Cynthia Cammidge
LEGAL COUNSEL
TEL.: (416) 362-6093 EXT. 309
FAX: (416) 362-7708
EMAIL: ccammidge@cba.ca

October 22, 1999

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Department of Government Services and Lands, Securities Division,
of Newfoundland and Labrador
Registrar of Securities, Government of Northwest Territories
Registrar of Securities, Government of Nunavut
Registrar of Securities, Government of the Yukon Territory

c/o Daniel P. Iggers, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

And to:

Claude St. Pierre, Secretary
Commission des valeurs mobilières du Québec
Tour de la Bourse
C.P. 246, 22nd Floor
Montréal, Québec
H4Z 1G3

Dear Sirs and Madames:

Proposed National Instrument 55-101 – Exemption from Certain Insider Reporting Requirements

The Canadian Bankers Association appreciates this opportunity to provide you with our comments on proposed National Instrument 55-101 and its accompanying Companion Policy, 55-101CP. Our members recognize and applaud the significant steps taken by the CSA to streamline and decrease the administrative burden with respect to reporting requirements and are hopeful that the CSA will be responsive to the industry comments it receives in connection with this proposed National Instrument.

As per your request, a duplicate copy of our submission along with a disk containing our

letter formatted in Word 97 are enclosed.

Definition of "Senior Officer"

Under various provincial securities acts, an "insider" includes a senior officer of a reporting issuer, as well as senior officers of a reporting issuer's subsidiaries and affiliates. Parts 2 and 3 of proposed National Instrument 55-101 provide general exemptions from the insider reporting requirements for senior officers who are insiders of a reporting issuer by virtue of being a senior officer of a subsidiary or affiliate of such reporting issuer. These exemptions do not however, apply to a senior officer of a reporting issuer, or a senior officer of a significant subsidiary of a reporting issuer.

"Senior Officer" as currently defined in the provincial securities acts, includes a vice-president. As such, any vice-president of a bank or a subsidiary of a bank is subject to insider reporting obligations, and is not exempt under the proposed National Instrument as currently drafted.

It is our submission that the definition of "senior officer" should be narrowed with respect to insider reporting requirements. The definition currently imposes a large administrative burden on our members with respect to reporting requirements. The hierarchical and administrative structure of the banks currently dictates that there are a number of vice-presidents situated within their organizational structure. Many of our members confer titles that are honorific in nature and may not necessarily reflect the level of managerial responsibility of the individual. Thus, many vice-presidents do not have, nor are they privy to, confidential material information with respect to their respective reporting issuer. As a result, we believe that the reporting requirement should be based on function and access to inside information, rather than on job titles. It is our proposal that the definition of "senior officer" be limited to those officers who are truly "senior". For example, the definition of "senior officer" should include only those vice-presidents who are in charge of principal business units, divisions or functions of the banks.

In support of our proposal set out above, we direct your attention to the following: (i) the approach to insider reporting taken by the United States Securities and Exchange Commission; and (ii) other Canadian statutory reporting requirements of executive officers.

The insider reporting approach taken by the United States is set out in Section 240.16a-1 "Definition of Terms" with respect to "Reports of Directors, Officers and Principal Shareholders" under the "Rules and Regulations Under the Securities Exchange Act of 1934,". The following is a copy of the definition of "officer" found in Section 240.16a-1:

> (f) The term "officer" shall mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust.

Note: "Policy-making function" is not intended to include policy-making functions that are not significant. If pursuant to Item 401(b) of Regulation S-K (Sec. 229.401(b)) the issuer identifies a person as an "executive officer," it is presumed that the Board of Directors has made that judgement and that the persons so identified are the officers for purposes of Section 16 of the Act, as are such other persons enumerated in this paragraph (f) but not in Item 401(b).

In addition to the elimination of any unnecessary regulatory burden, we believe that the restriction of the definition of "senior officer' to those that are truly senior in nature, would bring proposed National Instrument 55-101 more in line with other existing reporting requirements. For example, Form 40 of the *Securities Act* (Ontario) "Statement of Executive Compensation" defines an "executive officer" of an issuer as:

(a) the chair of the issuer, if that individual performed the functions of the office on a full-time basis;
(b) a vice-chair of the issuer, if that individual performed the functions of the office on a full-time basis;
(c) the president of the issuer;
(d) a vice-president of the issuer in charge of a principal business unit, division or function such as sales, finance or production; or
(e) an officer of the issuer or any of its subsidiaries or any other person who performed a policy-making function in respect of the issuer;

whether or not the individual was also a director of the issuer or any of its subsidiaries.

Hence, existing legislation, such as the above, already limits a vice-president to those individuals that are in charge of a principal business unit, division or function and limits an officer to those individuals who perform a policy-making function. We therefore believe that amending National Instrument 55-101 to become more in line with the definition currently found in Form 40 would be a further step towards the goal of harmonization of securities legislation both intra-provincially and inter-provincially within Canada.

Given that "senior officer" is defined in the provincial securities legislation, we appreciate the difficulty of including a new definition of "senior officer" in proposed National Instrument 55-101, without also amending the existing definitions contained in the relevant securities acts. To circumvent this issue, we suggest amending National Instrument 55-101 to include a general exemption for certain senior officers. In particular, we suggest an exemption similar to the following:

Notwithstanding section 2.2, the insider reporting requirement does not apply to a senior officer who is a vice-president of the reporting issuer or a vice-president of a subsidiary (including a significant subsidiary) of the reporting issuer provided that:

(a) the vice-president is not in charge of a principal business unit, division or function of the reporting issuer or subsidiary of the reporting issuer, as the case may be;

(b) the vice-president does not receive, in the ordinary course, information as to material changes concerning the reporting issuer before the material facts or changes are generally disclosed; and

(c) the vice-president is not an insider of the reporting issuer in any other capacity than as vice-president of the reporting issuer, or vice-president of a subsidiary of the reporting issuer, as the case may be, and is not otherwise exempt from the insider reporting requirements.

Broker – Dealer Dividend Re-investment Plans and Optional Cash Payments

The proposed definition of "automatic securities purchase plan" does not currently contemplate the inclusion of dividend re-investment plans offered by registered broker dealers, nor does it include optional cash payments. We respectfully submit that this definition should be amended to provide for both of these types of plans. Many of the banks' subsidiary broker dealers have dividend re-investment programs and the Canadian securities commissions have on numerous occasions granted these plans the benefits afforded to automatic securities purchase plans. In order to omit the necessity of making an application to have one's dividend re-investment plan treated as an automatic securities purchase plan we contend that dividend re-investment programs should be included in the above definition. This amendment would be in keeping with the CSA's initiative to streamline and harmonize the securities regulatory market. Further, optional cash payments should also be included in the definition of "automatic securities purchase plan" as these plans are subject to restrictions when the purchases are actually made which make them unlikely to be abused for the purposes of insider trading.

Reporting Requirements

Section 4.3(b) of the proposed National Instrument states that an insider that is exempt from the insider reporting requirement under section 4.1 shall report all acquisitions of securities under an automatic securities purchase plan if any of the securities acquired under the automatic securities purchase plan during any financial year are not disposed of or transferred during the financial year, within 90 days of the financial year end of the reporting issuer. The financial year end of the banks is October 31st and accordingly, pursuant to this section, all reports would have to be filed by January 31st of the following year. Reporting individuals of the banks may have difficulty in complying with this requirement in those of their plans which deliver statements on a calendar quarterly basis. Due to this quarterly reporting, there is a strong possibility that a reporting individual would not have the required information readily available to him or her in sufficient time to report by January 31st. At the same time, some of the same insiders may participate in other plans of that issuer which report on a fiscal quarter basis (such as a dividend reinvestment plan). These plan statement reporting systems cannot be changed, since they often involve technology and services through third party contracts and extensive technology set-up expenditure and operational support systems.

In addition, numerous of our members' existing plans, each possibly involving participation of hundreds of insiders of that member, have been issued exemption rulings and orders which call for annual reporting by March 31st of plan acquisitions during the prior calendar year. Filings on this basis will have become part of their insiders' routine compliance. If a new plan is established for participation by a large number of the same insiders, compliance would

be simplified if the insiders could be told to report the new plan at the same time as reporting acquisitions under the other plans of this issuer in which they participate.

The proposed Companion Policy allows for the continuation of reporting existing plans on the basis of existing rulings and orders (which have been issued for years on the basis of annual filing within 90 days after the calendar year end, by March 31st), but the proposed National Instrument provides for acquisitions in all new plans to be reported on the basis of 90 days after the issuer's fiscal year end.

We respectfully submit that, to facilitate compliance with the reporting requirements, and since the information, both respecting plans that issue statements for a fiscal quarter and plans that issue statements for a calendar quarter, would be received by insider participants in time to report by March 31st (with respect to the prior fiscal or calendar year), the Reporting Requirement should provide that acquisitions under automatic securities purchase plans, in the absence of reportable disposition or transfer of those securities, will be annually reported by March 31st.

In the alternative, it should be allowable for insiders to report with respect to a particular plan within 90 days following, at their individual election or at the issuer's election, EITHER the fiscal year end (respecting unreported acquisitions in the plan during that prior fiscal year) OR the calendar year end (respecting unreported acquisitions in the plan during that prior calendar year), reporting on a consistent basis with respect to the particular plan.

Existing Exemptions

Section 5.1 of the proposed National Instrument currently calls for reporting issuers to maintain a list of all insiders of that reporting issuer exempted by the National Instrument and the basis upon which those insiders are exempt. For large institutions, such as the banks, the task of keeping a list of all insiders pursuant to this section is a very timing consuming and unreasonable administrative burden. The banks each have hundreds of persons who are exempt at any one time and any lists of such "exemptees" would change on a daily basis.

As a result of the impracticality of maintaining such a list we would like to propose an alternative. Rather than a requirement that the name of each exempt individual be kept by the reporting issuer, we propose that section 5.1 be amended to state that a list be kept by the reporting issuer of all individuals who are required to file insider reports. Currently, our member reporting issuers maintain a list of all individuals within their organization who are required to file insider reports and regularly write to these individuals informing them of their responsibility to do so. Therefore, amending section 5.1 to state that a list be kept in the positive rather than the negative, would eliminate any further administrative burden on our reporting issuers while still meeting the goal of the CSA of having a list of those individuals who are (or are not) required to file insider reports.

Conclusion

We commend the CSA on its initiative to have insider reporting obligations harmonized throughout Canada and we believe this proposed National Instrument is a good starting point for both regulators and market participants. We hope our comments have offered the CSA some concrete suggestions for improvement of National Instrument 55-101 and that such comments will help to further streamline and reduce the administrative burden of market participants while still maintaining a high level of consumer protection.

We appreciate the CSA's consideration of our comments and would be happy to meet with you at your convenience to discuss any questions or issues that may arise from our letter.

Yours truly,

CLC