

1.1.7 OSC Staff Notice 12-703 – Preferred Format of Applications to the Director under Section 83 of the Securities Act (Ontario)

ONTARIO SECURITIES COMMISSION STAFF NOTICE 12-703 – PREFERRED FORMAT OF APPLICATIONS TO THE DIRECTOR UNDER SECTION 83 OF THE SECURITIES ACT (ONTARIO)

1. Background

On April 15, 2003 the Commission amended the Assignment by Commission Pursuant to Section 6 of the Act of Certain of Commission's Powers and Duties, as amended (the Assignment). The Commission limited the assignment of its powers and duties to the Director (as defined under section 1(1) of the Act) under section 83 of the Act by revoking clause (h) of paragraph 2 of the Assignment and substituting the following:

[Pursuant to subsection 6(3) of the Act, the Commission assigns to each Director, acting individually, the powers and duties vested in or imposed upon the Commission by:]

- (h) section 83 of the Act but only in respect of a reporting issuer:
 - (i) whose outstanding securities, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in Ontario and less than 51 security holders in Canada;
 - (ii) whose securities are not traded on a marketplace as defined in National Instrument 21-101;
 - (iii) that is not in default of any of its obligations as a reporting issuer; and
 - (iv) that will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Director granting the relief requested.

The Assignment, as amended, gives the Director the power to order that a reporting issuer ceases to be a reporting issuer in these circumstances. The Director does not have the power to grant relief to a reporting issuer that does not meet the requirements set out in clause (h) of paragraph 2 of the Assignment: Only the Commission may grant relief to such a reporting issuer.

2. Objective

Consistent with the terms of clause (h) of paragraph 2 of the Assignment, we are setting out the preferred format of

applications under section 83 to the Director. We believe the preferred format will simplify the process for a reporting issuer submitting such an application. It may be inappropriate for a reporting issuer that does not meet the requirements of clause (h) of paragraph 2 of the Assignment, to submit an application using the preferred format.

3. Preferred Format of Applications

A reporting issuer seeking relief from the Director under section 83 may request relief by:

- (a) submitting a letter in duplicate prepared by or on behalf of the reporting issuer that:
 - (i) indicates that the reporting issuer is requesting relief under section 83;
 - (ii) references this staff notice; and
 - (iii) includes representations by the reporting issuer that it meets each of the criteria referred to in clause (h) of paragraph 2 of the Assignment; and
- (b) complying with parts A, B, and C, and subpart D(e) of OSC Policy 2.1.

An example of an Application Letter and of an Order Granting the Relief is attached as Schedule 1. Notwithstanding the format of the application described, we may request that the reporting issuer provide additional information in support of the application.

Schedule 1

Example of an Application Letter

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Dear *
*
Re: *(the Applicant) – Application to Cease to be a Reporting Issuer under Section 83 of the *Securities Act* (Ontario)

We are applying to the Ontario Securities Commission on behalf of the Applicant for an order under section 83 of the Act and consistent with Ontario Securities Commission Staff Notice 12-703, that the Applicant is deemed to have ceased to be a reporting issuer.

The Applicant represents that:

- The outstanding securities of the Applicant, including debt securities are beneficially owned, directly or indirectly, by less than 15 security holders in Ontario and less than 51 security holders in Canada;
- No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101;
- The Applicant is not in default of any of its obligations under the Act as a reporting issuer; and
- The Applicant will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Director granting the relief requested.

Dated this ___ day of _____, in the City of _____ in the Province of Ontario.

Applicant name *
Signature of the person who has signing authority

Example of an Order Granting the Relief

*
Dear *
*
Re: *(the Applicant) – Application to Cease to be a Reporting Issuer under Section 83 of the *Securities Act* (Ontario)

The Applicant has applied to the Ontario Securities Commission for an order under section 83 of the Act to be deemed to have ceased to be a reporting issuer.

As the Applicant has represented to the Commission that:

- The outstanding securities of the Applicant, including debt securities are beneficially owned, directly or indirectly, by less than 15 security holders in Ontario and less than 51 security holders in Canada;
- No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101;
- The Applicant is not in default of any of its obligations under the Act as a reporting issuer; and
- The Applicant will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is deemed to have ceased to be a reporting issuer.

*
Director