

**Proposed Changes to
National Policy 12-203 Cease Trade Orders
for Continuous Disclosure Defaults**

1. ***The changes to National Policy 12-203 Cease Trade Orders for Continuous Disclosure Defaults are set out in this Schedule.***
2. ***Paragraph 1.2 (c) is replaced with the following:***

(c) MCTOs issued under this policy are not a "penalty" or "sanction" for disclosure purposes — 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 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 PR 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:

- Section 16.2 of Form 41-101F1 *Information Required in a Prospectus*;
- Section 16.1 of Form 41-101F4 *Information Required in a Venture Issuer Prospectus*;
- Item 16 of Form 44-101F1 *Short Form Prospectus*;
- Subsection 10.2(1) of Form 51-102F2 *Annual Information Form*;
- Subsection 7.2 of Form 51-102F5 *Information Circular*;
- Subsection 30(4) of Form 51-103F1 *Annual and Interim Reports*;
- Subsection 14(1) of Form 51-103F4 *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.

3. ***Part 2 is amended by replacing the definition of "specified requirement" with the following:***

"specified requirement" means the requirement to file within the time period prescribed by securities legislation

- (a) annual financial statements,
- (b) an interim financial report,

(c) an annual or interim management's discussion and analysis (MD&A) or an annual or interim management report of fund performance (MRFP),

(d) an annual information form (AIF),

(d.1) an annual report,

(d.2) an interim report, or

(e) certification of filings under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

4. Section 4.3 is replaced with the following:

4.3 Alternative information guidelines — Default Announcement — 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 NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) or part 5 of NI 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* (NI 51-103), as applicable. 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 the circumstances leading to the default, or the default, do not 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 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 CEO or the CFO (or equivalent) of the reporting issuer, be approved by the board or audit committee and be 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 NI 51-102 or part 5 of NI 51-103, as applicable. An issuer will usually be able to determine that it will not comply with a specified requirement at least two weeks before its due date and, as soon as it makes this determination, should issue the default announcement.

The default announcement should

(i) identify the relevant specified requirement and the (anticipated) default,

(ii) disclose in detail the reason(s) for the (anticipated) default,

(iii) disclose the current plans of the reporting issuer to remedy the default, including the date it anticipates remedying the default,

(iv) 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,

(v) 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 NI 51-102 or part 5 of NI 51-103, as applicable, and

(vi) subject to section 4.5 of this policy, 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 section 4.3 regarding a default announcement of that earlier default and is complying with the provisions of section 4.4 regarding default status reports.

5. *Section 4.5 is replaced with the following:*

4.5 Confidential material information — The alternative information guidelines in this policy supplement the material change reporting requirements in NI 51-102 and NI 51-103 and should be interpreted in a similar manner. Similar to the procedures in NI 51-102 and NI 51-103, 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.

6. *Section 4.6 is amended by inserting the following after “part 7 of NI 51-102.”:*

The same holds true for venture issuers subject to the requirements in NI 51-103; if a venture issuer is in default of a specified requirement, it must still comply with all other continuous disclosure requirements.

7. *Sections 4 and 5 of Appendix C - Sample Form of Consent are replaced by the following:*

4. The Issuer [is] [is not] [delete as applicable] a "venture issuer" as defined in National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* (NI 51-103) and [is] [is not] [delete as applicable] a "senior-unlisted issuer" as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102). 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. annual report, as required by section 7 of NI 51-103,

b. audited annual financial statements for the year ended December 31, 2007, as required by Part 4 of NI 51-102,

c. management's discussion and analysis (MD&A) relating to the audited annual financial statements, as required by Part 5 of NI 51-102, and

d. 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).]

8. These changes become effective on ●.