

[09 Jun 2023] – The following is ASC Policy 12-601 that replaced the December 1, 2016 consolidated version. This version of ASC Policy 12-601 is no longer current.

ALBERTA SECURITIES COMMISSION POLICY 12-601 APPLICATIONS SUBMITTED TO THE ALBERTA SECURITIES COMMISSION

PART 1 INTRODUCTION

1. The Alberta Securities Commission (**Commission**) and its Executive Director (the **Executive Director**) are authorized to make decisions under
 - (a) various provisions of the *Securities Act* (Alberta) (the Act),
 - (b) the rules of the Commission, including both Alberta-only rules (each an ASC Rule) and Commission rules titled national and multilateral instruments made on a harmonized basis with the other members of the Canadian Securities Administrators (CSA) (each a CSA Instrument), and
 - (c) the *Business Corporations Act* (Alberta) (the ABCA).
2. The decision maker in respect of each type of application is identified in the legislation under which the application is made. In the Act, the ASC Rules and the ABCA, the Commission and the Executive Director are generally referred to as such. In the CSA Instruments, the Commission is referred to as the “securities regulatory authority”, while the Executive Director is referred to as the “regulator”.
3. This policy provides guidance on how to make an application to the Commission or the Executive Director, and how to pay fees for those applications. It applies to all applications under the Act (except those relating to Parts 2 and 16), the ASC Rules, the CSA Instruments and the ABCA. In Part 8 of this policy, certain guidance is provided about appealing a decision.
4. This policy also provides important information regarding any confidentiality as to information in the custody or control of the Commission or staff. Prospective applicants are strongly encouraged to refer to Part 6 of this policy before providing confidential or commercially sensitive information to the Commission or staff.

PART 2 FEES

5. Fees are prescribed by Alberta Securities Commission Rule 13-501 *Fees*.

PART 3 HOW TO ADDRESS AN APPLICATION, SUBMIT AN APPLICATION AND PAY APPLICATION FEES

6. Most applications to the Commission or the Executive Director are processed by staff in one of two divisions: Corporate Finance or Market Regulation. Appendix 1 contains a list of legislation in respect of which applications are typically processed by staff in the

Corporate Finance division. Appendix 2 contains a list of legislation in respect of which applications are typically processed by staff in the Market Regulation division.

7. Address your application to the attention of the Director, Corporate Finance if
 - (a) it pertains to the legislation listed in Appendix 1,
 - (b) it pertains to a securities law requirement applicable to issuers, insiders or securityholders (e.g., prospectus requirements or prospectus exemptions, mergers and acquisitions or continuous disclosure requirements), or
 - (c) it relates to matters assigned to each of Corporate Finance and Market Regulation.
8. Address your application to the attention of the Director, Market Regulation if
 - (a) it pertains to the legislation listed in Appendix 2, or
 - (b) it pertains to securities law requirements applicable to registrants, marketplaces, clearing agencies or over-the-counter derivatives.
9. Delays in processing applications may occur when applications are not addressed to the attention of the appropriate recipient.
10. After the effective date (the **Effective Date**) of National Instrument 13-103 *System for Electronic Data Analysis and Retrieval+* (SEDAR+) (**NI 13-103**), most applications and fees for those applications will be submitted using an electronic filing system known as SEDAR+ (**SEDAR+**). The transition to SEDAR+ under NI 13-103 will be phased, with some filing types transitioned to SEDAR+ over time. After the Effective Date, applicants will need to refer to NI 13-103 to determine whether their application and the fees for it are required to be transmitted through SEDAR+. Applications and associated fees that are not required to be transmitted through SEDAR+ should be submitted using the process outlined in sections 11 through 13 below.
11. Applications that are not required to be transmitted through SEDAR+ should be submitted by email to legalapplications@asc.ca. This email address will accept emails up to 20MB in size. If your application package exceeds this size, you may either divide the application package into multiple parts to be sent in separate emails (clearly identifying each email in the series as well as the total number of emails) or alternatively, you may deliver an electronic version of your application letter by email at legalapplications@asc.ca, and physically deliver an optical disc or USB flash drive containing an electronic version of the remainder of the application package to the Alberta Securities Commission at Suite 600, 250 – 5th Street S.W., Calgary, Alberta T2P 0R4 (the **ASC's Address**). Please note that staff cannot return an optical disc or USB flash drive used to transmit an application package to us.

12. Application fees that are not required to be transmitted through SEDAR+ should be paid by cheque payable to the Alberta Securities Commission and sent to the ASC's Address. If a filer does not wish to pay by cheque, the filer may email accounts.receivable@asc.ca to make arrangements to pay by wire transfer, or to inquire whether further alternatives are available.
13. In accordance with Alberta securities laws, certain applications for recognition under the Act must be submitted as follows:
 - (a) an application for recognition as an exchange under section 62 of the Act must be submitted in accordance with Part 3 of National Instrument 21-101 *Marketplace Operations*;
 - (b) an application for recognition as a clearing agency under section 67 of the Act must be submitted in accordance with Part 2 of National Instrument 24-102 *Clearing Agency Requirements*;
 - (c) an application for recognition as a trade repository under section 67.3(1) of the Act must be submitted in accordance with Part 2 of National Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*.

Expedited treatment is generally not available for these applications.

14. An applicant seeking relief under section 153 of the Act that is not seeking equivalent relief in other jurisdictions may request relief by applying in accordance with this policy. An applicant seeking relief under section 153 of the Act and equivalent relief in at least one other jurisdiction should refer to this policy and National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (NP 11-206).

PART 4 CONTENTS OF AN APPLICATION

15. Generally, an application package should consist of the following:
 - (a) a letter prepared by or on behalf of the applicant containing submissions as to why the decision sought should be made;
 - (b) a draft of the decision sought in Word format, conforming, if applicable, to the form of decision set out in any relevant policy, such as National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203), or NP 11-206;
 - (c) relevant supporting documents (e.g. a copy of any disclosure documents prepared in conjunction with the transaction);

- (d) a verification statement signed by the applicant or, if the applicant is not an individual, by a senior officer or director of the applicant or an individual performing functions for the applicant similar to those performed by a senior officer or director, that
 - (i) confirms the truth of the representations contained in the application, and
 - (ii) if the application was prepared and/or filed by an agent on behalf of the applicant, confirms the authority of the agent to prepare and/or file the application.
- 16. Include in or with your submissions all information that would be relevant to staff in determining whether or not to recommend the decision sought. The following information is generally essential to this determination:
 - (a) a description of the transaction or circumstances giving rise to the application;
 - (b) the section number(s) of both the requirement(s) pursuant to which the decision is sought, and if an exemption is sought, the provision(s) providing authority to grant it;
 - (c) a description of any related decision you are seeking, or expect to seek, under securities legislation in other jurisdictions;
 - (d) if you are seeking relief in multiple jurisdictions and you are not making your application in accordance with NP 11-203, explain why;
 - (e) full details of any pre-filing discussions with staff, other securities regulators or exchanges, including the name of the staff member with whom such discussions were held and the dates of the discussions;
 - (f) submissions as to whether any applicable test for the making of the decision (e.g. that the granting of the relief or approval sought would not be prejudicial to the public interest) has been met;
 - (g) if exemptive relief is requested, a discussion of any relevant Commission or Executive Director decisions, including copies of the decisions or citations to them. All such decisions issued since January 1999 are available on www.albertasecurities.com. If there are no prior such decisions, please include or cite relevant decisions of other Canadian securities regulators. Although these decisions are helpful and will be considered in arriving at a recommendation with respect to an application, neither the Commission nor the Executive Director are bound by precedent, and any application will be considered on its particular facts.

PART 5 REQUESTS FOR EXPEDITED TREATMENT OF AN APPLICATION

- 17. If expedited treatment has been requested, include in your application an explanation of why expedited treatment is required and the reasons for any delay in the making of the application.

18. We receive many requests for expedited treatment of an application. In our view, many of these requests are not appropriate. In most cases, expediting our review of an application delays our review of other previously submitted applications. Therefore, staff will not expedite an application unless the request for expedited treatment is reasonable and due to circumstances beyond the applicant's control. We recognize that such circumstances do arise, and we make reasonable efforts to accommodate appropriate requests for expedited treatment. If you become aware that you may require expedited treatment of an application, we strongly encourage you to contact a staff member of the appropriate division immediately to discuss your situation.
19. Regardless of whether expedited treatment is requested for an application, if it is important that relief or approval be granted by a specific date, this should be clearly indicated in boldface type on the first page of the application.

PART 6 CONFIDENTIALITY

20. Subsection 221(3) of the Act establishes a general rule that all material required to be filed with the Commission or the Executive Director must be made available for public inspection during normal business hours. In addition, section 2(a) of the *Freedom of Information and Protection of Privacy Act* (Alberta) provides any person a right of access to the records in the custody or control of a public body, as defined therein, subject to limited and specific exceptions. Consequently, in the absence of an order under subsection 221(4) or (5) of the Act, all applications and other material provided to the Commission or the Executive Director may generally be accessed by the public through a request made as provided on www.albertasecurities.com.
21. Application can be made under subsection 221(4) or (5) of the Act to hold material submitted to the Commission or its staff in confidence. If confidential treatment is requested, an explanation of why confidential treatment is required should be included in the application. If confidentiality is requested but subsequently denied in respect of such material, subject to any legislative exceptions, the material will become available for access by the public once the decision to deny confidentiality is no longer subject to appeal. It is important to note that our records retention policy does not permit us to return or destroy any material we have relied upon in making a decision, even if such material is the subject of a request for confidentiality.
22. You may contact staff to discuss any request for confidentiality prior to submitting confidential material with an application. For applications that are not submitted through SEDAR+, you may contact staff to discuss options for the secure electronic transmission or physical delivery of confidential material. Generally, staff can accept encrypted material submitted by email as long as a decryption key is provided.
23. Please specify a date for the termination of confidential treatment of the application and related materials. Your application should contain submissions that support the period of confidentiality you are requesting and overturn the presumption that it is in the public interest that all materials be made available for access by the public. It is rare for

confidentiality to be granted for a period of longer than 90 days, and particularly compelling reasons would be necessary in such circumstances.

24. A request for confidentiality is itself an application under the Act requiring payment of an application fee.

PART 7 REVIEW OF APPLICATIONS AND DECISION MAKING PROCESS

25. Applications are assigned to a staff member for review. Staff will begin their review once all necessary submissions and materials have been received. The decision maker will not issue a decision until all required fees have been paid.
26. Staff will typically contact you for further information or clarification, or to provide comments on the draft decision document. You should respond promptly to staff comments and questions. If you fail to do so, staff may conclude that you have abandoned your application and terminate the review.
27. While the initial draft of a decision document submitted with an application may require changes as a result of the staff review and comment process, in most cases, these changes are not substantive enough to warrant further verification by the applicant. However, if the factual basis for an application changes significantly from that set out in the original application, staff may request the applicant to provide additional written submissions accompanied by a new verification statement confirming the accuracy of the revised representations, and any agent's continuing authority to prepare and/or file the application.
28. Once the review is complete, the staff member responsible for the application will make a recommendation to the decision maker in respect of the decision. If staff recommend the decision that the applicant is seeking, and such recommendation is accepted by the decision maker, the decision will be signed by the decision maker and provided to the applicant. In some cases, a decision maker will request revisions to a decision sought. If the requested revisions are substantive in nature, staff will contact the applicant to discuss the revisions before the decision is issued. If the requested revisions are non-substantive, they will typically be included in the final form of decision without further consultation.
29. If staff recommend to the Executive Director or the Commission, as the case may be, that an application be denied, staff will provide the applicant with reasons for their recommendation. The applicant may then withdraw the application, or request a hearing before the relevant decision maker. The Executive Director and the Commission generally prefer to deal with such hearings solely on the basis of written submissions. If the applicant and staff agree on the written material to be presented, that material will be forwarded to the relevant decision maker, who may request additional information or submissions before rendering a decision. If the applicant and staff cannot agree on the written material to be presented to the relevant decision maker, or if either party requests an oral hearing, an appearance will be scheduled to deal with the matter.

PART 8 APPEALS

30. The Act contains appeal mechanisms in respect of decisions of the Executive Director and in respect of decisions of the Commission. Please consult the Act to determine the applicability of these mechanisms to your circumstances, including the manner in which an appeal may be commenced. In respect of an appeal to the Commission, you should also consult ASC Rule 15-501 *Rules of Practice and Procedure for Commission Proceedings*.

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Appendix 1

Legislation in respect of which Applications will be Processed by Staff in the Corporate Finance Division

Section Number, if applicable, in Act, Rule or Instrument	Description
<i>SECURITIES ACT</i>	
144(1)	Prospectus Exemption
144(2)	Deemed distribution
144(3)	Declaration re: Distribution
145(1)	Application for reporting issuer status
153	Application to be deemed to have ceased to be a reporting issuer
179(1)	Order re: non-compliance with Part 14 of the Act
179(2)	Take-over bid and issuer bid relief
189(2)	Mutual fund related parties
191(2)	Filing by mutual fund management company
213	General exemptive relief in respect of matters falling within the responsibility of the Corporate Finance division
214	Revocation or variation of decision (in relation to an application processed by staff in the Corporate Finance division)
221(4) or (5)	Confidentiality of materials provided to or obtained by the Executive Director or the Commission (in relation to an application being processed by staff in the Corporate Finance Division)
<i>BUSINESS CORPORATIONS ACT</i>	
3(3)	Distribution to the public
151	Proxy solicitation
156(2)	Omissions from financial statements
171(3)	Dispensing with audit committee

Section Number, if applicable, in Act, Rule or Instrument	Description
CSA INSTRUMENTS AND ASC RULES	
	National Instrument 33-105 <i>Underwriting Conflicts</i>
	All national instruments, multilateral instruments and ASC Rules in the 40 series, e.g. National Instrument 41-101 <i>General Prospectus Requirements</i>
	All national instruments, multilateral instruments and ASC Rules in the 50 series, e.g. National Instrument 51-101 <i>Standards of Disclosure for Oil and Gas Activities</i>
	All national instruments, multilateral instruments and ASC Rules in the 60 series, e.g. National Instrument 61-101 <i>Protection of Minority Security Holders in Special Transactions</i>
	All national instruments, multilateral instruments and ASC Rules in the 70 series, e.g. National Instrument 71-101 <i>Multijurisdictional Disclosure System</i>
	All national instruments, multilateral instruments and ASC Rules in the 80 series, e.g. National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i>

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Appendix 2

Legislation in respect of which Applications will be Processed by Staff in the Market Regulation Division

Section Number, if applicable, in Act, Rule or Instrument	Description
<i>SECURITIES ACT</i>	
62	Application for exemption from recognition as an exchange
67	Application for exemption from recognition as an clearing agency
62 or 67	Application to reflect a merger, acquisition reorganization or restructuring of an exchange or clearing agency
67.3(1)	Application for exemption from recognition as a trade repository
144(1)	Registration exemption
213	General exemptive relief in respect of matters falling within the responsibility of the Market Regulation division
214	Revocation or variation of decision (in relation to an application processed by staff in the Market Regulation division)
221(4) or (5)	Confidentiality of materials provided to or obtained by the Executive Director or the Commission (in relation to an application being processed by staff in the Market Regulation division)
CSA INSTRUMENTS AND ASC RULES	
	All national instruments, multilateral instruments and ASC Rules in the 20 series, e.g. National Instrument 21-101 <i>Marketplace Operation</i>
	All national instruments, multilateral instruments and ASC Rules in the 30 series, e.g. National Instrument 31-102 <i>National Registration Database</i> , except for National Instrument 33-105 <i>Underwriting Conflicts</i>
	All national instruments, multilateral instruments and ASC Rules in the 90 series, e.g. National Instrument 91-101 <i>Derivatives: Product Determination</i>