

1.1.5 OSC Staff Notice 12-703 (Revised) -- Preferred Format of Applications to the Director under Clause 1(10)(b)

ONTARIO SECURITIES COMMISSION STAFF NOTICE 12-703 (Revised) – PREFERRED FORMAT OF APPLICATIONS TO THE DIRECTOR UNDER CLAUSE 1(10)(b) OF THE SECURITIES ACT (ONTARIO)

1. Background

This notice replaces the notice published on April 25, 2003 to substitute references to section 83 of the Act with references to clause 1(10)(b) of the Act and make consequential changes based on the language of the new Act provision. Section 83 was repealed and replaced with clause 1(10)(b) by Bill 151, *An Act to enact various 2006 Budget measures and to enact, amend or repeal various Acts* (short title, the *Budget Measures Act, 2006 (No.2)* (the Budget Measures Act) which came into force on December 20, 2006. In connection with Budget Measures Act, the Commission amended and restated the Assignment of Certain Powers and Duties of the Ontario Securities Commission, as amended (the Assignment) on March 16, 2007. The amendment and restatement reflects certain amendments to the Act, including consequential amendments to clause (f) of paragraph 2 of the Assignment that states 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:]

- (f) clause 1(10)(b) 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 *Marketplace Operation*;
 - (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 making an order that the reporting issuer is not a reporting issuer.

The Assignment, as amended and restated, gives the Director the power to order that a reporting issuer is not 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 (f) 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 (f) of paragraph 2 of the Assignment, we are setting out the preferred format of applications under clause 1(10)(b) of the Act 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 (f) 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 clause 1(10)(b) of the Act 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 clause 1(10)(b);
 - (ii) references this staff notice; and
 - (iii) includes representations by the reporting issuer that it meets each of the criteria referred to in clause (f) of paragraph 2 of the Assignment; and
- (b) complying with parts A, B, and C, and subpart D(e) of OSC Policy 2.1 *Applications to the Ontario Securities Commission*.

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 *

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Re: * (the Applicant) – Application for an order under clause 1(10)(b) of the *Securities Act* (Ontario) that the Applicant is not a reporting issuer

We are applying to the Ontario Securities Commission on behalf of the Applicant for an order under clause 1(10)(b) of the Act and consistent with Ontario Securities Commission Staff Notice 12-703 *Preferred Format of Applications to the Director under Clause 1(10)(b) of the Securities Act* (Ontario), that the Applicant is not 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 *Marketplace Operation*;
- 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

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Dear *

*

Re: * (the Applicant) -- Application for an order under clause 1(10)(b) of the *Securities Act* (Ontario) that the Applicant is not a reporting issuer

The Applicant has applied to the Ontario Securities Commission for an order under clause 1(10)(b) of the Act that the Applicant is not 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 *Marketplace Operation*;
- 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 not a reporting issuer.

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Director