

Annex D

Proposed National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations under Passport*

PART 1 INTRODUCTION

Scope of this policy

1. Reporting issuers are subject to continuous disclosure requirements under securities legislation so that there is information in the marketplace to enable investors and prospective investors to make an informed investment decision. The integrity and fairness, or confidence in the integrity and fairness, of the capital markets may be compromised if trading in securities of a reporting issuer is permitted to continue when the reporting issuer is not in compliance with the continuous disclosure requirements.

This policy provides guidance to issuers, investors and other market participants regarding how the Canadian Securities Administrators (CSA or we) will generally respond to certain types of continuous disclosure defaults by a reporting issuer, referred to as specified defaults in this policy. The term “specified default” is defined in part 2 of this policy and is based on the harmonized list of deficiencies developed by the CSA and described in CSA Notice 51-322 *Reporting Issuer Defaults*.¹

This policy also explains why we issue a failure-to-file cease trade order in response to a specified default and, beginning in part 4, describes our process for issuing and revoking a failure-to-file cease trade order in multiple jurisdictions under the passport system (passport). This policy applies to a reporting issuer and, where the context permits, to a securityholder or other party.

Cease trade orders outside of the scope of this policy

2. Cease trade orders that are not issued under the passport system are outside of the scope of this policy. The following cease trade orders for continuous disclosure defaults are not currently part of passport:
 - (a) a cease trade order issued in respect of a failure-to-file that is not a specified default;

¹ The definition of “specified default” does not include certain failure-to-file deficiencies described in section 1 of CSA Notice 51-322 *Reporting Issuer Defaults*, such as a failure-to-file a material change report or a failure-to-file technical disclosure or other reports required by National Instrument 43-101 *Standards of Disclosure for Mineral Projects* or National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. We have omitted these items from the definition because these filings will generally be non-periodic in nature and in some cases it may be unclear whether a filing requirement has been triggered.

- (b) a cease trade order issued where a reporting issuer has made a required filing but the required filing is deficient in terms of content (a content deficiency)²;
- (c) a management cease trade order as defined in National Policy 12-203 *Management Cease Trade Orders*;
- (d) a cease trade order issued in respect of an OTC reporting issuer as defined in Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-The-Counter Markets* (Multilateral Instrument 51-105 is not applicable in Ontario);
- (e) a cease trade order issued in respect of an issuer that is only a reporting issuer in one jurisdiction³;
- (f) a cease trade order issued prior to the effective date of this policy.

Cease trade orders that are not issued under passport will generally be issued by the CSA regulators following principles of mutual reliance. Typically the CSA regulator that will first issue a cease trade order in one of these circumstances will be the CSA regulator that is the issuer's principal regulator applying the principles set out in part 3 of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. This is usually the CSA regulator in the jurisdiction where the reporting issuer's head office is located. Once that CSA regulator issues a cease trade order, each of the other CSA regulators will then decide whether to issue a similar order in its jurisdiction.

The application process for a revocation of a cease trade order that was not issued under the passport system is described in National Policy 12-202 *Revocations of Non-Passport Cease Trade Orders*.

PART 2 DEFINITIONS AND INTERPRETATION

Definitions

3. In this policy:

“cease trade order” means an order under a provision of Canadian securities legislation, set out in Annex A, that one or more persons or companies must not trade in securities of a reporting issuer, whether directly or indirectly;

“CSA regulator” means a securities regulatory authority or regulator, as applicable;

“dual application” means an application described in section 26;

² Examples of content deficiencies are set out in section 2 of CSA Notice 51-322 *Reporting Issuer Defaults*.

³ A local CSA regulator will generally apply the same principles and considerations as set out in this policy when issuing a local cease trade order.

“dual failure-to-file cease trade order” means an order described in section 16;

“failure-to-file cease trade order” has the same meaning as in Multilateral Instrument 11-102 *Passport System*;

“filer” means the person or company filing an application to revoke or partially revoke a failure-to-file cease trade order;

"management cease trade order" has the same meaning as in National Policy 12-203 *Management Cease Trade Orders*;

“MD&A” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“MRFP” means a management report of fund performance as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“OSC” means the regulator in Ontario;

“partial revocation order” means an order that permits one or more persons or companies to conduct specific trades when a failure-to-file cease trade order is in effect, and includes a variation of the failure-to-file cease trade order;

“passport application” means an application described in section 25;

“passport failure-to-file cease trade order” means an order described in section 15;

“passport jurisdiction” means the jurisdiction of a passport regulator;

“passport regulator” means a regulator or securities regulatory authority that has adopted Multilateral Instrument 11-102 *Passport System*;

“principal regulator” means the regulator described in section 13;

“revocation order” means either a partial revocation order or an order fully revoking a failure-to-file cease trade order;

“SEDAR” means System for Electronic Document Analysis and Retrieval;

“SEDI” means System for Electronic Disclosure by Insiders;

“specified default” means a failure by a reporting issuer to comply with a specified requirement;

“specified requirement” means the requirement to file within the time period prescribed by securities legislation one or more of the following:

- (a) annual financial statements;
- (b) an interim financial report;
- (c) annual or interim MD&A or annual or interim MRFP;
- (d) an annual information form;
- (e) a certification of filings under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

Further definitions

- 4. Terms used in this policy that are defined in Multilateral Instrument 11-102 *Passport System* or National Instrument 14-101 *Definitions* have the same meaning as in those instruments.

Interpretation

- 5. (1) In certain jurisdictions, the regulator may issue a failure-to-file cease trade order that prohibits trading in, and the acquisition or purchase of, securities of a reporting issuer. In these jurisdictions, references in this policy to a “trade” refer to a trade in, acquisition of, or purchase of securities of the reporting issuer, as applicable.
- (2) In Québec, “trade” is not defined in the *Securities Act* (Québec). Part 4D of Multilateral Instrument 11-102 *Passport System* covers all securities transactions that may be the object of an order provided for in paragraph 3 of section 265 of the *Securities Act* (Québec).

PART 3 OVERVIEW AND IMPLICATIONS OF CEASE TRADE ORDERS ISSUED FOR CONTINUOUS DISCLOSURE DEFAULTS

DIVISION 1 OVERVIEW

Possible regulatory responses to a specified default

- 6. In the jurisdictions where the issuer is a reporting issuer, the CSA regulators will generally respond to a specified default by noting the issuer in default on their default lists. For more information about the CSA default lists, refer to CSA Notice 51-322 *Reporting Issuer Defaults*.

The CSA regulators will then respond to a specified default in one of two ways:

- (a) by issuing a failure-to-file cease trade order;
- (b) if an issuer applies under National Policy 12-203 *Management Cease Trade Orders*, and demonstrates that it is able to comply with that policy, by issuing a management cease trade order.

If the outstanding filing is expected to be filed relatively quickly, the default is not expected to be recurring and the issuer meets the eligibility criteria, a management cease trade order may be an appropriate response to the default.

While we recognize that issuers may sometimes face difficulties in complying with filing deadlines due to circumstances beyond their control, we do not believe it is appropriate to vary a filing deadline simply to allow an issuer to avoid being in default. The CSA regulators will consider the issuer's circumstances in deciding what action, if any, is appropriate to respond to a default. Once an issuer is in default, a failure-to-file cease trade order may be issued by the CSA regulator at any time.

Reasons for issuing a failure-to-file cease trade order in response to a specified default

7. If a reporting issuer fails to comply with a specified requirement, the CSA regulators generally respond by issuing a failure-to-file cease trade order. Some of the reasons for issuing a failure-to-file cease trade order are listed below.
 - (a) Investors and prospective investors should be able to make an informed investment decision about the securities of the defaulting reporting issuer. This ability may be compromised if certain disclosures have not been made when required.
 - (b) The integrity and fairness, or confidence in the integrity and fairness, of the capital markets may be compromised if trading in securities of the reporting issuer is permitted to continue during the period of default (when there is heightened potential that some people may have access to information that would normally be reflected in the continuous disclosure document that the reporting issuer is in default of filing).
 - (c) The practice of responding to a specified default with a failure-to-file cease trade order has a significant positive effect on general compliance. The prospect of a cease trade order creates a strong incentive for the reporting issuer's management to avoid a specified default. Similarly, the issuance of a cease trade order once the issuer is in default creates a strong incentive on the part of management to diligently rectify the specified default.

- (d) A failure-to-file cease trade order represents a rapid, public response by the CSA regulators to a specified default by a reporting issuer. This sends a message to issuers and investors that filing deadlines are important and that there will be serious consequences for a specified default, helping to preserve integrity and fairness in the securities marketplace.

We acknowledge that a failure-to-file cease trade order can impose a burden on issuers and investors because existing investors may be unable to sell their securities and prospective investors are unable to purchase securities of the issuer while the cease trade order remains in effect. In addition, issuers are generally unable to access financing while the cease trade order remains in effect. Nevertheless, if a reporting issuer is in default of a specified requirement, the issuance of a failure-to-file cease trade order addresses our overriding concern of investor protection.

Enforcement action

- 8. If a reporting issuer is in default of a continuous disclosure requirement, CSA regulators may also consider taking enforcement action against the reporting issuer, the directors and officers of the reporting issuer, or any other responsible party. Nothing in this policy should be interpreted as limiting the discretion of the CSA regulators in responding to such a default through enforcement action.

Insider trading

- 9. The guidelines below should be considered if a reporting issuer is or reasonably anticipates being in default of a specified requirement or another continuous disclosure requirement, and a cease trade order has not yet been issued in respect of the issuer.
 - (a) We expect an issuer to monitor and restrict trading by a director, officer and other insider of the issuer due to the increased risk that these individuals may have access to material undisclosed information. This may include information that would otherwise have been reflected in the continuous disclosure filing in respect of which the issuer is or reasonably anticipates being in default, information about any investigation into the events that may have led to the default or anticipated default, and information about the status of remediation activities.
 - (b) Management and other insiders of the issuer should consider the insider trading prohibitions under securities legislation before entering into any transaction involving securities of the issuer that is or reasonably anticipates being in default.

Refer to National Policy 51-201 *Disclosure Standards* for guidance regarding disclosure, the maintenance of confidential information, and the application of insider trading laws.

- (c) We also remind issuers and other market participants that an officer or other insider of a reporting issuer in default will generally be unable to sell securities

acquired from the issuer on a prospectus exempt basis because of the resale restrictions in subsections 2.5(2)7 and 2.6(3)5 of National Instrument 45-102 *Resale of Securities* which require that a selling security holder have no reasonable grounds to believe that the issuer is in default of securities legislation.

DIVISION 2 OTHER IMPLICATIONS OF A CEASE TRADE ORDER

Effect of a cease trade order in a jurisdiction where an issuer is not a reporting issuer

10. Although a trade in a jurisdiction where an issuer is not a reporting issuer may not violate a cease trade order in another jurisdiction, the trading activity may still be contrary to the public interest and therefore subject to enforcement or other administrative proceedings. Market participants in a jurisdiction in which an issuer is not a reporting issuer should be cautious about trading in a security if a CSA regulator in another jurisdiction has issued a cease trade order. Continuous disclosure obligations reflect the minimum requirements we think are necessary to generate sufficient public disclosure to permit investors to make informed investment decisions. The issuance of a cease trade order by a CSA regulator will generally mean that an issuer has not met the required standard and that there is significant risk of harm to investors if trading is allowed to continue. Accordingly, market participants should carefully consider the existence of the continuous disclosure default, and the determination of the principal regulator, before effecting a trade in a jurisdiction where the issuer is not reporting.

Effect of a cease trade order in a foreign jurisdiction

11. If a market participant intends to execute a trade in securities of a cease-traded issuer on an exchange or marketplace outside of Canada, the market participant should consider whether the trade may be considered to be a trade in one or more jurisdictions in Canada where either the cease trade order is in effect or trading is prohibited or restricted by operation of the passport system. For example, a transaction may be a trade in a jurisdiction if “acts in furtherance of the trade” occur within that jurisdiction. A transaction may also be a trade in a jurisdiction if there are connecting factors or other facts and circumstances that indicate that the securities may not “come to rest” outside Canada but may be resold to investors in a jurisdiction where a cease trade order is in effect or trading is prohibited under Multilateral Instrument 11-102 *Passport System*.

Effect of a cease trade order on market participants subject to Investment Industry Regulatory Organization of Canada regulation

12. Presently, all marketplaces (including exchanges, alternative trading systems and quotation and trade reporting systems) in Canada have retained Investment Industry Regulatory Organization of Canada (IIROC) as their regulation services provider. Under the Universal Market Integrity Rules (UMIR), which have been adopted by IIROC, if a CSA regulator issues a cease trade order with respect to an issuer whose securities are traded on a marketplace, IIROC imposes a regulatory halt on trading of those securities on all marketplaces for which IIROC acts as the regulation services provider. Once the

halt is imposed by IIROC, no person subject to the UMIR may trade those securities on any marketplace in Canada, over-the-counter or on a foreign organized regulated market.

PART 4

ISSUANCE OF A FAILURE-TO-FILE CEASE TRADE ORDER UNDER PASSPORT

DIVISION 1 OVERVIEW

Principal regulator

- 13.** Under section 4D.1 of Multilateral Instrument 11-102 *Passport System*, if a CSA regulator in another jurisdiction of Canada issues a failure-to-file cease trade order in respect of a reporting issuer's securities, a person or company must not trade in a security of the issuer in any passport jurisdiction where the issuer is a reporting issuer, except in accordance with any conditions of the order, including any variation or partial revocation of it. In most cases, the CSA regulator that will issue a failure-to-file cease trade order will be the reporting issuer's principal regulator, that is, the one selected by the issuer at the time that it becomes a reporting issuer and that it identified on its SEDAR profile. For the purposes of this policy, we will refer to the CSA regulator that issues the failure-to-file cease trade order as the principal regulator.

Types of failure-to-file cease trade orders

- 14.** The possible types of failure-to-file cease trade orders are
- (a) a passport failure-to-file cease trade order, and
 - (b) a dual failure-to-file cease trade order.

Passport failure-to-file cease trade order

- 15.** The possible types of passport failure-to-file cease trade orders are
- (a) where the issuer is not a reporting issuer in Ontario, a failure-to-file cease trade order issued in respect of this issuer by a passport regulator, and
 - (b) where the issuer is a reporting issuer in Ontario and the OSC is the issuer's principal regulator, a failure-to-file cease trade order issued in respect of this issuer by the OSC.

Dual failure-to-file cease trade order

- 16.** A dual failure-to-file cease trade order is a failure-to-file cease trade order issued in respect of an issuer by its principal regulator where the principal regulator is a passport regulator, the issuer is a reporting issuer in Ontario and the OSC, as a non-principal regulator, confirms that it is opting into the failure-to-file cease trade order.

DIVISION 2 DECISION-MAKING PROCESS

Passport failure-to-file cease trade orders

- 17.** After considering the recommendation of its staff, the principal regulator will determine whether or not to issue the passport failure-to-file cease trade order.

Dual failure-to-file cease trade orders

- 18. (1)** After considering the recommendation of its staff, the principal regulator will determine whether or not to issue the failure-to-file cease trade order and circulate its order to the OSC before 12:00 pm (noon) local time in the jurisdiction of the principal regulator.
- (2)** The OSC, on the same business day that it receives the principal regulator's order, will confirm whether
- (a)** it has made the same decision as the principal regulator and is opting into the order, or
 - (b)** it will opt-out and not make the same decision as the principal regulator.
- (3)** If the OSC elects to opt-out, it will notify the principal regulator and give its reasons for opting out.
- (4)** If the OSC does not provide a response before the expiry of the opt-in period referred to in subsection (2), the principal regulator will consider that the OSC has opted out.
- (5)** The principal regulator generally will not issue the failure-to-file cease trade order before the earlier of
- (a)** the expiry of the opt-in period referred to in subsection (2), and
 - (b)** receipt from the OSC of the confirmation referred to in subsection (2).
- (6)** If the OSC does not opt into or is considered to have opted out of the principal regulator's order as set out in subsections (3) and (4), the principal regulator will issue a passport failure-to-file cease trade order.

DIVISION 3 EFFECT OF A FAILURE-TO-FILE CEASE TRADE ORDER

Effect of a passport failure-to-file cease trade order

19. Once the principal regulator issues a passport failure-to-file cease trade order, the effect under section 4D.1 of Multilateral Instrument 11-102 *Passport System*, in each passport jurisdiction where the issuer is a reporting issuer, is that a person or company must not trade in a security of the issuer, except in accordance with the conditions, if any, contained in the order. The conditions of a failure-to-file cease trade order may include a variation or partial revocation.

Effect of a dual failure-to-file cease trade order

20. Once the principal regulator issues a dual failure-to-file cease trade order, the effect under section 4D.1 of Multilateral Instrument 11-102 *Passport System*, in each passport jurisdiction where the issuer is a reporting issuer, is that a person or company must not trade in a security of the issuer, except in accordance with the conditions, if any, contained in the order. The conditions of a failure-to-file cease trade order may include a variation or partial revocation. The order of the principal regulator also evidences the OSC's decision. As a result, trading in the securities that are subject to the failure-to-file cease trade order is also prohibited in Ontario.

Transmission of failure-to-file cease trade orders

21. (1) The principal regulator will send the failure-to-file cease trade order to the reporting issuer.
- (2) The principal regulator will send the OSC a copy of the dual failure-to-file cease trade order.

PART 5

REVOCATION OF A FAILURE-TO-FILE CEASE TRADE ORDER UNDER PASSPORT

DIVISION 1 INITIATING THE REVOCATION PROCESS

Full revocation

22. The way an issuer initiates the process to obtain a full revocation of a failure-to-file cease trade order depends on how long the failure-to-file cease trade order has been in effect.
- (a) In the case of a failure-to-file cease trade order that has been in effect for 90 days or less, the filing of the required continuous disclosure documents initiates the review process by the principal regulator for a revocation of the failure-to-file

cease trade order. We will not require an issuer to make an application in this circumstance.⁴

- (b) In the case of a failure-to-file cease trade order that has been in effect for more than 90 days, the issuer should make an application as set out in section 37.

Partial revocation

- 23. An issuer seeking a partial revocation order should meet the revocation qualification criteria under Division 3 and make an application as set out in section 38.

Types of applications

- 24. The types of applications to obtain a full revocation of a failure-to-file cease trade order that has been in effect for more than 90 days or a partial revocation order are
 - (a) a passport application, and
 - (b) a dual application.

Passport application

- 25. A passport application means,
 - (a) if the issuer is not a reporting issuer in Ontario, an application made by this issuer to its principal regulator, or
 - (b) if the issuer is a reporting issuer in Ontario and the OSC is the issuer's principal regulator, an application made by this issuer to the OSC.

Dual application

- 26. An issuer whose principal regulator is a passport regulator and that is also a reporting issuer in Ontario will make an application to both its principal regulator and to the OSC.

Principal regulator

- 27. The principal regulator for a revocation order is the CSA regulator that issued the failure-to-file cease trade order.

⁴ In the jurisdictions where an application is required by law to obtain a revocation order, the filing of the outstanding documents referred to in the failure-to-file cease trade order will be deemed to be the application.

DIVISION 2 FULL REVOCATION QUALIFICATION CRITERIA AND CONSIDERATIONS

Filing outstanding continuous disclosure for a full revocation

28. (1) We will generally not exercise our discretion to revoke a failure-to-file cease trade order that has been in effect for 90 days or less, unless the issuer has filed all of the outstanding continuous disclosure documents specified in the failure-to-file cease trade order, and any annual or interim financial statements, MD&A or MRFP, and certification of filings, that subsequently became due.
- (2) We will generally not exercise our discretion to revoke a failure-to-file cease trade order that has been in effect for more than 90 days, subject to sections 29 and 30, unless the issuer has filed all of its outstanding continuous disclosure.

Exceptions to interim filing requirements

29. In exercising their discretion to revoke a failure-to-file cease trade order that has been in effect for more than 90 days, the principal regulator, under a passport application, or the principal regulator and the OSC under a dual application, may elect not to require the issuer to file certain outstanding interim financial reports, interim MD&A, interim MRFP, or interim certificates under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, subject to section 30, if the issuer has filed all of the following:
- (a) audited annual financial statements, annual MD&A, annual MRFP, and annual certificates, required to be filed under applicable securities legislation;
 - (b) annual information forms, information circulars and material change reports required to be filed under applicable securities legislation;
 - (c) for all interim periods in the current fiscal year, interim financial reports (which include the applicable comparatives from the prior fiscal year), interim MD&A, interim MRFP, and interim certificates, required to be filed under applicable securities legislation.

Exceptions to annual filing requirements

30. In certain cases, an issuer seeking to revoke a failure-to-file cease trade order that has been in effect for more than 90 days may consider that the length of time that has elapsed since the date of the failure-to-file cease trade order makes the preparation and filing of all outstanding disclosure impractical, or of limited use to investors. This may apply to disclosure for periods that ended more than 3 years before the date of the application, or periods prior to a significant change in the issuer's business. An issuer seeking a full revocation order in these circumstances should make detailed submissions explaining its position. In appropriate cases, the principal regulator, under a passport application, or the

principal regulator and the OSC, under a dual application, will consider whether the filing of certain outstanding disclosure may be unnecessary as a condition of a full revocation order. The factors that may be considered include one or more of the following:

- (a) the age of information to be contained in the continuous disclosure filing: information from older periods may be less relevant than information from more recent periods;
- (b) whether there is access to records of the issuer: lack of access to records may hinder compliance with some filing requirements;
- (c) whether the issuer conducted activity during the period: if an issuer was inactive or changed its business at any time while it was cease-traded, disclosure of information from or prior to this time may be less relevant;
- (d) the length of time the failure-to-file cease trade order has been in effect;
- (e) whether the historical disclosure relates to significant transactions or litigation.

We generally consider that disclosure for periods within the most recent 3 financial years of the issuer provides useful information for investors. We generally do not consider the time and cost required to prepare disclosure to be a compelling factor in the determination of the disclosure to be provided in connection with an application to revoke a failure-to-file cease trade order.

Outstanding fees

- 31.** Before a full revocation order is issued, the issuer should pay all outstanding fees to each jurisdiction in which it is a reporting issuer. Outstanding fees generally include, where applicable, all activity and participation fees, and late filing fees.

Depending on how long the failure-to-file cease trade order has been in effect, and whether the issuer filed its continuous disclosure documents in a timely manner while it was cease-traded, the amount of outstanding fees can be considerable. Before submitting an application, an issuer should contact each of the CSA regulators to confirm the fees that will be payable.

Annual meeting

- 32.** An issuer should ensure that it has complied with the requirement in applicable corporate or similar governing legislation or any equivalent requirement in its constating documents to hold an annual meeting of securityholders. If the issuer has not complied with the annual meeting requirement, the CSA regulator will generally not exercise its discretion to issue a full revocation order unless the issuer provides an undertaking to hold an annual meeting within 3 months after the date on which the failure-to-file cease trade order is revoked.

An undertaking does not relieve the issuer from any obligation it may have regarding an annual meeting requirement.

News release

- 33.** If the issuance of an order revoking a failure-to-file cease trade order or the circumstances giving rise to the issuer seeking the revocation order is a “material change”, the issuer is required by Canadian securities legislation to issue and file a news release and material change report. For example, if the issuer has ceased to carry on an active business, or its business purpose has been abandoned, the circumstances giving rise to the issuer seeking the revocation order may be a “material change”. If so, the news release and material change report should disclose that the issuer has ceased to carry on an active business or that its business purpose has been abandoned, and should disclose the issuer’s future business plans or that the issuer has no future business plans.

Even if there is no material change, the issuer should consider issuing a news release that announces the revocation order.

DIVISION 3 PARTIAL REVOCATION QUALIFICATION CRITERIA AND CONSIDERATIONS

Permitted transactions

- 34.** We will consider granting a partial revocation order to permit certain transactions involving trades in securities of the issuer, such as a private placement to raise sufficient funds to prepare and file outstanding continuous disclosure documents or a shares-for-debt transaction to allow the issuer to recapitalize. We will generally not exercise our discretion to grant a partial revocation order unless the issuer intends to subsequently apply for a full revocation order and reasonably anticipates having sufficient resources after the proposed transaction to bring its continuous disclosure and fees up to date.

Other circumstances may arise that warrant a partial revocation order. For example, we will generally consider granting a partial revocation order to permit a securityholder to sell securities for a nominal amount solely to establish a tax loss, or if the issuer is winding up or in the context of insolvency.

Issuers may wish to consult their legal counsel to determine whether a particular transaction constitutes a trade and therefore requires an application for a partial revocation order. For example, in most jurisdictions of Canada, a disposition of securities by way of a bona fide gift, made in good faith and not as part of a plan or scheme to evade requirements of securities legislation, would generally not be considered a “trade” under securities legislation. As such, a partial revocation order would not typically be required in these circumstances. However, after the gift, the securities will generally remain subject to the cease trade order.

Acts in furtherance of a trade

35. The definition of trade, where applicable, includes acts in furtherance of a trade. In any particular case, it is a question of legal interpretation whether a step taken by an issuer or other party is an act in furtherance of a trade, and therefore a breach of the failure-to-file cease trade order. If securities have been issued in breach of a cease trade order, we will consider whether enforcement action is appropriate. Issuers should consult their legal counsel whenever there is doubt as to whether a proposed action would be an act in furtherance of a trade. We generally expect an issuer to obtain a partial revocation order before carrying out an act in furtherance of a trade. For example, we expect an issuer or other party intending to conduct a trade to obtain a partial revocation order before entering into an agreement to transfer securities and before publicly disclosing an intended transaction in securities.

Continuing effect of failure-to-file cease trade order

36. Following the completion of a trade permitted by a partial revocation order, all securities of the issuer remain subject to the failure-to-file cease trade order until a full revocation is granted.

DIVISION 4 FILING MATERIALS FOR A REVOCATION APPLICATION

Materials to be filed with an application for a full revocation of a failure-to-file cease trade order that has been in effect for more than 90 days

37. (1) To make a passport application to fully revoke a passport failure-to-file cease trade order that has been in effect for more than 90 days, a filer should remit the fees payable, where applicable, under the securities legislation of the principal regulator, as set out in Annex B. The application should include all of the following information:
- (a) details of any revocation applications currently in progress in other jurisdictions;
 - (b) a copy of any draft material change report or news release as discussed in section 33;
 - (c) confirmation that all continuous disclosure documents have been filed with the relevant regulator or a description of the documents that will be filed;
 - (d) confirmation that the issuer has the necessary financial resources to pay all outstanding fees, referred to in section 31, or has paid these fees to each relevant jurisdiction;
 - (e) confirmation that the issuer's SEDAR and SEDI profiles are up-to-date;

- (f) a draft full revocation order as contemplated in section 40;
 - (g) a completed personal information form and authorization in the form set out in Appendix A of National Instrument 41-101 *General Prospectus Requirements* for each current and incoming director, executive officer and promoter of the issuer;
 - (h) if the issuer has been subject to another cease trade order within the 12-month period before the date of the current failure-to-file cease trade order, a detailed explanation of the reasons for the multiple defaults.
- (2) To make a dual application to fully revoke a dual failure-to-file cease trade order that has been in effect for more than 90 days, a filer should remit the application fees payable, where applicable, under the securities legislation of the principal regulator and the OSC. The application should include the same information as set out in subsection (1).
 - (3) With respect to paragraph (1)(g), if the promoter is not an individual, the issuer should provide a completed personal information form and authorization for each director and executive officer of the promoter. If the issuer is an investment fund, the issuer should also provide a completed personal information form and authorization for each director and executive officer of the manager of the investment fund.

Materials to be filed with an application for a partial revocation

- 38. (1)** To make a passport application for a partial revocation order, a filer should submit the application and remit the application fees payable, where applicable, under the securities legislation of the principal regulator, as set out in Annex B. The application should include all of the following information:
- (a) the jurisdictions where the proposed trades would occur;
 - (b) details of any revocation applications currently in progress in other jurisdictions;
 - (c) a description of the proposed trades and their purpose;
 - (d) a draft partial revocation order as contemplated in section 40 that includes conditions that the applicant will
 - (i) obtain, and provide upon request to the principal regulator, signed and dated acknowledgements from all participants in the proposed trades, which clearly state that the securities of the issuer acquired by the participant will remain subject to the failure-to-file cease

trade order until a full revocation order is granted, the issuance of which is not certain, and

- (ii) provide a copy of the failure-to-file cease trade order and the partial revocation order to all participants in the proposed trades;
 - (e) if the purpose of the proposed partial revocation is to permit the issuer to raise funds, use of proceeds information as discussed in subsection (4);
 - (f) if applicable, details of the exemptions the issuer intends to rely on to complete the proposed trades;
 - (g) if the proposed trades are the result of a decision by a court, a copy of the relevant court order.
- (2) To make a dual application for a partial revocation order, a filer should submit the application and remit the application fees payable, where applicable, under the securities legislation of the principal regulator and the OSC. The application should include the same information as set out in subsection (1).
- (3) A filer requesting a partial revocation order only in one jurisdiction should contact the CSA regulator of that jurisdiction so that appropriate steps can be taken regarding the filer's request.
- (4) If the purpose of a proposed partial revocation of a failure-to-file cease trade order is to permit the issuer to raise funds, the application and the offering document, if any, should contain all of the following:
- (a) an estimate, reasonably supported, of the amount the issuer expects to raise from the financing;
 - (b) a reasonably detailed explanation of the purpose of the financing and how the issuer plans to use the funds;
 - (c) an estimate, reasonably supported, of the total amount the issuer will need in order to apply for a full revocation order, which includes the amount of funds required to prepare and file the documents that are necessary to bring the issuer's continuous disclosure up to date and pay outstanding fees.

Request for confidentiality

39. (1) A filer requesting that the CSA regulators hold an application and supporting materials in confidence during the application review process should provide a substantive reason for the request in its application.

- (2) Any request for confidentiality should explain why the request is reasonable in the circumstances and not prejudicial to the public interest and when any decision granting confidentiality would expire.
- (3) Staff of the CSA regulators are unlikely to recommend that an order be held in confidence after its effective date. However, if a filer requests that the CSA regulators hold the application, supporting materials, or order in confidence after its effective date, the filer should describe the request for confidentiality separately in its application, and pay any required fee
 - (a) in the principal jurisdiction, if the filer is making a passport application, or
 - (b) in the principal jurisdiction and in Ontario, if the filer is making a dual application.
- (4) Communications on requests for confidentiality will normally take place by e-mail. If a filer is concerned with this practice, the filer may request in the application that all communications take place by telephone.

Form of order

40. For the purposes of preparing a draft order to be included in an application for a full revocation of a failure-to-file cease trade order that has been in effect for more than 90 days or a partial revocation order, an issuer can refer to one of the following forms set out in National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*:
 - (a) if the application is a passport application, under Annex A - *Form of decision for a passport application*;
 - (b) if the application is a dual application, under Annex B - *Form of decision for a dual application*.

Filing

41. (1) Except as set out in subsections (3) and (4), a filer should send the application materials in paper format, including the draft order together with the fees, where applicable, and by e-mail to
 - (a) the principal regulator, in the case of a passport application, or
 - (b) the principal regulator and the OSC, in the case of a dual application.
- (2) For a dual application, filing the application concurrently with the principal regulator and the OSC will enable these CSA regulators to process the application expeditiously.

- (3) In British Columbia, an electronic filing system is available for filing and tracking applications. Filers should file an application in British Columbia using that system instead of e-mail.
- (4) In Ontario, an electronic system is available for filing applications. Filers should file an application in Ontario using that system instead of e-mail.
- (5) Filers should send application materials by e-mail (or through the electronic systems in British Columbia and Ontario) using the relevant address or addresses listed below:

British Columbia	www.bcsc.bc.ca (click on <i>BCSC e-services</i> and follow the steps)
Alberta	legalapplications@asc.ca
Saskatchewan	exemptions@gov.sk.ca
Manitoba	exemptions.msc@gov.mb.ca
Ontario	www.osc.gov.on.ca/filings (follow the steps for submitting applications)
Québec	Dispenses-Passeport@lautorite.qc.ca
New Brunswick	Passport-passeport@fcnb.ca
Nova Scotia	nsscexemptions@novascotia.ca

Incomplete or deficient material

42. If the filer's materials are deficient or incomplete, the principal regulator may ask the filer to file an amended application. This will likely delay the review of the application.

Acknowledgment of receipt of filing

43. After the principal regulator receives a complete application, the principal regulator for a passport application will send the filer an acknowledgment of receipt of the application. For a dual application, the principal regulator will send a copy of the acknowledgement to the OSC. The acknowledgement will identify the name, phone number and e-mail address of the individual reviewing the application and, for a dual application, the end date of the review period identified in subsections 47(3), (4) or (5), as applicable.

Withdrawal or abandonment of application

44. (1) If a filer decides to withdraw an application at any time during the process, the filer must notify the principal regulator or, for a dual application, the principal regulator and the OSC, and provide an explanation of the withdrawal.

- (2) If at any time during the review process, the principal regulator determines that a filer has abandoned an application, the principal regulator will notify the filer that it will mark the application as “abandoned”. In that case, the principal regulator will close the file unless the filer provides acceptable reasons not to close the file in writing within 10 business days of the notification from the principal regulator. If the filer does not provide acceptable reasons, the principal regulator will notify the filer and, for a dual application, the filer and the OSC, that the principal regulator has closed the file.

DIVISION 5 REVIEW PROCESS FOR A REVOCATION ORDER

Review of continuous disclosure

45. (1) All full revocations will involve some level of review of the filings the issuer made in order to rectify the specified default. If the failure-to-file cease trade order has been in effect for more than 90 days, this review will be similar to the full review under the harmonized continuous disclosure review program described in CSA Staff Notice 51-312 *Harmonized Continuous Disclosure Review Program*.
- (2) Partial revocations generally do not involve a review of the issuer’s continuous disclosure record.

Review process for a revocation of a passport failure-to-file cease trade order

46. (1) The principal regulator will conduct a review in relation to the revocation of a passport failure-to-file cease trade order in accordance with its securities legislation and securities directions and based on its review procedures, analysis and consideration of previous orders.
- (2) The filer will deal only with the principal regulator, who will provide comments to and receive responses from the filer.

Review process for a revocation of a dual failure-to-file cease trade order

47. (1) The principal regulator will conduct a review in relation to the revocation of a dual failure-to-file cease trade order in accordance with its securities legislation and securities directions, based on its review procedures, analysis and consideration of previous orders. The principal regulator will consider any comments from the OSC.
- (2) The filer will generally deal only with the principal regulator. The principal regulator will provide comments to the filer once it has completed its own review and considered any comments from the OSC. In exceptional circumstances, the principal regulator may refer the filer to the OSC.

- (3) For a dual failure-to-file cease trade order that has been in effect for 90 days or less, the OSC will have one business day from being notified by the principal regulator that the issuer has filed the continuous disclosure documents specified in the failure-to-file cease trade order to conduct a review in relation to the revocation of the order.
- (4) For a dual failure-to-file cease trade order that has been in effect for more than 90 days, the OSC will have 7 business days from receiving the acknowledgement referred to in section 43 to conduct a review in relation to the revocation of the order.
- (5) For a partial revocation of a dual failure-to-file cease trade order, the OSC will have 7 business days from receiving the acknowledgement referred to in section 43 to conduct a review.
- (6) For the revocation of a dual failure-to-file cease trade order, the OSC will advise the principal regulator, before the expiration of the review period, of any substantive issues that would cause OSC staff to recommend that the revocation order not be granted. The principal regulator may assume that the OSC does not have comments in respect of the revocation if the principal regulator does not receive the comments from the OSC within the review period.

DIVISION 6 DECISION-MAKING PROCESS

Revocation of a passport failure-to-file cease trade order

48. (1) After completing the review process and considering the recommendation of its staff, the principal regulator will determine whether or not to grant the revocation of a passport failure-to-file cease trade order.
- (2) If the principal regulator is not prepared to grant the revocation order based on the information before it, the principal regulator will notify the filer accordingly.
- (3) If a filer receives a notice under subsection (2) and this process is available in the jurisdiction of the principal regulator, the filer may request the opportunity to appear before, and make submissions to, the principal regulator.

Revocation of a dual failure-to-file cease trade order

49. (1) After completing the review process and considering the recommendation of its staff, the principal regulator will determine whether or not to grant the revocation of a dual failure-to-file cease trade order and promptly circulate its decision to the OSC.

- (2) For a full revocation of a dual failure-to-file cease trade order that has been in effect for 90 days or less, the OSC will have one business day from receipt of the principal regulator’s revocation order to confirm whether

 - (a) it has made the same decision as the principal regulator and is opting into the order, or
 - (b) it will not be making the same decision as the principal regulator.
- (3) For a full revocation of a dual failure-to-file cease trade order that has been in effect for more than 90 days, the OSC will have 5 business days from receipt of the principal regulator’s revocation order to confirm whether

 - (a) it has made the same decision as the principal regulator and is opting into the order, or
 - (b) it will not be making the same decision as the principal regulator.
- (4) For a partial revocation of a dual failure-to-file cease trade order, the OSC will have 5 business days from receipt of the principal regulator’s revocation order to confirm whether

 - (a) it has made the same decision as the principal regulator and is opting into the order, or
 - (b) it will not be making the same decision as the principal regulator.
- (5) If the OSC elects to opt out as referred to in subsection (2), (3), or (4) as applicable, it will notify the principal regulator and give its reasons for opting out.
- (6) If the OSC does not provide a response in the time frames contemplated under subsection (2), (3), or (4), as applicable, the principal regulator will consider that the OSC has opted out.
- (7) The principal regulator will not send the filer an order for the revocation of a dual failure-to-file cease trade order before the earlier of

 - (a) the expiry of the opt-in period referred to in subsection (2), (3) or (4), as applicable, and
 - (b) receipt from the OSC of the confirmation referred to in subsection (2), (3) or (4), as applicable.
- (8) If the OSC does not provide the confirmation referred to in subsection (2), (3) or (4), the principal regulator will advise the filer that it will not be receiving an order from the OSC and direct the filer to consult the OSC on this matter.

- (9) If the principal regulator is not prepared to grant the order based on the information before it, it will notify the filer and the OSC.
- (10) If a filer receives a notice under subsection (9) and this process is available in the jurisdiction of the principal regulator, the filer may request the opportunity to appear before, and make submissions to, the principal regulator. The principal regulator may hold a hearing on its own, or jointly or concurrently with the OSC.

DIVISION 7 EFFECT OF A REVOCATION ORDER

Effect of a revocation of a passport failure-to-file cease trade order

50. Under section 4D.1 of Multilateral Instrument 11-102 *Passport System*, a principal regulator's revocation order has the effect of removing or limiting the prohibition or restriction on trading in each passport jurisdiction where the issuer is a reporting issuer, to the same extent as in the jurisdiction of the principal regulator.

Effect of a revocation of a dual failure-to-file cease trade order

51. (1) Under section 4D.1 of Multilateral Instrument 11-102 *Passport System*, a principal regulator's revocation order has the effect of removing or limiting the prohibition or restriction on trading in each passport jurisdiction where the issuer is a reporting issuer, to the same extent as in the jurisdiction of the principal regulator.
- (2) If the OSC has opted into the principal regulator's revocation order under section 49, the prohibition or restriction on trading in Ontario, referred to in section 20, is removed or limited to the same extent as in the jurisdiction of the principal regulator. The order of the principal regulator also evidences the OSC's decision.
- (3) If the OSC has opted out or is considered to have opted out of the principal regulator's revocation order under section 49, the prohibition or restriction on trading in Ontario referred to in section 20 continues to apply.

Listing non-principal jurisdictions

52. (1) For convenience, the order of the principal regulator for a revocation of a passport failure-to-file cease trade order or for a revocation of a dual failure-to-file cease trade order will refer to the passport jurisdictions where the issuer is a reporting issuer.
- (2) The order of the principal regulator for a revocation of a dual failure-to-file cease trade order will contain wording that makes it clear that the order evidences and sets out the decision of the OSC.

DIVISION 8 TRANSITION

Transition

- 53.** The process set out in National Policy 12-202 *Revocations of Non-Passport Cease Trade Orders* will continue to apply for the revocation of a cease trade order that was issued before ●.

PART 6 EFFECTIVE DATE

Effective Date

- 54.** This policy comes into effect on ●.

Annex A

Securities Act provisions for Cease Trade Orders

Jurisdiction	Legislative reference
British Columbia	Section 164
Alberta	Section 33.1
Saskatchewan	Section 134.1
Manitoba	Sections 147.1 and 148
Ontario	Section 127
Quebec	Section 265 paragraph 3
New Brunswick	Section 188.2
Nova Scotia	Section 134A
Prince Edward Island	Section 59
Newfoundland and Labrador	Section 127(1)
Yukon	Section 59
Northwest Territories	Section 59
Nunavut	Section 59

Annex B

Securities Act provisions for full or partial revocation applications

Jurisdiction	Legislative reference
British Columbia	Section 171
Alberta	Section 214
Saskatchewan	Sections 158(3) and (4)
Manitoba	Section 147.1(1)
Ontario	Section 144
Québec	Section 265 paragraph 3 and 318
New Brunswick	Sections 188.2(3) and (4)
Nova Scotia	Section 151
Prince Edward Island	Section 15
Newfoundland and Labrador	Section 142.1
Yukon	Section 15
Northwest Territories	Section 15
Nunavut	Section 15