

1.1.3 OSC Staff Notice 12-703 – Applications for a Decision that an Issuer is not a Reporting Issuer

OSC Staff Notice 12-703 *Applications for a Decision that an Issuer is not a Reporting Issuer*

(Revised July 26, 2012)

Purpose

This Notice provides information and guidance on applications that may be made under subclause 1(10)(a)(ii) of the *Securities Act* (Ontario)(the Act) for an order that an issuer is not a reporting issuer (a decision).

This Notice applies to an issuer that only requires a decision in Ontario. If a decision is required in more than one jurisdiction of Canada, please see the guidance in CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer*.

Among other things, this Notice covers:

- how an issuer can apply for a decision under a simplified procedure if it meets certain conditions,
- how an issuer can apply for a decision if it is not eligible to use the simplified procedure,
- how a foreign issuer with a small securityholder presence in Canada can apply for a decision, and
- the procedure for dissolved issuers.

In this Notice, “securityholder” means, for a security, the beneficial owner of the security.

The Simplified Procedure

The Ontario Securities Commission (the Commission) has adopted a simplified procedure for certain applications under subclause 1(10)(a)(ii) of the Act in which an issuer is seeking a decision that it is not a reporting issuer. Pursuant to an assignment of certain of the Commission’s powers that was made under subsection 6(3) of the Act, a decision under the simplified procedure can be made by the Director under the Act. The Director does not have the power to grant relief to a reporting issuer that does not meet the conditions for the simplified procedure (only the Commission may grant relief to such a reporting issuer).

The simplified procedure is available to a reporting issuer:

- whose outstanding securities, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in Ontario and fewer than 51 securityholders in total worldwide,
- whose securities, including debt securities, are not traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported,
- that is not in default of any of its obligations as a reporting issuer, and
- that will not be a reporting issuer in any jurisdiction of Canada immediately following the director making a decision that the issuer is not a reporting issuer.

A reporting issuer may request a decision under the simplified procedure by submitting, a draft decision document and a letter in duplicate prepared by or on behalf of the issuer that:

- states that the issuer is seeking a decision of the Director that it is not a reporting issuer,
- references the simplified procedure in this Notice, and

- includes representations that the applicant meets each of the criteria set out in the simplified procedure in this Notice.

Schedule 1 includes a sample application letter and form of decision document. In some cases, staff may request additional information from the reporting issuer. The reporting issuer should make its application in paper and electronic format to:

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON
M5H 3S8

Attention: Applications Administrator

The issuer should provide an electronic copy of the application letter and form of decision document by email to: applications@osc.gov.on.ca. The application should be accompanied by the signed verification statement referred to in section D(e) of OSC Policy 2.1 *Applications to the Ontario Securities Commission*. If confidentiality is requested, the application should comply with section C.2 of OSC Policy 2.1.

What to do when the simplified procedure in this Notice is not available

If an issuer cannot meet all of the simplified procedure criteria in this Notice, the issuer should submit an application under the standard procedure for an application under OSC Policy 2.1 using a more detailed application letter and form of decision document.

Going-private transactions

Where the issuer is in the process of completing a going-private transaction following which it will want to stop being a reporting issuer, the issuer may apply for relief using the simplified procedure in this Notice prior to completing the transaction. The Director cannot make a decision until the transaction is complete and the issuer can represent that it has satisfied all the criteria for the simplified procedure.

Successor reporting issuers

In circumstances where an issuer has exchanged its securities with another party (or that party's securityholders) in connection with a statutory arrangement or procedure, the issuer should consider whether any other party in the transaction will or has become a reporting issuer following the exchange. If so, the issuer should disclose the name of that party in its application to stop being a reporting issuer and provide a brief summary of the statutory arrangement or procedure and the parties involved.

Issuers subject to the *Business Corporations Act* (Ontario)

The *Business Corporations Act* (Ontario)(the OBCA):

- contains certain provisions that apply to reporting issuers that were incorporated, continued or amalgamated under the OBCA (the OBCA refers to these reporting issuers as "offering corporations"), and
- provides, in subsection 1(6), that if an offering corporation no longer wants those provisions to apply to it, it must obtain an order from the Commission deeming it to have ceased to be offering its securities to the public.

If an offering corporation requires an order under subsection 1(6) of the OBCA, it must make a separate application to the Commission. A decision obtained under the simplified procedure in this Notice or other application under subclause 1(10)(a)(ii) of the Act is only for the purposes of securities legislation.

Foreign issuers

Foreign-incorporated issuers often seek decisions that they are not reporting issuers under applicable securities legislation when they have a declining numbers of securityholders in Canada. In general, these issuers do not meet the criteria for the simplified procedure in this Notice because they typically have many beneficial securityholders in jurisdictions in Canada, and their securities are listed on one or more exchanges outside of Canada. For guidance on how such a foreign issuer can obtain a decision that the issuer is not a reporting issuer, please see the guidance under the heading "Foreign issuers" in CSA Staff Notice 12-307.

Reporting issuer that has been dissolved or terminated

A reporting issuer does not need to apply for a decision that it is not a reporting issuer if it is:

- a corporation that was dissolved under applicable corporate legislation,
- a limited partnership that was dissolved under applicable limited partnership legislation,
- a trust that was terminated under its declaration of trust, or
- another form of business organization that was dissolved or terminated under its applicable governing legislation or constating or establishing document.

In each case, it will be sufficient if an agent files evidence of the dissolution or termination with the Commission.

For a corporation, sufficient evidence includes a copy of the certificate and articles of dissolution.

For a limited partnership, sufficient evidence typically includes:

- a copy of the declaration of dissolution or similar document filed under applicable limited partnership legislation, and
- a written representation from the general partner about the effective date of dissolution under applicable limited partnership legislation.

For a trust, sufficient evidence typically includes:

- a copy of the resolution authorizing the termination of the trust,
- a report on voting results indicating that the resolution was passed,
- a written representation that the trust no longer exists (it is sufficient if this representation is provided by filing counsel or former trustees or officers),
- a copy of the change in corporate structure notice filed under section 4.9 of National Instrument 51-102 *Continuous Disclosure Obligations*, and
- evidence such as a copy of a news release or written submission from filing counsel that the trust has no securities outstanding and none listed on an exchange.

If an issuer has commenced dissolution proceedings but still exists, it will remain a reporting issuer in the absence of a decision that it is not a reporting issuer.

Questions

Please refer your questions to any of the following people:

Michael Bennett
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-8079
mbennett@osc.gov.on.ca

Carina Kwan
Legal Counsel, Investment Funds
Ontario Securities Commission
416-593-8052
ckwan@osc.gov.on.ca

July 26, 2012

Schedule 1

Example of an Application Letter under the Simplified Procedure

[Enter date]

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON
M5H 3S8

Attention: Applications Administrator

Dear Sirs/Mesdames:

Re: [Enter name of applicant] (the Applicant) – application for an order under subclause 1(10)(a)(ii) of the Securities Act (Ontario)(the Act) that the Applicant is not a reporting issuer

We are applying to the Ontario Securities Commission **[on behalf of the Applicant]** for an order under subclause 1(10)(a)(ii) of the Act that the Applicant is not a reporting issuer.

In this application, “securityholder” means, for a security, the beneficial owner of the security.

Under the simplified procedure in OSC Staff Notice 12-703, the Applicant represents that:

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in Ontario and fewer than 51 securityholders in total worldwide;
- no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
- the Applicant is not in default of any of its obligations under the Act as a reporting issuer; and
- the Applicant will not be a reporting issuer in any jurisdiction in Canada immediately following the Director granting the relief requested.

[Enter name of Applicant]

[Signature of the person who has signing authority]

Example of a Decision Document under the Simplified Procedure

[Enter date]

[Enter name and address of Applicant]

Dear Sirs/Mesdames:

Re: [Enter name of applicant] (the Applicant) – application for an order under subclause 1(10)(a)(ii) of the Securities Act (Ontario)(the Act) that the Applicant is not a reporting issuer

The Applicant has applied to the Ontario Securities Commission for an order under subclause 1(10)(a)(ii) of the Act that the Applicant is not a reporting issuer.

In this order, “securityholder” means, for a security, the beneficial owner of the security.

The Applicant has represented to the Commission that:

- (a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in Ontario and fewer than 51 securityholders in total worldwide;
- (b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
- (c) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer; and
- (d) the Applicant will not be a reporting issuer in any jurisdiction of Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

[Name of signatory]

[Title]

Ontario Securities Commission