

**Ontario Securities Commission**

**Policy 13-601**

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**OSC POLICY 13-601**

***PUBLIC AVAILABILITY OF MATERIAL FILED UNDER THE SECURITIES ACT***

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## **A. GENERAL**

1. Section 137 [140] of the *Securities Act* (Ontario) (the "Act") requires, in effect, that material filed pursuant to the Act or the regulations made under the Act (the "Regulation") be made available for public inspection during normal business hours except for any material or class of material as to which the Ontario Securities Commission is of the opinion that it "discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection." This Policy Statement sets out how the Commission believes that section 137 [140] should be construed and applied.

2. Nothing in this Policy Statement limits the authority of the Commission to make a determination that any specific material filed with it should, or should not, be made publicly available.

## **B. MEANING OF "FILED"**

The word "filed" is one of precise meaning in the Act. This Policy Statement deals with all of the classes and types of material that the Act and Regulation require to be filed. That does not mean that all other material is to be kept confidential. For example, material with respect to rights offerings delivered to the Commission in compliance with sections 34(1)14 [35(1)(14)] and 71(1)(h) [72(1)(h)] of the Act will be made public except where special circumstances indicate that the material should be confidential and except that internal memoranda and correspondence with other regulatory authorities will be treated as confidential. By contrast, applications for registration will be treated as confidential. From time to time, this Policy Statement will be supplemented as to public availability of other information that is not technically "filed", such as documents that are only required to be "delivered" to the Commission.

## **C. AVAILABILITY OF FILED MATERIAL**

The following are the classes of material required to be filed under the Act. Material of each class will be made publicly available except to the extent and in the circumstances noted in any comment after the description of that class:

- (a) Codes or symbols used to identify persons, companies or salesmen in confirmations and filed under section 35 [36].

Comment - to be made public.

- (b) Prospecting syndicate agreements filed under section 50 [51].

Comment - will be made public after the issuance of a receipt by the Director of the Commission. Supporting material will also be made public, except that the Commission has assigned to the Director under section 6 the right to make a case-by-case decision as to confidentiality in the same manner as for material filed supplementary to prospectuses, dealt with under clause (c) of this Section C.

- (c) Preliminary prospectus and prospectus filed under section 52 [53], amendment to either of them filed under section 56 [57]; renewal prospectus filed under section 61 [62]; short form preliminary prospectus and prospectus filed pursuant to section 62 [63].

Comment - each of these documents is to be made public after the issuance of a receipt by the Director. At the end of the filing process - i.e., when a final receipt is issued for a prospectus, or an amendment is filed under section 56(1) [57(1)], or a receipt is issued for an amendment under section 56(2) [57(2)], or a receipt is issued for a renewal prospectus under section 61 [62] - then a determination will be made as to the availability of supplementary material, including material filed under section 55(2) [56(2)] and any other material received in connection with the specific filing. Pursuant to section 6 of the Act, the Commission has assigned to the Director the right to make that determination. It should be in accordance with the following guidelines:

- (i) deficiency letters and correspondence relating thereto, including correspondence with other jurisdictions as well as correspondence with those responsible for the filing, should not be made public unless special circumstances are present, since the prospect of public availability of this material would detract from freedom of communication during the filing process. In any event, correspondence with or involving another regulatory authority should not be made public without the consent of that authority;
- (ii) supporting material required by the staff as further information in connection with the filing such as auditors' letters, legal opinions, geologists' reports and similar data (but not including material contracts) should be made public unless confidentiality is specifically requested or the Director determines confidentiality is desirable;
- (iii) where confidentiality is specifically requested as to supporting material, the Director may nonetheless determine that it shall be placed on the public file after providing the party requesting confidentiality with an opportunity to make oral or written submissions.

If a prospectus or a renewal prospectus is withdrawn before a final receipt is issued, the originally filed preliminary prospectus or renewal prospectus will be kept on the public file, stamped as withdrawn, but supplementary materials should not be on the public file unless the Director so determines.

- (d) Reports filed under sections 71(3) [72(3)], 71(4)(c) [72(4)(c)], 71(5)(b) [72(5)(b)], 71(7)(b)(i) [72(7)(b)(i)] or 71(7)(b)(ii) [72(7)(b)(ii)] with respect to transactions exempt from the prospectus requirements.

Comment - All of the forms relating to transactions in securities of a class in which a public trading market exists shall be made public.

- (e) Statements of material facts filed under section 72(1)(b) [73(1)(b)].

Comment - the comment with respect to prospectuses applies here, with necessary changes. The draft statement of material facts need not be made public until after it is accepted for filing.

- (f) Application for exemption order under section 73(1) [74(1)].

Comment - It is in the public interest that a copy of an application for an exemption order should be placed in the public file upon the receipt by the Commission of the application unless the applicant specifically requests confidentiality and demonstrates that it is not contrary to the public interest.

- (g) Timely disclosure reports under sections 74(1) [75(1)] and 74(2) [75(2)] and copies of reports to other regulatory agencies filed pursuant to the Regulation.

Comment - to be made public, except that reports to other regulatory agencies should be treated as confidential to the extent contemplated by the Regulation (see section 6(4) of the Regulation).

- (h) Confidential timely disclosure reports under section 74(3) [75(3)] and ten day up-date reports under section 74(4) [75(4)].

Comment - to be treated as confidential. If the issuer fails to file a ten day up-date report or if the reasons for confidentiality are considered to be insufficient by the staff the matter will be brought to the attention of the Commission, but no release may be initiated without consent of the issuer except upon an order of the Commission. Except in extraordinary situations, the Commission will provide the issuer with an opportunity to be heard before making such an order.

- (i) Interim financial statements under sections 76(1) [77(1)] and 76(2) [77(2)]; annual comparative financial statements under section 77(1) [78(1)] with accompanying auditors' report under section 77(2) [78(2)]; information circular or annual report under sections 80(1) [81(1)] or 80(2) [81(2)]; finance company reports filed pursuant to the Regulation.

Comment - to be made public.

- (j) Take-over bid circulars, varied take-over bid circulars, issuer bid circulars, directors' circulars (filing requirements in the Regulation).

Comment - to be made public. In some cases, for example, in compliance with Policy Statement 9.1, the Director and the staff of the Commission review material of this type prior to publication and receive supporting material in connection with that review. The procedure set out in clause (c) of this Section C with respect to supporting material on a prospectus filing also applies here.

- (k) Initial and subsequent insider reports and amended reports under section 107, and insider reports of change of registered holder under section 108, except for information contained in the reports filed with the Commission that the Commission has determined to hold in confidence under Companion Policy 55-102CP to National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*; reports by nominee holders under section 109; reports by mutual fund management companies under section 117(1), or comparable reports from other jurisdictions under section 121.

#### **D. AVAILABILITY OF LISTS OF REPORTING ISSUERS, ISSUERS IN DEFAULT AND ISSUERS AGAINST WHICH A CEASE TRADING ORDER HAS BEEN ISSUED**

As set forth in Policy Statement 2.5, the following lists are available during normal business hours for inspection in the public office of the Commission, 17th floor, 20 Queen Street West, Toronto:

- (a) a list of issuers deemed to be reporting issuers. This list is updated monthly and indicates which companies have outstanding cease trade orders and which are in default as of the date of the list. The list also indicates whether the securities of these issuers trade on a Canadian exchange (and, if so, which exchanges) or over-the-counter;
- (b) a list indicating those issuers deemed to be in default in accordance with section 71(9) [72(9)] of the Act. This list is updated daily; and

- (c) a list indicating companies against which a cease trade order has been issued.  
This list is updated as necessary.

(Former Policy 3-40: First published (1979) O.S.C.B. 189. Former Policy 3-49: First published (1980) O.S.C.B. 461; published as 2.2 (1982) 4 O.S.C.B. 366E.)