such objections at the pre-hearing conference or at the beginning of the hearing of the application.

- 5.10 The Commission or the Director, as the case may be, the Staff and the applicant will have available to them at the pre-hearing conference:
- (a) the application and any supporting material filed with the application;
 - (b) correspondence between the Staff and the applicant with respect to the application; and
 - (c) the memoranda of the Staff recommending the denial of the application and requesting the pre-hearing conference, but neither the Commission or the Director nor the applicant will have access to the Staff's notes with respect to the application. Either the Staff or the applicant may file additional material or written submissions at the pre-hearing conference provided such is made available to the other party. Such additional materials or written submissions become part of the application file but should not be considered as forming part of the record for any hearing held with respect to the application.
- 5.11 If the application is set down for hearing it will be dealt in accordance with Saskatchewan Policy Statement 12-602 Procedure on Hearings and Reviews Before the Commission.
- 5.12 Pre-hearing conferences are not open to the public unless both the applicant and the Staff agree otherwise or the Commission or the Director so orders.
- 5.13 An applicant who requests a hearing may in writing waive the holding of a pre-hearing conference with respect to an application and in such a case the application will immediately be set down for hearing and dealt in accordance with Saskatchewan Policy Statement 12-602 Procedure on Hearings and Reviews Before the Commission.
- 5.14 Where the Staff determines that the subject matter of an application is of general importance or of a new or novel nature, the application may be dealt with in the same manner as if the Staff were recommending a denial of the application.

Adopted by the Commission effective May 3, 1990.

Amended on May 13, 1993.

Amended effective May 15, 1996.

"*Marcel de la Gorgendière*"

Marcel de la Gorgendière, Q.C.

Chairperson