

Nova Scotia Securities Commission

Rule 11-103

Failure-to-File Cease Trade Orders in Multiple Jurisdictions

- and-

Multilateral Instrument 11-103

Failure-to-File Cease Trade Orders in Multiple Jurisdictions

- and-

National Policy 11-207 *Failure-to-File Case Trade Orders and Revocations in Multiple Jurisdictions*

- and-

Changes to National Policy 12-202 *Revocation of Certain Cease Trade Orders* and Changes to National Policy 12-203 *Management Cease Trade Orders*

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Multilateral Instrument 11-103 *Failure-to-File Case Trade Orders in Multiple Jurisdictions* (the Rule) a copy of which is attached hereto, has been made a rule by one or more of the Canadian securities regulatory authorities;
4. National Policy 11-207 *Failure-to-File Case Trade Orders and Revocations in Multiple Jurisdictions*, Changes to National Policy 12-202 *Revocation of Certain Cease Trade Orders* and Changes to National Policy 12-203 *Management Cease Trade Orders* (collectively, the Policies), copies of which are attached hereto, have been issued by one or more of the Canadian Securities regulatory authorities; and
5. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;

- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Policies as a policy statements of the Commission; and
- (c) declares that the Rule approved and made pursuant to clause (a) and the Policies issued pursuant to clause (b) shall take effect on **June 23, 2016**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statements shall not become effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 11th day of March, 2016.



Paul Radford Q.C.,
Chair

Attachments

Multilateral Instrument 11-103
Failure-to-File Cease Trade Orders in Multiple Jurisdictions

PART 1
DEFINITIONS

Definitions

1. In this Instrument,

“failure-to-file cease trade order” means an order, other than a management cease trade order, in relation to a specified default that prohibits or restricts trading in, or purchasing of, securities of a reporting issuer;

“management cease trade order” means a cease trade order that prohibits or restricts trading in securities of a reporting issuer by one or more of the following:

- (a) the chief executive officer of the reporting issuer or a person acting in a similar capacity;
- (b) the chief financial officer of the reporting issuer or a person acting in a similar capacity;
- (c) an officer or director of the reporting issuer or other person or company who had, or may have had, access directly or indirectly to a material fact or material change with respect to the reporting issuer that has not been generally disclosed;

“specified default” means a failure by a reporting issuer to comply with the requirement to file, within the time period prescribed, one or more of the following:

- (a) annual financial statements;
- (b) an interim financial report;
- (c) an annual or interim management's discussion and analysis or annual or interim management report of fund performance;
- (d) an annual information form;
- (e) a certification of filings under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

**PART 2
FAILURE-TO-FILE CEASE TRADE ORDERS**

Issuance and revocation of failure-to-file cease trade order

2. If an issuer is a reporting issuer in the local jurisdiction, and a securities regulatory authority or regulator in another jurisdiction of Canada makes a failure-to-file cease trade order in respect of the issuer's securities, a person or company must not trade in or purchase a security of the issuer in the local jurisdiction, except in accordance with the conditions that are contained in the order, if any, for so long as the failure-to-file cease trade order remains in effect.

**PART 3
EFFECTIVE DATE**

3. This Instrument comes into force on June 23, 2016.

**National Policy 11-207 *Failure-to-File Cease Trade Orders and
Revocations in Multiple Jurisdictions***

**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.²

This policy also explains why we issue a failure-to-file cease trade order in response to a specified default. Beginning in part 4, this policy also explains how a failure-to-file cease trade order has effect in multiple jurisdictions due to the operation of:

- Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*, in those CSA jurisdictions that have adopted it, or
- A statutory reciprocal order provision as defined in section 3.

This policy also explains what a reporting issuer should do to apply for a full or partial revocation (including a variation) of a failure-to-file cease trade order.

Any CSA jurisdiction that has adopted Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* or has a statutory reciprocal order provision will apply the operational processes set out in this policy.

Although Ontario has not adopted Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*, this policy describes an interface process (“dual” regime) to facilitate the reciprocation in Ontario of failure-to-file cease trade orders issued and revoked by other CSA regulators.

² The term “specified default” is defined in section 3 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*.

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. The following cease trade orders for continuous disclosure defaults are not covered by the definition of failure-to-file cease trade order in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*:
 - (a) a cease trade order issued in respect of a failure to file deficiency that is not a specified default;³
 - (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);⁴
 - (c) a management cease trade order as defined in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*;
 - (d) a cease trade order issued in respect of an issuer that is only a reporting issuer in one jurisdiction;⁵
 - (e) a cease trade order issued prior to the effective date of Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*.

Cease trade orders that do not meet the definition of failure-to-file cease trade order, and as such do not automatically take effect in each MI 11-103 jurisdiction where the issuer is a reporting issuer, will generally be issued by the CSA regulators following principles of mutual reliance. Once the principal regulator, as this term is defined in section 3, issues a cease trade order, each other CSA regulator in a jurisdiction where the issuer is a reporting issuer will then decide whether to issue a similar order in its jurisdiction.⁶

The application process for a revocation of a cease trade order that does not meet the definition of failure-to-file cease trade order in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*, is described in National Policy 12-202 *Revocations of Certain Cease Trade Orders*.

³ 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.

⁴ Examples of content deficiencies are set out in section 2 of CSA Notice 51-322 *Reporting Issuer Defaults*.

⁵ 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.

⁶ These cease trade orders would be automatically reciprocated in jurisdictions that have a statutory reciprocal order provision.

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 a regulator, as applicable;

“dual application” means an application described in section 22;

“dual failure-to-file cease trade order” means an order described in section 14;

“failure-to-file cease trade order” has the same meaning as in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*;

“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 Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*;

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

“MI 11-103 jurisdiction” means the jurisdiction of a CSA regulator that has adopted Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*;

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

“non-principal regulator” means, for a person or company, the CSA regulator of a jurisdiction other than the principal jurisdiction;

“OSC” means the regulator in Ontario;

“OTC reporting issuer” has the same meaning as in Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-The-Counter Markets*;

“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;

“principal jurisdiction” means, for a person or company, the jurisdiction of the principal regulator;

“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” has the same meaning as in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*;

“statutory reciprocal order provision” means a provision in the securities statute of a jurisdiction, set out in Annex C, that provides for the automatic reciprocation of any order imposing sanctions, conditions, restrictions or requirements issued by another CSA regulator based on a finding or admission of a contravention of securities legislation;

“venture issuer” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*.

Further definitions

4. Terms used in this policy that are defined in National Instrument 14-101 *Definitions* have the same meaning as in that instrument.

Interpretation

5.
 - (1) In certain jurisdictions, the CSA 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). Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* covers any activity in respect of a transaction in securities that may be the object of a failure-to file cease trade order issued under 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 generally 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. In the event of a specified default, 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 specified default occurs, 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 in default or reasonably anticipates that a specified default or a default of another continuous disclosure requirement will occur, 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.

In a jurisdiction that has a statutory reciprocal order provision, a cease trade order issued by another CSA regulator will have effect in this jurisdiction even where the issuer is not a reporting issuer.

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 under

Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* or a statutory reciprocal order provision. 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 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* or a statutory reciprocal order provision. The conditions of each cease trade order should be carefully considered.

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, subject to any conditions set out in the cease trade order.

PART 4 ISSUANCE OF A FAILURE-TO-FILE CEASE TRADE ORDER

DIVISION 1 OVERVIEW

Principal regulator

13. Under section 2 of Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*, if a CSA regulator 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 MI 11-103 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. The effect is the same in jurisdictions that have a statutory reciprocal order provision, except that a failure-to-file cease trade order issued by another CSA regulator will have effect in these jurisdictions even where the issuer is not a reporting issuer.

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.

Dual failure-to-file cease trade order

14. 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 CSA regulator other than the OSC, 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

Issuance of failure-to-file cease trade orders

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

Dual failure-to-file cease trade orders

16. (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. If the principal regulator decides to issue the failure-to-file cease trade order, it will 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 dual 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 failure-to-file cease trade order.

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

Effect of a failure-to-file cease trade order

17. Once the principal regulator issues a failure-to-file cease trade order, the effect under section 2 of Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders*, in each MI 11-103 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 effect is the same in each jurisdiction that has a statutory reciprocal order provision, except that the failure-to-file cease trade order will have effect in these jurisdictions even where the issuer is not a reporting issuer.

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

18. Once the principal regulator issues a dual failure-to-file cease trade order, the effect under section 2 of Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders*, in each MI 11-103 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.

The effect is the same in each jurisdiction that has a statutory reciprocal order provision, except that the dual failure-to-file cease trade order will have effect in these jurisdictions even where the issuer is not a reporting issuer.

Transmission of failure-to-file cease trade orders

19. (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

DIVISION 1 INITIATING THE REVOCATION PROCESS

Full revocation

20. 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.⁷
- (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 33.

Partial revocation

21. 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 34.

Dual application

22. An issuer whose principal regulator is a CSA regulator other than the OSC and that is also a reporting issuer in Ontario will make an application to both its principal regulator and to the OSC.

Principal regulator

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

⁷ 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, or the dual application, as the case may be.

DIVISION 2 FULL REVOCATION QUALIFICATION CRITERIA AND CONSIDERATIONS

Filing outstanding continuous disclosure for a full revocation

24. (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.⁸
- (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 25 and 26, unless the issuer has filed all of its outstanding continuous disclosure.

Exceptions to interim filing requirements

25. 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 or, for a dual application, the principal regulator and the OSC, 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 24, 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

26. 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 particularly apply to disclosure for periods that ended more than 3 years before the date of the

⁸ Before we revoke a failure-to-file cease trade order for an OTC reporting issuer, we may require the issuer to file additional documents, including those required under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.

application for a non-venture issuer or more than 2 years before the date of the application for a venture issuer, or for 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 or, for a dual application, the principal regulator and the OSC, will consider whether the filing of certain outstanding disclosure may be unnecessary as a condition of a full revocation order. The factors that we may consider 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 for a non-venture issuer, or the most recent 2 financial years for a venture 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

27. Before a full revocation order is issued, the issuer should pay all outstanding fees to each CSA regulator in whose jurisdiction 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 relevant CSA regulator to confirm the fees that will be payable.

Annual meeting

28. 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 requirement to hold an annual meeting requirement.

News release

29. 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 are 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

30. 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. It may be possible to establish a loss for tax purposes without disposing of the securities. Securityholders may want to consult the *Income Tax Act* before applying for a partial revocation order.

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

31. 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

32. 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, depending on the terms of the failure-to-file cease trade order.

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

33. (1) To make an application to fully revoke a 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 the other jurisdictions;
 - (b) a copy of any draft material change report or news release as discussed in section 29;

- (c) confirmation that all continuous disclosure documents have been filed with the relevant CSA 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 27, or has paid these fees to each relevant CSA regulator;
 - (e) confirmation that the issuer's SEDAR and SEDI profiles are up-to-date;
 - (f) a draft full revocation order as contemplated in subsection 36(1);
 - (g) a completed personal information form and authorization in the form set out in Appendix A of National Instrument 41-101 *General Prospectus Requirements*, or Form 51-105F3A, for issuers subject to Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*, 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 any application fees payable 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

34. (1) To make an application for a partial revocation order, a filer should submit the application and remit any application fees payable 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 the other jurisdictions;
 - (c) a description of the proposed trades and their purpose;
 - (d) a draft partial revocation order as contemplated in subsection 36(1) 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 any application fees payable 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 a jurisdiction that is not the principal 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

- 35. (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, 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

- 36. (1) 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 this policy:
 - (a) if the application is for a full revocation of a failure-to-file cease trade order, the issuer should use Annex D – *Form of order for a full revocation of a FFCTO that has been in effect for more than 90 days*;
 - (b) if the application is a dual application for a full revocation of a dual failure-to-file cease trade order, the issuer should use Annex E — *Form of order for a full revocation of a dual FFCTO that has been in effect for more than 90 days*;

- (c) if the application is for a partial revocation of a failure-to-file cease trade order, the issuer should use Annex F — *Form of order for a partial revocation of a FFCTO – applied for by issuer*; and
 - (d) if the application is a dual application for a partial revocation of a dual failure-to-file cease trade order, the issuer should use Annex G — *Form of order for a partial revocation of a dual FFCTO – applied for by issuer*.
- (2) If a filer that is not the issuer is requesting a partial revocation order only in a jurisdiction that is not the principal jurisdiction, the filer should contact the CSA regulator of that jurisdiction for guidance on the appropriate form of order.

Filing

37. (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, 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

38. 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

39. After the principal regulator receives a complete application, the principal regulator 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 43(3), (4) or (5), as applicable.

Withdrawal or abandonment of application

40. (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

41. (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 (Revised) *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 failure-to-file cease trade order

42. (1) The principal regulator will conduct a review in relation to the revocation of a 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

43. (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 39 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 39 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 failure-to-file cease trade order

44. (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 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

45. (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 failure-to-file cease trade order

46. Under section 2 of Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders*, a principal regulator's revocation order has the effect of removing or limiting the prohibition or restriction on trading in each MI 11-103 jurisdiction where the issuer is a reporting issuer, to the same extent as in the jurisdiction of the principal regulator.

The effect is the same in each jurisdiction that has a statutory reciprocal order provision, except that the revocation order will have effect in these jurisdictions even where the issuer is not a reporting issuer.

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

47. (1) Under section 2 of Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders*, a principal regulator's revocation order has the effect of removing or limiting the prohibition or restriction on trading in each MI 11-103 jurisdiction where the issuer is a reporting issuer, to the same extent as in the jurisdiction of the principal regulator. The effect is the same in each jurisdiction that has a statutory reciprocal order provision except that the revocation order will have effect in these jurisdictions even where the issuer is not a reporting issuer.
- (2) If the OSC has opted into the principal regulator's revocation order under section 45, the prohibition or restriction on trading in Ontario, referred to in section 18, 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 45, the prohibition or restriction on trading in Ontario referred to in section 18 continues to apply.

PART 6 EFFECTIVE DATE

Effective Date

48. This policy comes into effect on June 23, 2016.

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
Québec	Section 265, paragraph 3
New Brunswick	Section 188.2
Nova Scotia	Section 134A
Prince Edward Island	Section 59
Newfoundland and Labrador	Subsection 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	Subsections 158(3) and (4)
Manitoba	Subsection 147.1(1)
Ontario	Section 144
Québec	Sections 265, paragraph 3 and 318
New Brunswick	Subsections 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

Annex C

Statutory reciprocal order provisions (*Securities Act*)

Jurisdiction

Legislative reference

Alberta

Section 198.1

Annex D

Form of order for a full revocation of a FFCTO that has been in effect for more than 90 days

Citation: [*neutral citation*]

Date: [*date of order*]

[*name of issuer*]

REVOCATION ORDER

Under the securities legislation of [*insert jurisdiction of principal regulator*] (the **Legislation)**

Background

1. [*name of the issuer*] (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the [*regulator of / securities regulatory authority*] (the **Principal Regulator**) on [*date of the FFCTO*].
2. The Issuer has applied to the Principal Regulator under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (NP 11-207) for an order revoking the FFCTO.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* [or, in Québec, in *Regulation 14-501Q on definitions* (when the Autorité des marchés financiers is the principal regulator),] or in NP 11-207 have the same meaning if used in this order, unless otherwise defined.

[Representations - Include representations if necessary.

3. This decision is based on the following facts represented by the Issuer:]

Order

4. The Principal Regulator is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

5. The decision of the Principal Regulator under the Legislation is that the FFCTO is revoked [*if the FFCTO was a bulk order, add “as it applies to the Issuer”*].

(Name of signatory for the principal regulator)

(Title)

(Name of principal regulator)

Annex E
***Form of order for a full revocation of a dual FFCTO that has been in effect
for more than 90 days***

Citation: [*neutral citation*]

Date: [*date of order*]

[*name of issuer*]

REVOCATION ORDER

**Under the securities legislation of [*insert jurisdiction of principal regulator*] and Ontario (the
Legislation)**

Background

1. [*name of the issuer*] (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the regulator or securities regulatory authority in each of [*the principal regulator jurisdiction*] (the **Principal Regulator**) and Ontario (each a **Decision Maker**) respectively on [*date(s) of the FFCTO*].
2. The Issuer has applied to each of the Decision Makers under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (NP 11-207) for an order revoking the FFCTOs.
3. This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* [or, in Québec, in *Regulation 14-501Q on definitions* (when the Autorité des marchés financiers is the principal regulator),] or in NP 11-207 have the same meaning if used in this order, unless otherwise defined.

[Representations - Include representations if necessary.

4. This decision is based on the following facts represented by the Issuer:]

Order

5. Each of the Decision Makers is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Decision Maker to make the decision.

6. The decision of the Decision Makers under the Legislation is that the FFCTO is revoked [if the FFCTO was a bulk order, add “as it applies to the Issuer”].

(Name of signatory for the principal regulator)

(Title)

(Name of principal regulator)

Annex F
Form of order for a partial revocation of a FFCTO - applied for by issuer

Citation: [*neutral citation*]

Date: [*date of order*]

[*name of issuer*]

PARTIAL REVOCATION ORDER

Under the securities legislation of [*insert jurisdiction of principal regulator*] (the Legislation)

Background

1. [*name of the issuer*] (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the [*regulator / securities regulatory authority*] (the **Principal Regulator**) on [*date of the FFCTO*].
2. The Issuer has applied to the Principal Regulator for a partial revocation order of the FFCTO.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* [or in Québec, in *Regulation 14-501Q on definitions* (when the Autorité des marchés financiers is the principal regulator),] or in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

Representations

3. This decision is based on the following facts represented by the Issuer:
 - a. [*Include necessary representations from Issuer.*]

Order

4. The Principal Regulator is satisfied that a partial revocation order of the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

5. The decision of the Principal Regulator under the Legislation is that the FFCTO is partially revoked [*if the FFCTO was a bulk order, add “as it applies to the Issuer”*] solely to permit [*enter the name of the defined transaction e.g., Private Placement*].

(Name of signatory for the principal regulator)

(Title)

(Name of principal regulator)

Annex G

Form of order for a partial revocation of a dual FFCTO - applied for by issuer

Citation: [*neutral citation*]

Date: [*date of order*]

[*name of issuer*]

PARTIAL REVOCATION ORDER

Under the securities legislation of [*insert jurisdiction of principal regulator*] and Ontario (the Legislation)

Background

1. [*name of the issuer*] (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the regulator or securities regulatory authority in each of [*the principal regulator jurisdiction*] (the **Principal Regulator**) and Ontario (each a **Decision Maker**) respectively on [*date(s) of the FFCTOs*].
2. The Issuer has applied to each of the Decision Makers for a partial revocation order of the FFCTO.
3. This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* [or, in Québec, in *Regulation 14-501Q on definitions* (when the Autorité des marchés financiers is the principal regulator),] or in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

Representations

4. This decision is based on the following facts represented by the Issuer:
 - a. [*Include necessary representations from Issuer.*]

Order

5. Each of the Decision Makers is satisfied that a partial revocation order of the FFCTO meets the test set out in the Legislation for the Decision Maker to make the decision.

6. The decision of the Decision Makers under the Legislation is that the FFCTO is partially revoked [*if the FFCTO was a bulk order, add “as it applies to the Issuer”*] solely to permit [*enter the name of the defined transaction e.g., Private Placement*].

(Name of signatory for the principal regulator)

(Title)

(Name of principal regulator)

National Policy 12-202 *Revocation of Certain Cease Trade Orders*

PART 1 INTRODUCTION

Scope of this policy

1. This policy⁹ provides guidance for issuers applying for the revocation of a cease trade order (or CTO, as defined below) for a continuous disclosure default that is not covered by the definition of failure-to-file cease trade order in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*. These CTOs include all of the following:
 - (a) a CTO issued in respect of a failure to file deficiency that is not a specified default;¹⁰
 - (b) a CTO issued where a reporting issuer has made a required filing but the required filing is deficient in terms of content (a content deficiency);¹¹
 - (c) a management cease trade order as defined in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* ;
 - (d) a CTO issued in respect of an issuer that is only a reporting issuer in one jurisdiction;
 - (e) a CTO issued prior to the effective date of Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*.

This policy describes what the issuer should file, the general type of review that the Canadian Securities Administrators (or we) will perform, and explains some of the factors that we will consider when determining whether to grant a full or partial

⁹ National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order* has been withdrawn and replaced by this policy, National Policy 12-202 *Revocation of Certain Cease Trade Orders*. This replacement policy, which includes a title change, reflects the fact that the processes surrounding the full or partial revocation (including variation) of cease trade orders that fall within the definition of failure-to-file cease trade order in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* have been moved to National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*.

¹⁰ 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.

¹¹ Examples of content deficiencies are set out in section 2 of CSA Notice 51-322 *Reporting Issuer Defaults*.

revocation of the CTO.¹² It also applies, where the context permits, to a securityholder or other party applying for a revocation order.

PART 2 DEFINITIONS AND INTERPRETATION

Definitions

2. In this policy:

“application” means an application for a partial or full revocation of a CTO submitted to the applicable jurisdictions (see Appendix A for section references); in British Columbia, if the CTO has been in effect for 90 days or less, the filing of the required continuous disclosure documents constitutes the application;

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

“cease trade order” (or “CTO”) has the same meaning as in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*;

“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*;

“partial revocation order” has the same meaning as in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*;

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

“SEDI” means System for Electronic Disclosure by Insiders;

“venture issuer” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*.

¹² The full or partial revocation of a CTO will have an automatic effect in jurisdictions that have a statutory reciprocal order provision, as this term is defined in section 3 of National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*.

Further definitions

3. Terms used in this policy that are defined in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* or National Instrument 14-101 *Definitions* have the same meaning as in those instruments.

Interpretation

4. (1) In certain jurisdictions, the CSA regulator may issue a CTO 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). This policy covers any activity in respect of a transaction in securities that may be the object of an order issued under paragraph 3 of section 265 of the *Securities Act* (Québec), other than CTOs that fall within the definition of failure-to-file cease trade order in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*.

PART 3

REVOCATION QUALIFICATION CRITERIA AND CONSIDERATIONS

DIVISION 1 FULL REVOCATION

Filing outstanding continuous disclosure for a full revocation

5. (1) We will generally not exercise our discretion to grant a full revocation order, subject to sections 6 and 7, unless the issuer has filed all of its outstanding continuous disclosure.
- (2) Most of the continuous disclosure requirements are in the following rules or regulations:
 - (a) National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (b) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;
 - (c) National Instrument 81-106 *Investment Fund Continuous Disclosure*;
 - (d) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;
 - (e) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

- (f) Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
- (g) National Instrument 52-110 *Audit Committees*;
- (h) National Instrument 58-101 *Disclosure of Corporate Governance Practices*.

Exceptions to interim filing requirements

6. In exercising our discretion to revoke a CTO, we 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 7, 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

7. In certain cases, an issuer seeking a revocation order may consider that the length of time that has elapsed since the date of the CTO makes the preparation and filing of all outstanding disclosure impractical or of limited use to investors. This may particularly apply to disclosure for periods that ended more than 3 years before the date of the application for a non-venture issuer or more than 2 years before the date of the application for a venture issuer, or for periods prior to a significant change in the issuer's business. An issuer seeking a revocation order in these circumstances should make detailed submissions explaining its position. In appropriate cases, we will consider whether the filing of certain outstanding disclosure may be unnecessary as a condition of a full revocation order. The factors that we may consider 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 CTO 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 for a non-venture issuer, or the most recent 2 financial years for a venture 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 CTO.

Outstanding fees

8. Before a full revocation order is issued, the issuer should pay all outstanding fees to each CSA regulator in whose jurisdiction 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 CTO 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 relevant CSA regulator to confirm the fees that will be payable.

Annual meeting

9. 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, we will generally not exercise our discretion to issue a full revocation order unless the issuer provides an undertaking to the relevant CSA regulator(s) to hold the annual meeting within 3 months after the date on which the CTO is revoked.

An undertaking does not relieve the issuer from any requirement to hold an annual meeting requirement.

News release

10. If the issuance of a revocation order or the circumstances giving rise to the issuer seeking the revocation order are 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 2 PARTIAL REVOCATIONS

Permitted transactions

11. 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. It may be possible to establish a loss for tax purposes without disposing of the securities. Securityholders may want to consult the *Income Tax Act* before applying for a partial revocation order.

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 CTO.

Acts in furtherance of a trade

12. 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 CTO. If securities have been issued in breach of a CTO, 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 CTO

13. Following the completion of a trade permitted by a partial revocation order, all securities of the issuer remain subject to the CTO until a full revocation is granted, depending on the terms of the CTO.

PART 4 APPLICATIONS

Application for a full revocation

14.
 - (1) All applications for a full revocation will result in some level of review of the issuer's continuous disclosure record for compliance.
 - (2) An issuer requesting a full revocation order should submit an application, with the application fees, to the CSA regulator in all jurisdictions where the issuer's securities are cease-traded. The application should include all of the following information:
 - (a) the jurisdictions where the issuer's securities are cease-traded;
 - (b) details of any revocation applications currently in progress in the other jurisdictions;
 - (c) a copy of any draft material change report or news release as discussed in section 10;
 - (d) confirmation that all continuous disclosure documents have been filed with the relevant CSA regulator or a description of the documents that will be filed;
 - (e) confirmation that the issuer has the necessary financial resources to pay all outstanding fees, referred to in section 8, or has paid these fees to each relevant CSA regulator;
 - (f) confirmation that the issuer's SEDAR and SEDI profiles are up-to-date;
 - (g) a draft revocation order;

- (h) 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;
 - (i) if the issuer has been subject to another CTO within the 12-month period before the date of the current CTO, the issuer should provide a detailed explanation of the reasons for the multiple defaults.
- (3) With respect to paragraph 14(2)(h), 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.

Application for a partial revocation

15. (1) An issuer requesting a partial revocation order should submit an application with the application fees, where applicable, to the CSA regulator in all jurisdictions where the issuer's securities are cease-traded and where the proposed trades would occur. The application should include all of the following information:
- (a) the jurisdictions where the issuer's securities are cease-traded and where the proposed trades would occur;
 - (b) details of any revocation applications currently in progress in the other jurisdictions;
 - (c) a description of the proposed trades and their purpose;
 - (d) a draft partial revocation order that includes conditions that the applicant will
 - (i) obtain, and provide upon request to the relevant CSA regulators, 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 CTO until a full revocation order is granted, the issuance of which is not certain, and
 - (ii) provide a copy of the CTO and partial revocation order to all participants in the proposed trades;
 - (e) if the purpose of the proposed partial revocation is to permit an issuer to raise funds, use of proceeds information as discussed in subsection (2);

- (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) If the purpose of a proposed partial revocation of a CTO 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

16. (1) An issuer requesting that a CSA regulator 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 a CSA regulator is unlikely to recommend that an order be held in confidence after its effective date. However, if an issuer requests that a CSA regulator hold the application, supporting materials, or order in confidence after its effective date, the issuer should describe the request for confidentiality separately in its application, and pay any required fee to the CSA regulator.
- (4) Communications on requests for confidentiality will normally take place by e-mail. If an issuer is concerned with this practice, the issuer may request in the application that all communications take place by telephone.

PART 5
EFFECTIVE DATE

Prior policy

17. National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order* is withdrawn and replaced by this policy.

Effective date

18. This new policy comes into effect on June 23, 2016.

Appendix A

Legislative references for an application under local securities legislation

British Columbia:

Securities Act: sections 164 and 171.

Alberta:

Securities Act: section 214.

Saskatchewan:

The Securities Act, 1988: subsections 158(3) and (4).

Manitoba:

Securities Act: subsection 148(1).

Ontario:

Securities Act: section 144.

Quebec:

Securities Act: section 265 paragraph 3 and section 318.

New Brunswick:

Securities Act: section 188.2.

Nova Scotia:

Securities Act: section 151.

Prince Edward Island:

Securities Act: sections 15 and 59.

Newfoundland and Labrador:

Securities Act: section 142.1.

Yukon:

Securities Act: sections 15 and 59.

Northwest Territories:

Securities Act: sections 15 and 59.

Nunavut:

Securities Act: sections 15 and 59.

National Policy 12-203 *Management Cease Trade Orders*

PART 1 INTRODUCTION

Scope of this policy

1. This policy¹³ provides guidance to issuers, investors and other market participants as to when the Canadian Securities Administrators (CSA or we) will consider responding to a specified default by issuing a management cease trade order (or MCTO). It explains what we mean by the term MCTO and why we issue MCTOs, addresses what other actions we will ordinarily take when issuing an MCTO, and identifies what we expect from defaulting reporting issuers in these circumstances.

The definition of “specified default” does not include certain defaults described in 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 the issuer has triggered a filing requirement. However, a CSA regulator may apply this policy statement if a reporting issuer is in default of a continuous disclosure requirement that is not included in the definition of specified default. Similarly, a CSA regulator may apply this policy statement if a reporting issuer has made a required filing but the required filing is deficient in terms of content.

The guidance in this policy is general in nature. Each CSA regulator will decide how to respond to a specified default, including whether to issue an MCTO on a case-by-case basis after considering all relevant facts and circumstances.

¹³ National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults* has been withdrawn and replaced by this policy, National Policy 12-203 *Management Cease Trade Orders*. This replacement policy, which includes a title change, reflects the fact that the process surrounding the issuance of failure-to-file cease trade orders has been moved to National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*.

PART 2
DEFINITIONS AND INTERPRETATION

Definitions

2. In this policy:

“alternative information guidelines” means the guidelines relating to a default announcement and default status report described in sections 9 and 10;

“cease trade order” has the same meaning as in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*;

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

“default announcement” means a news release and material change report as described in section 9;

“default status report” means a report as described in section 10;

“failure-to-file cease trade order” has the same meaning as in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*;

“management cease trade order” (or “MCTO”) has the same meaning as in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*;

“principal regulator” has the same meaning as in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*;

“specified default” has the same meaning as in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*;

“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*;

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

Further definitions

3. Terms used in this policy that are defined in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* or National Instrument 14-101 *Definitions* have the same meaning as in those instruments.

Interpretation

4. In certain jurisdictions, the CSA regulator may issue cease trade orders and MCTOs that prohibit trading in, and the purchase or acquisition 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.

In Québec, “trade” is not defined in the *Securities Act* (Québec). This policy covers any activity in respect of a transaction of securities that may be the object of an order issued under paragraph 3 of section 265 of the *Securities Act* (Québec), other than cease trade orders that fall within the definition of failure-to-file cease trade order in Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*.

PART 3 ISSUANCE AND REVOCATION OF A MANAGEMENT CEASE TRADE ORDER

Possible regulatory responses to a specified default

5. 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 generally 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 section 8, and demonstrates that it is able to comply with this policy, by issuing an MCTO.

For more information about failure-to-file cease trade orders refer to National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*.

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 outlined in section 6, an MCTO may be an appropriate response to the default.

If the issuer's principal regulator decides that an MCTO is appropriate, it will generally issue an MCTO that restricts the trading of the issuer's chief executive officer and chief financial officer. At the discretion of the principal regulator, it will similarly decide whether to extend it to the issuer's directors or other persons or companies. Since MCTOs are not covered by Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions*, the non-principal regulators in the jurisdictions in which the issuer is a reporting issuer will generally issue MCTOs in respect of persons or companies named in the principal regulator's MCTO that reside in their jurisdiction.¹⁴

Eligibility criteria

6. We will consider granting an MCTO if the issuer satisfies all of the following criteria:
- (a) the outstanding filings are expected to be filed as soon as they are available and within a reasonable period. In most cases, we expect this to be within 2 months. However, in exceptional circumstances, as determined by the principal regulator, we may permit an issuer to take longer than 2 months to remedy the default;
 - (b) the issuer is generating revenue from its principal business or, if it is in the development stage, the issuer is actively pursuing the development of its products or properties;
 - (c) the issuer has the necessary financial and human resources, including a reasonable number of directors and officers in place, to remedy the default in a timely and effective manner and complies with all other continuous disclosure requirements (other than requirements reasonably linked to the specified default) for the duration of the default;
 - (d) the issuer's securities are listed on a Canadian stock exchange and there is an active, liquid market for those securities. Thinly traded issuers will generally not be considered eligible for an MCTO;
 - (e) the issuer is not on the defaulting reporting issuer list in any CSA jurisdiction for any reason other than the failure to comply with the specified requirement (and any other requirement that is reasonably linked to the specified requirement).

We will also consider an issuer's history of complying with its continuous disclosure obligations when evaluating the issuer's request for an MCTO. A reporting issuer subject to insolvency proceedings should also refer to section 14 for additional considerations.

¹⁴ Management cease trade orders will be automatically reciprocated in jurisdictions that have a statutory reciprocal order provision as this term is defined in section 3 of National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*. This automatic reciprocation will occur in these jurisdictions even where the issuer is not a reporting issuer.

Application timing

7. If an issuer satisfies the eligibility criteria set out above, it should contact its principal regulator at least 2 weeks before the due date for the required filings and apply in writing for an MCTO instead of a having a cease trade order issued against the issuer.

We believe that, in most cases, an issuer exercising reasonable diligence should be able to determine whether it can comply with a specified requirement at least 2 weeks in advance of the deadline. We acknowledge, however, that there will be rare situations where an issuer, notwithstanding the exercise of reasonable diligence, will be unable make this determination at least 2 weeks before the due date. In these rare cases, the issuer should include a brief explanation of the reasons for the delayed filing in its application.

We will generally not consider an application for an MCTO that is submitted after a filing deadline.

Application contents

8. An issuer that wishes to apply for an MCTO under this policy should apply to the issuer's principal regulator and send a copy of the application to each CSA regulator in the other jurisdictions in which the issuer is a reporting issuer.

In its application, the issuer should

- (a) identify the specified default, the reasons for the default and the anticipated duration of the default,
- (b) explain how the issuer satisfies each of the eligibility criteria described in section 6,
- (c) set out a detailed remediation plan that explains how the issuer proposes to remedy the default and includes a realistic timetable for remedying the default,
- (d) include consents signed by the chief executive officer and the chief financial officer (or equivalent) to the issuance of an MCTO (see Appendix A),
- (e) include a copy of the proposed or actual default announcement,
- (f) confirm that the issuer will comply with the alternative information guidelines,
- (g) include a copy of the issuer undertaking described in section 13, and
- (h) briefly describe the issuer's blackout policies and other policies and procedures relating to insider trading.

Alternative Information Guidelines — Default Announcement

9. If a reporting issuer determines that it will not comply, or subsequently determines that it has not complied, with a specified requirement, this will often represent a material change that the issuer should immediately communicate to the securities marketplace by way of a news release and material change report in accordance with part 7 of National Instrument 51-102 *Continuous Disclosure Obligations*. In determining whether a failure to comply with a specified requirement is a material change, the issuer should consider both the events leading to the failure and the failure itself.

If neither the circumstances leading to the default, nor the default, represent a material change, the issuer should nevertheless consider whether the circumstances involve important information that should be immediately communicated to the marketplace by way of news release.

The CSA regulators will generally not exercise their discretion to issue an MCTO unless the issuer issues and files a default announcement containing the information set out below. If the default involves a material change, the material change report may contain this information, in which case a separate default announcement is not necessary. The default announcement should be authorized by the chief executive officer or the chief financial officer (or equivalent) of the reporting issuer, approved by the board or audit committee and prepared and filed with the CSA regulators on SEDAR in the same manner as a news release and material change report referred to in part 7 of National Instrument 51-102 *Continuous Disclosure Obligations*. An issuer will usually be able to determine that it will not comply with a specified requirement at least 2 weeks before the due date and, as soon as it makes this determination, should issue the default announcement.

The default announcement should

- (a) identify the relevant specified requirement and the (anticipated) default,
- (b) disclose in detail the reason(s) for the (anticipated) default,
- (c) disclose the plans of the reporting issuer to remedy the default, including the date it anticipates remedying the default,
- (d) confirm that the reporting issuer intends to satisfy the provisions of the alternative information guidelines so long as it remains in default of a specified requirement,
- (e) disclose relevant particulars of any insolvency proceeding to which the reporting issuer is subject, including the nature and timing of information that is required to be provided to creditors, and confirm that the reporting issuer intends to file with the CSA regulators throughout the period in which it is in default, the same information it provides to its creditors when the information is provided to the

creditors and in the same manner as it would file a material change report under part 7 of National Instrument 51-102 *Continuous Disclosure Obligations*, and

- (f) subject to section 11, disclose any other material information concerning the affairs of the reporting issuer that has not been generally disclosed.

A default announcement is not needed if the issuer is in default of a previous specified requirement, has followed the provisions of this section regarding a default announcement of that earlier default and is complying with the provisions of section 10 regarding default status reports.

Alternative Information Guidelines — Default Status Reports

10. After the default announcement, and during the period of the MCTO, the CSA regulators will generally exercise their discretion to issue a cease trade order unless the defaulting reporting issuer issues bi-weekly default status reports, in the form of news releases, containing the following information:
 - (a) any changes to the information contained in the default announcement or subsequent default status reports that would reasonably be expected to be material to an investor, including a description of all actions taken to remedy the default and the status of any investigations into any events which may have contributed to the default;
 - (b) particulars of any failure by the defaulting reporting issuer in fulfilling its stated intentions with respect to satisfying the provisions of the alternative information guidelines;
 - (c) information regarding any (anticipated) specified default subsequent to the default which is the subject of the default announcement;
 - (d) subject to section 11, any other material information concerning the affairs of the reporting issuer that has not been generally disclosed.

Where there are no changes otherwise required to be disclosed in items (a) to (d), this fact should be disclosed in a default status report.

To keep the market continuously informed of any developments during the period of default, the issuer should issue default status reports every 2 weeks following the default announcement. If a CSA regulator, at any time, issues a cease trade order against an issuer, default status reports will no longer be necessary.

Every default status report should be prepared, authorized, filed and communicated to the securities marketplace in the same manner as that specified in section 9 for a default announcement.

Confidential material information

11. The alternative information guidelines in this policy supplement the material change reporting requirements in National Instrument 51-102 *Continuous Disclosure Obligations* and should be interpreted in a similar manner. Similar to the procedures in that instrument, an issuer may omit confidential material information from default status announcement or default status reports if in the opinion of the issuer, and if that opinion is arrived at in a reasonable manner, disclosure of the applicable material information would be unduly detrimental to the interests of the reporting issuer.

Compliance with other continuous disclosure requirements

12. The alternative disclosure described in sections 9 and 10 supplements the issuer's disclosure record during the period of default. It does not provide an alternative to the continuous disclosure requirements under Canadian securities legislation.

If a reporting issuer is in default of a specified requirement, the issuer must still comply with all other applicable continuous disclosure requirements, other than requirements reasonably linked to the specified requirement in question. For example, an issuer that has not filed its financial statements on time will also be unable to comply with the requirement to file management's discussion and analysis under National Instrument 51-102 *Continuous Disclosure Obligations*. However, failure to comply with a requirement to file audited financial statements in accordance with the requirements of part 4 of National Instrument 51-102 *Continuous Disclosure Obligations* does not excuse compliance with other requirements of that instrument such as the requirement to file an Annual Information Form in accordance with part 6 or material change reports in accordance with part 7.

Issuer undertaking to cease certain trading activities

13. The reporting issuer should include with the application an undertaking that, for so long as the issuer is in default of the specified requirement in question, the issuer will not, directly or indirectly, issue securities to or acquire securities from an insider or employee of the issuer except in accordance with legally binding obligations to do so existing as of the date of the specified default. The issuer should address the undertaking to the CSA regulator of each jurisdiction in which the issuer is a reporting issuer.

Reporting issuers subject to insolvency proceedings

14. If a reporting issuer is the subject of insolvency proceedings, we will consider an application for an MCTO if in addition to complying with all applicable sections of this policy, including the eligibility criteria in section 6,
 - (a) the issuer retains title to its assets,
 - (b) the issuer's directors and officers continue to manage the affairs of the issuer, and

- (c) the issuer agrees to file a report disclosing the information it provides to its creditors
 - (i) simultaneously with delivery to its creditors, and
 - (ii) in the same manner as a report of a material change referred to in part 7 of National Instrument 51-102 *Continuous Disclosure Obligations*.

If the issuer chooses to file the information provided to creditors with a material change report, then, for the purposes of filing on SEDAR, this should be contained in the same electronic document as the material change report.

Financial information in default announcements and default status reports

- 15. Any unaudited financial information that is communicated to the marketplace should, except in certain circumstances involving insolvency, be directly derived from financial statements prepared and presented in accordance with generally accepted accounting principles. In default announcements and default status reports, this information should be accompanied by cautionary language that the information has been prepared by management of the defaulting reporting issuer and is unaudited.

Default correction announcement

- 16. Once the specified default is remedied, the reporting issuer should consider communicating that information to the securities marketplace in the same manner as that specified in this policy for a default announcement.

Revocation of a management cease-trade-order

- 17. Some MCTOs will include a provision which describes when the MCTO will automatically expire.

The process for revoking an MCTO that does not automatically expire by its terms is described in National Policy 12-202 *Revocations of Certain Cease Trade Orders*.

PART 4 OTHER CONSIDERATIONS

Trading by management and other insiders during the period of default

- 18. Certain guidelines regarding trading by management and other insiders during the period of default are set out in section 9 of National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*.

No penalty or sanction for disclosure purposes

19. The CSA regulators do not consider MCTOs issued under this policy to be a “penalty” or “sanction” for the purposes of disclosure obligations in Canadian securities legislation relating to penalties or sanctions. They are not issued as part of an enforcement process and the CSA regulators do not intend them to suggest a finding of fault or wrongdoing on the part of any individual named in the MCTO. For example, a defaulting issuer’s board of directors might invite an individual to serve as an officer or director of the issuer to assist the issuer in remedying its default. The individual might have no prior involvement with the defaulting reporting issuer. The fact that the principal regulator may subsequently name the individual in an MCTO does not mean the individual had any responsibility for the default, which occurred before the individual joined the issuer.

However, issuers are required to disclose MCTOs issued under this policy in accordance with the following disclosure requirements:

- (a) Section 16.2 of Form 41-101F1 *Information Required in a Prospectus*;
- (b) Item 16 of Form 44-101F1 *Short Form Prospectus*;
- (c) Subsection 10.2(1) of Form 51-102F2 *Annual Information Form*;
- (d) Item 7.2 of Form 51-102F5 *Information Circular*.

If an issuer is required to include disclosure of an MCTO in a public filing, the issuer may supplement the disclosure with additional information explaining the circumstances of the MCTO.

PART 5 EFFECTIVE DATE

20. National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults* is withdrawn and replaced by this policy.
21. This policy comes into effect on June 23, 2016.

Appendix A — Sample Form of Consent

Consent

To: *[Name of Issuer's Principal Regulator]*, as principal regulator (the Regulator),

And to: *[Name(s) of other Regulator(s) in whose jurisdiction(s) the Issuer is a reporting issuer (collectively with the principal regulator, the Regulators)]*

Re: Consent to issuance of management cease trade order

I, *[name of individual providing the consent]* hereby confirm as follows:

1. I am the *[name of position with the Issuer, e.g., the chief executive officer or chief financial officer]* of *[name of Issuer]* (the Issuer).
2. The Issuer is a *[nature of entity, e.g., a corporation incorporated under the Canada Business Corporations Act]* with a head office located in *[province or territory]*.
3. The Issuer is a reporting issuer in *[identify all jurisdictions in which the issuer is a reporting issuer]*. The Issuer's principal regulator, as determined in accordance with section 13 of National Policy 11-207 Failure-to-File Cease Trade Orders in Multiple Jurisdictions is *[name of principal regulator]*.
4. The Issuer *[is] [is not] [delete as applicable]* a “venture issuer” as defined in National Instrument 51-102 *Continuous Disclosure Obligations*. The Issuer has a financial year ending *[state the issuer's year end, e.g., December 31]*.
5. On or about *[identify the deadline for filing]* (the filing deadline), the Issuer will be required to file *[briefly describe the required filings, e.g.,
 - a. audited annual financial statements for the year ended December 31, 2014, as required by Part 4 of National Instrument 51-102 *Continuous Disclosure Obligations*;
 - b. management's discussion and analysis (MD&A) relating to the audited annual financial statements, as required by Part 5 of National Instrument 51-102 *Continuous Disclosure Obligations*; and
 - c. CEO and CFO certificates relating to the audited annual financial statements, as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings (collectively, the required filings)*].*
6. The Issuer has determined that it may not be able to make the required filings by the filing deadline. The Issuer wishes to apply to the Regulator[s] for a management cease trade order (an

MCTO) as an alternative to a general cease trade order in accordance with National Policy 12-203 *Management Cease Trade Orders*.

7. I am providing this consent in support of the Issuer's application for an MCTO in accordance with section 8 of National Policy 12-203 *Management Cease Trade Orders*.

8. I hereby consent to the issuance of an MCTO against me by the Issuer's principal regulator under the applicable statutory authority listed in Annex A to National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*.

9. Specifically, I understand that the MCTO will prohibit me from trading in or acquiring securities of the Issuer, directly or indirectly, until two full business days following the receipt by the principal regulator of all filings the Issuer is required to make under the securities legislation of the principal regulator or until further Order of the principal regulator.

10. I hereby further consent to the issuance of any substantially similar MCTO that another Regulator may consider necessary to issue by reason of the default described above.

DATED this day of [DATE]

by:

Name:

Title:

Amended ● .